

COURT-MARTIAL RECORD

NAME RICHMOND, EDWARD L. PFC

SSN [REDACTED] b(6)-2

ACTIONS CODED:

INITIAL _____

ACCA _____

FINAL _____

COMPANION(S):

ASSIGNED TO:

PANEL 2

EXAM. DIV. _____

RETURN THIS FILE TO:

OFFICE OF THE CLERK OF COURT

US ARMY JUDICIARY

901 NORTH STUART STREET, SUITE 1200

ARLINGTON, VA 22203-1837

VOL II **OF** VII **VOL(S)**

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ARMY 20040787

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JALS-CC FORM 24, 1 OCTOBER 2000

JUN 13 2005

16644A

VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

VOL I of V
ORIGINAL COPY

II of VII

OF

RICHMOND, Edward L.,
Jr.

(NAME: Last, First Middle Initial)

HHC, 1st Bn, 27th In,
2nd Bde, 25th IN
(unit/Command Name)

[REDACTED] b(6)-2
(Social Security Number)

US Army
(Branch of Service)

Private First Class

(Rank)

Kirkuk, Iraq
(Station or Ship)

BY
GENERAL COURT-MARTIAL

CONVENED BY COMMANDING GENERAL
(Title of Convening Authority)

Headquarters, 1st Infantry Division
(Unit/Command of Convening Authority)

TRIED AT

FOB Danger, Tikrit, Iraq
(Place or Places of Trial)

ON

3-5 August 2004
(Date or Dates of Trial)

COMPANION CASES:

RECEIVED
CLERK OF COURT
2005 JUN 10 A 7:00
US ARMY JUDICIARY

016644B

20040787

¹ Insert "verbatim" or summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)
² See inside back cover for instructions as to preparation and arrangement.

ARTICLE 32 INVESTIGATION

016645



DEPARTMENT OF THE ARMY
Headquarters, 1st Cavalry Division (Light)
Fort Cavazos, Texas 76102
AFM 7-21.1 (10/03)

APR 17 2004

0 APR 2004

MEMORANDUM FOR Commander, 1st Cavalry Division (Light),
Fort Cavazos, Texas 76102

SUBJECT: Clarification in Response to the Defense's Objection to Article 32(b) Investigating
Officer's Report

I. References

a. Article 32, Record of Findings and Recommendation - *United States v. PFC Edward L. Richmond, Jr.*, dtd 17 April 2004

b. Defense's Objection to Article 32(b) Investigating Officer's Report, dtd 27 April 2004

2. After reviewing the defense's objection, associated materials, and my findings as written on 17 April 2004, my recommendations remain unchanged. In order to be thorough, however, and thereby presenting a fair and unbiased presentation of the findings, clarification of the context of this objection is also required.

3. The text as it appears in TAB B - Elements of Article 118:

(3) Analysis: It is the belief of this investigating officer that the shooting of a successfully secured (read: flex-cuffed) and unarmed "non-combatant" be an unlawful, thus one justifying the charges of murder. The burden of proof remains with the Defense to prove the shooting was justified or lawful, which could in turn, if successful, merit a change in the charges brought forth. This proof was not sufficient.

4. Explanation and clarification.

a. While the defense is correct in noting that the concept of "burden of proof" remains solely and wholly with the government, it was an error in verbiage rather than an error in the logic used to support the recommendations.

b. The intent of this analysis was to state that a preponderance of the evidence in the case supports the illegality of the killing, and that the defense presented no evidence to believe otherwise. The government, however, met its requirement for "burden of proof".

c. Recommendation: The IO agrees with the Defense in that the use of the phrase "Burden of Proof" was an incorrect application of established legal standards; however, when applying the proper standards to the analysis, the findings go unchanged. No confusion existed as to my role

016646

Abstract

DR. G. EMMETT PARKER

UNCLASSIFIED//FOR OFFICIAL USE ONLY

THE UNIVERSITY OF SOUTHERN CALIFORNIA

MEAL SC
Investigating Officer

157

b(6)-2

$$b(7)(c) - 2$$

016647



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
REGION IX, FOB DANGER BRANCH OFFICE
APO AE 09392

REPLY TO
ATTENTION OF:

AETV-BGJA-TDS

28 April 2004

MEMORANDUM FOR COL [REDACTED] b(6)-2
Commander, Headquarters, 2nd Brigade Combat
Team, 25th Infantry Division (Light), Kirkuk, Iraq, APO AE 09347-9998

SUBJECT: Supplemental Objection to Article 32(b) Investigating Officer's Report – PFC
Edward L. Richmond, Jr., [REDACTED] b(6)-5; b(7)(c)-5
Headquarters and Headquarters Company, 1st Battalion,
27th Infantry Regiment, 25th Infantry Division (Light), FOB Warrior, Kirkuk, Iraq, APO AE
09347-9998

1. This supplemental objection to the Article 32(b) Investigating Officer's Report in the above-referenced case is submitted pursuant to Rule for Courts-Martial 405(j)(4). Based upon the following errors in the investigation and the defense objection submitted on 27 April 2004, the defense requests that a new Investigating Officer (IO) and legal advisor be appointed and a new Article 32(b) hearing be held in order to preserve the rights of PFC Richmond.

2. On 28 April 2004, defense counsel reviewed the original Criminal Investigation Division (CID) case file regarding the 28 February 2004 shooting by PFC Richmond. A CID Form 28-R maintained in the original case file notes the following:

b(6)-1, b(7)(c)-1 b(6)-2; b(7)(c)-2
SA [REDACTED] coordinated with CPT [REDACTED], [OSJA], and he advised through previous discussion with MAJ [REDACTED] the SJA is seeking a Court Martial pertaining to PFC Richmond.

3. CPT [REDACTED], an administrative law attorney, was the legal advisor to MAJ [REDACTED] the Article 32 Investigating Officer. At the time CPT [REDACTED] provided legal advice to MAJ Anderson on the day of the Article 32 and in the days leading up to the Article 32, he believed that the SJA was seeking to Court Martial PFC Richmond. Further, as indicated in this CID notation, CPT [REDACTED] had at least one discussion about the case with the Chief of Military Justice for the 1st Infantry Division.

4. The IO is, per se, unable "to make a thorough and impartial investigation into the truth of the allegations" against PFC Richmond IAW DA Pam. 27-17, para. 1-1, when being advised by an officer that has discussed the case with the Chief of Military Justice. This belief is further bolstered when documents show that the legal advisor told CID that the SJA is seeking to court-martial PFC Richmond.

b(6)-2; b(7)(c)-2
¹ Defense counsel believes that "MAJ [REDACTED]" is a reference to MAJ [REDACTED], Chief of Military Justice for the 1st Infantry Division.

016643

AETV-BGJA-TDS

¹
b(6)-5; b(7)(c)-5
SUBJECT: Supplemental Objection to Article 32(b) Investigating Officer's Report – PFC Edward L. Richmond, Jr.,
[REDACTED] Headquarters and Headquarters Company, 1st Battalion, 27th Infantry Regiment, 25th Infantry Division
(Light), FOB Warrior, Kirkuk, Iraq, APO AE 09347-9998

5. PFC Richmond is prejudiced by this improper involvement by the legal advisor in the military justice process. The IO recommended that the charge go forward to a General Court Martial. This is the exact path that his legal advisor believed the SJA wanted to take.

6. Thank you for your consideration of this matter. If I may be of further assistance please contact me via email at [REDACTED]@us.army.mil or by DNVF phone at: [REDACTED] or [REDACTED]

b(6)-2; b(7)(c)-2

[REDACTED]
CPT, JA
Trial Defense Counsel



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
REGION IX, FOB DANGER BRANCH OFFICE
APO AE 09392

REPLY TO
ATTENTION OF:

AETV-BGJA-TDS

27 April 2004

b(6)-2, b(7)(C)-2

MEMORANDUM FOR COL [REDACTED] Commander, Headquarters, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk, Iraq, APO AE 09347-9998

SUBJECT: Objection to Article 32(b) Investigating Officer's Report – PFC Edward L. Richmond, Jr., [REDACTED] Headquarters and Headquarters Company, 1st Battalion, 27th Infantry Regiment, 25th Infantry Division (Light), FOB Warrior, Kirkuk, Iraq, APO AE 09347-9998

b(6)-5, b(7)(C)-5

1. This objection to the Article 32(b) Investigating Officer's Report in the above-referenced case is submitted pursuant to Rule for Courts-Martial 405(j)(4). Based upon the following errors in the investigation, the defense requests that a new Investigating Officer (IO) be appointed and a new Article 32(b) hearing be held in order to preserve the rights of PFC Richmond.

2. On 5 April 2004, CPT [REDACTED] b(6)-2, b(7)(C)-2 preferred one charge of murder, in violation of Article 118 of the UCMJ against PFC Edward L. Richmond, Jr. The defense makes the following objections to the Article 32 investigation that was conducted on 17 April 2004 and served on defense counsel on 23 April 2004.

a. The IO applied an improper burden of proof.

DA Pam. 27-17, para. 1-1, delineates several functions of the Article 32(b) investigation. Specifically, the IO is tasked:

- (i) To make a *thorough and impartial* investigation into the truth of the allegations;
- (ii) To consider the correctness and the form of the charges; and
- (iii) To make recommendations as to the disposition of the charges in the interest of justice and discipline.

In the referenced investigation, the IO misapplied a critical legal standard. In his findings and recommendations, the IO discusses the elements of the charged offense. However, the IO clearly misunderstands the law when he states at Tab B, para. 2c(3) of his findings, that the "burden of proof remains with the Defense to prove the shooting was justified or lawful." This is clearly erroneous. The burden of proof of each and every element of the charged offense belongs to the government and does not shift to the defense. The government must establish that the shooting was unlawful. PFC Richmond is entitled to present a defense to any of the elements; however, the burden of proof is not on the defense to establish that the shooting was lawful or justified. In so clearly misstating established law, the IO displays an actual bias against the

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AETV-BGJA-TDS

SUBJECT: Objection to Article 32(b) Investigating Officer's Report – PFC Edward L. Richmond, Jr., [REDACTED]
Headquarters and Headquarters Company, 1st Battalion, 27th Infantry Regiment, 25th Infantry Division (Light), FOB
Warrior, Kirkuk, Iraq, APO AE 09347-9998

b(6)-5; b(7)(c)-5

accused. Alternatively, the IO was confused as to his function and role at the Article 32 hearing and a new hearing with a new IO must be conducted to preserve the rights of the accused.

b. PFC Richmond is prejudiced by the IO's application of the erroneous legal standard.

The IO's error, as discussed in paragraph 2a of this memorandum, is prejudicial to PFC Richmond. In his findings and recommendations, the IO states at Tab B, para. 2c(3), that, "the burden of proof remains with the Defense to prove the shooting was justified or lawful, *which could in turn, if successful, merit a change in the charges brought forth.*" (emphasis added) The IO acknowledges that essentially, a proper application of the law and a correct understanding of the burden of proof may have resulted in a different recommendation from the IO. Ultimately, this IO's recommendation will be considered by you and by the General Court-Martial Convening Authority. PFC Richmond is entitled to a new hearing with an IO that may recommend a lower disposition of the charges based on a correct understanding of the elemental burden of proof.

3. Thank you for your prompt consideration of this matter. If I may be of further assistance please contact me via email at [REDACTED]@us.army.mil or by DNVN phone at: [REDACTED] or [REDACTED]

b(6)-2; b(7)(c)-2

[REDACTED]
CPT, JA
Trial Defense Counsel



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
REGION IX, FOB DANGER BRANCH OFFICE
APO AE 09392

REPLY TO
ATTENTION OF:

AETV-BGJA-TDS

15 April 2004

b(6)-2, b(7)(c)-2

MEMORANDUM FOR MAJ [REDACTED] Article 32 Investigating Officer, Headquarters and Headquarters Company, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk, Iraq, APO AE 09347-9998

SUBJECT: Article 32 Request for Witnesses and Production of Evidence – *United States v. PFC Edward L. Richmond, Jr.*

1. The Defense requests that the following witnesses be produced at the Article 32 investigative hearing scheduled for 16 April 2004, IAW with Rules for Courts-Martial (R.C.M.) 405(f)(9) and 405(g):

CPT [REDACTED] A Co., 1/27 IN BN
SGT [REDACTED] HHC, 1/27 IN BN
SPC [REDACTED] HHC, 1/27 IN BN
PFC [REDACTED] HHC, 1/27 IN BN

b(6)-4; b(7)(c)-4

2. If the Government contends that any Defense requested witness is not reasonably available under R.C.M. 405(g), the Defense requests that you make a determination under R.C.M. 405(g)(2). Your determination should be made after the Government explains *on the record* the specific efforts made to locate and contact the witnesses and after consultation with your legal advisor as to whether or not the witness is reasonably available. If deemed reasonably unavailable, the Defense requests that a specific factual reason be stated on the record.

3. The Defense requests that the following documents and evidence be produced to the Defense at the Article 32 hearing, IAW with R.C.M. 405(f)(10) and 405(g)(1)(B):

a. All copies of CID reports (including 28s), military police reports, or any other reports made by a law enforcement agency relevant to this investigation to include the Agent Activity Reports and the Agent Activity Summaries. (The Defense has attempted to access this file during the week, however, CID will not permit Defense viewing of the file until authorized by the Government.);

b. Any and all ROE/RUF in effect for 1/27 IN BN from February 2004 through the present;

c. Any and all OPORDs that pertain to the 27-28 Feb 04 mission to include a copy of the actual ROE/RUF card then in effect (Defense counsel holds an "interim TS" clearance);

d. The SIGACT as reported by CPT [REDACTED] after the 28 Feb 04 incident;

b(6)-2, b(7)(c)-2

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e. All training records for PFC Richmond;

f. A copy of any parallel AR 15-6 or Line of Duty Investigations concerning the charged offense (to include, any documents maintained by the AR 15-6 Officer to include his or her appointment memorandum);

g. Copies of any Press Releases or PAO information disseminated by the command regarding the 27-28 Feb 04 raid, to include documents drafted by the Office of the Staff Judge Advocate for release;

h. Copies of any SIGACTS, FRAGOs, OPORDERs, or other similar documents related to the 1/27 IN BN mission on 27-28 Feb 04;

i. The Defense reserves the right to ask for additional evidence, as it becomes known during the Article 32 investigation.

4. If the Government contends that any Defense requested evidence relevant to this case is not reasonably available under R.C.M. 405(g), the Defense requests that you make a determination under R.C.M. 405(g)(2). This determination should be made after the Government counsel explains on the record the specific efforts made to locate and produce the evidence and consultation with your legal advisor as to whether the evidence is reasonably available.

5. Unless provided with copies of the referenced documents prior to the start of the Article 32 investigation, the Defense objects to consideration by the IO of the following evidence:

PFC Richmond's ERB
CID Report of Investigation

6. The Defense expresses the following additional concerns regarding the Article 32 pretrial investigation in this case:

a. Receipt of Legal Advice. The defense specifically requests that the IO make all determinations on questions of law after referring to R.C.M. 405, DA Pam 27-17, and based on advice from your legal advisor. As per DA Pam 27-17, para.1-2e, PFC Richmond and defense counsel are entitled to be informed of any legal advice received by the IO and the opportunity to reply to that legal advice. The Defense proposes that both parties be present during receipt of legal advice, that you restate the legal advice on the record, and that both parties be given the opportunity to respond to that advice before you make a determination on a question of law.

b. Marking Evidence. For record purposes, the Defense requests that you have the reporter mark each piece of evidence received and catalog the evidence. Please do not admit the "packet" as part of the record. This will prevent the parties and you from determining which evidence has been objected to and ruled upon.

c. Delivery of Report to Defense Counsel. The Defense requests that the convening authority direct delivery of your report to the Defense Counsel instead of PFC Richmond. See, R.C.M. 405(j)(3). To effect this delivery, I ask that you state my request in your report, and request that the report be delivered with a personal certification and date annotation so that the Defense may comment on the report within five (5) days allocated UP R.C.M. 405 (j)(4). Defense counsel and PFC Richmond are located in different physical jurisdictions and service upon PFC Richmond can not be considered the same as service on Defense Counsel.

d. Verbatim Testimony. The Defense requests a verbatim transcript of the testimony presented during the Article 32 hearing. Alternatively, and IAW R.C.M. 405(h) and its applicable discussion, the Defense requests that each witness swear to the truth of his or her testimony, after it is reduced to writing.

7. If I may be of further assistance in this matter, please contact me via email at [REDACTED]@us.army.mil or by DNV T phone at: [REDACTED] or [REDACTED]

b(6)-2; h(7)(c)-2

//original signed//

[REDACTED]
Trial Defense Counsel



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

Headquarters, 2nd Brigade Combat Team,
25th Infantry Division (Light)
Kirkuk, Iraq APO AE 09347-9998

APR 10 2004

APVG-UZO-CO (27-10e)

b(6)-2; b(7)(c)-2

MEMORANDUM FOR Major [REDACTED] Headquarters and Headquarters Company, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk, Iraq APO AE 09347-9998

SUBJECT: Appointment of Article 32 Investigating Officer

1. You are hereby appointed as investigating officer for the charges in the case of US v. Private First Class Edward L. Richmond Jr, Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk, Iraq APO AE 09347-9998. This is your primary duty and takes precedence over all other duties. Your responsibility is to impartially inquire into the truth and the form of the charges and such other matters that may be necessary to make a recommendation as to the disposition of the charges. You may also investigate uncharged offenses that come to light during your investigation.
2. You must complete your investigation no later than seven duty days from 10 April 2004. If counsel seeks a delay, they should submit a written request with specific reasons in support of their request. As the Investigating Officer, you may approve any request for delay up to 7 days. You will immediately forward any request for delay in excess of 7 days to the Legal Office.
3. You will submit a report of your investigation in seven copies on DD Form 457 (Appendix 5, Manual for Courts-Martial, United States, 2000 Edition) to the 2nd BCT Legal Office. Your report will contain a detailed chronology of the time you took to complete your investigation, to include any delay and the reason therefore. You must, within the time specified in paragraph 2 above, allow sufficient time for preparation of the report.
4. Your investigation will conform to Rule 405, Manual for Courts-Martial, United States, 2000 Edition, and Article 32, Uniform Code of Military Justice. You are to use DA Pam 27-17 as a procedural guide and administrative/recording support will be provided by the 2nd BCT Legal Center, DNV 523-8558.
5. You will contact the Administrative Law Branch, Office of the Staff Judge Advocate, CPT [REDACTED] at [REDACTED]@us.army.mil, [REDACTED]@1ID.army.smil.mil, or DNV [REDACTED], no later than 24 hours after receipt of this memorandum for a briefing on your duties prior to commencement of the investigation.

b(6)-2
b(7)(c)-2

2 Encls

1. Charge Sheet
2. ERB

[REDACTED]
Colonel, IN
Commanding

016655



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
Headquarters and Headquarters Company,
2nd Brigade Combat Team, 25th Infantry Division (Light)
Kirkuk, Iraq APO AE 09347-9998

APVG-UZO-CO

b(6)-5; b(7)(C)-5 10 April 2004

MEMORANDUM FOR Private First Class Edward L. Richmond Jr., [REDACTED], U.S. Army,
Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, 2nd Brigade Combat Team,
25th Infantry Division (Light), Kirkuk, Iraq APO AE 09347-9998

SUBJECT: Notification - Article 32 Investigation

b(6)-2; b(7)(C)-2

1. On 16 April 2004, at 1030 hours in the Information Operation conference room, Building 370, Kirkuk Airbase, Iraq, I will conduct an investigation pursuant to Article 32, UCMJ, to investigate the facts and circumstances concerning the charges preferred against you by CPT [REDACTED]. The charge is: Article 118, Murder.
2. You have the right to be present during the entire investigation. Additionally, you have the right to be represented at all times during this investigation by legally qualified counsel. Such counsel may be a civilian lawyer of your choice, provided at no expense to the United States Government, a qualified military lawyer of your selection, if reasonably available, or a qualified counsel detailed by the officer exercising general court-martial jurisdiction over the command. There is no cost to you for military counsel. You also have the right to waive representation by counsel. **Notify me with your decision thru the 2ND BCT Legal Center no later than 1630 hours, 15 April 2004.**

3. The names of the witnesses, known to me, who will be asked to testify at the hearing, are as follows:

<u>Rank</u>	<u>Name</u>	<u>Address</u>
SGT	[REDACTED]	HHC, 1/27 th IN Bn, Mortars FOB Mchenry

b(6)-4; b(7)(C)-4

Additionally, it is my intention to examine and consider the following evidence:

- a. SPC Edward L. Richmond Jr. Enlisted Records Brief
- b. CID Report of Investigation

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APVG-UZO-CO

SUBJECT: Notification - Article 32 Investigation

4. As Investigating Officer, I will try to arrange for the appearance of any witnesses that you want to testify at the hearing. I will also try to arrange for any evidence that you wish for me to consider. Notify me of the names, addresses and phone numbers of such witnesses or the location of the evidence no later than **1030 hours, 15 April 2004**. If, at a later time, you want additional witnesses or evidence, inform me immediately.

5. You may contact me by the 2ND BCT Legal Center at DNV 523-8558 for assistance.


MAJ, SC
Investigating Officer

b(6)-2

b(7)(C)-2

016657

INVESTIGATING OFFICER'S REPORT

(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)

1a. FROM: (Name of Investigating Officer - Last, First, MI) <div style="background-color: black; width: 100px; height: 1.2em; margin-top: 5px;"></div> b(6)-2, b(7)(C)-2		b. GRADE MAJ/O-4	c. ORGANIZATION 2nd Brigade, 25th Infantry Division (Light)	d. DATE OF REPORT 18 APR 04
2a. TO: (Name of Officer who directed the investigation - Last, First, MI) <div style="background-color: black; width: 100px; height: 1.2em; margin-top: 5px;"></div>		b. TITLE Commanding Officer	c. ORGANIZATION 2nd Brigade, 25th Infantry Division (Light) APO AE 09347	
3a. NAME OF ACCUSED (Last, First, MI) Richmond, Edward L.	b. GRADE PFC/E-3	c. SSN b(7)(C)-5 <div style="background-color: black; width: 100px; height: 1.2em; margin-top: 5px;"></div>	d. ORGANIZATION HHC, 1-27 IN BN, 2/25 ID (L)	e. DATE OF CHARGES 6 APR 04
(Check appropriate answer)				
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)				YES NO X
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)				X
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)				X
7a. NAME OF DEFENSE COUNSEL (Last, First, MI) <div style="background-color: black; width: 100px; height: 1.2em; margin-top: 5px;"></div>		b. GRADE CPT/O-3	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any)	b. GRADE
c. ORGANIZATION (If appropriate) TDS, 1ID, FOB Danger		c. ORGANIZATION (If appropriate)		
d. ADDRESS (If appropriate) FOB Danger, APO AE 09347		d. ADDRESS (If appropriate)		
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)				
a. PLACE		b. DATE		
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.				
c. SIGNATURE OF ACCUSED				
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)				YES NO
a.	THE CHARGE(S) UNDER INVESTIGATION			X
b.	THE IDENTITY OF THE ACCUSER			X
c.	THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31			X
d.	THE PURPOSE OF THE INVESTIGATION			X
e.	THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE			X
f.	THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT			X
g.	THE RIGHT TO CROSS-EXAMINE WITNESSES			X
h.	THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED			X
i.	THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION			X
j.	THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING			X
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)				X
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL				

NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "10c"). Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
[REDACTED] b(6)-4	CPT/O-3	A Co., 1-27 IN BN		X
[REDACTED] b(7)(C)-4	SGT/E-5	HHC, 1-27 IN BN	X	
[REDACTED]	SPC/E-4	HHC, 1-27 IN BN	X	
[REDACTED]	PFC/E-3	HHC, 1-27 IN BN	X	
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.			X	
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)			
(see Table of Contents - Exhibits received, includes sworn statements from above witnesses & accused)			X	
8 pictures of victim and crime scene			X	
SF 95, for [REDACTED] dated 10 March 2004	b(6)-4		X	
Sworn Statement by Edward L. Richmond, dated 1 March 2004	b(7)(C)-4		X	
Sworn Statement by Edward L. Richmond, dated 29 March 2004			X	
DA Pam 27-9, Paragraph 3-43-2			X	
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)				X
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)				X
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL			X	
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM			X	
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X	
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d)(1).)			X	
20. I RECOMMEND:				
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)				
o Memorandum For Record - Recommendation and justification by Investigating Officer is attached				
o Chronology and Record of Investigation is attached (see TAB A)				
o Discussion of the elements of Article 118 -IAW MCM para 43b and 43c (see TAB B)				
o Discussion of Defense position and recommendation for dismissal of charges (see TAB C)				
o Record of Verbatim Testimony is attached (see TAB D)				
o Delay of Article 32 Hearing as requested by the Defense Council (see TAB E)				
o Record of Investigating Officer's Questions and Summary of Witness Answers is attached (see TAB F)				
22a. TYPED NAME OF INVESTIGATING OFFICER	b. GRADE	c. ORGANIZATION		
[REDACTED] b(6)-2 b(7)(C)-2	MAJCO-4	2nd Brigade, 25th Infantry Division (Light)	016659	
d. SIGNATURE	e. DATE			
[REDACTED]	22 Apr 04			



DEPARTMENT OF THE ARMY
Headquarters, 2nd Brigade, 25th Infantry Division (Light)
FOB Warrior, Kirkuk, Iraq
APO AE 09347-9998

REPLY TO
ATTENTION OF:

APVG-UZC

17 April 2004

MEMORANDUM FOR Commander, 2nd Brigade Combat Team, 25th Infantry Division (Light),
Kirkuk, Iraq, APO AE 09347-9998

SUBJECT: Article 32 Record of Findings and Recommendation – *United States v. PFC Edward L. Richmond, Jr.*

1. After conducting a thorough investigation and examination of all the available evidence in the case of *United States v. PFC Edward L. Richmond*, I recommend that the case be tried under General Courts Martial for violation of Article 118 of the Uniform Code of Military Justice.

2. Background (TAB A - Chronology). On or about 2200 hours on 27 Feb 04, SGT [REDACTED] received the OPOD and ROE briefings for the next day's operation. He proceeded to brief his squad on the mission and ROE for 28 Feb 04, PFC Richmond was present. By 0500 hours, the blocking positions were in place and at 0530 hours the raid commenced. At 0730 hours, SGT [REDACTED] received orders, via FM radio, to detain all Iraqi males attempting to enter or leave the village. At 0800 hours, the farmer was spotted tending cattle in the adjacent field. At approximately 0830 hours, SGT [REDACTED] and the accused, PFC Richmond, went to detain the farmer. SGT [REDACTED] placed the accused in his security position, conducted an initial search for large weapons, and placed the Iraqi in flex-cuffs. Upon completion, SGT [REDACTED] patted the Iraqi on the shoulder, told the accused "he is good, let's go", turned the detainee and began to walk back. The accused then shot [REDACTED] in the back of the head at approximately 0845. b(6)-4 b(7)(c)-4

2. Summary. The IO's recommendation is based on the following, and supported by the referenced exhibits (marked and submitted as evidence in this investigation).

a. Government Position. The Manual for Courts Martial, 2002 Edition, contains four elements in defining Article 118 - Murder, in which the actions of the accused on 28 February 2004, met all criteria for the charge of Unpremeditated Murder. The summarized elements, and their application to this case, are as follows: b(6)-4; b(7)(c)-4

(1) Death. [REDACTED] was killed by a gunshot to the back of the head.

(2) Result of act or omission by the accused. [REDACTED] was killed by a gunshot from PFC Richmond's weapon. The shot was admittedly fired by the accused and as a direct result of actions taken by the accused.

(3) Killing was unlawful. [REDACTED] was killed after having been searched, flex-cuffed, and while in the process of being escorted from the area (TAB.B, para 2c(1)-(3)).

016660

(4) Intent to kill. By his own admission, the accused stated (sworn statement, 1 Mar 04), that he intended to kill the victim when he fired his weapon (TAB B, para 2d).

b. Defense Position.

b(6)-4; b(7)(C)-4

(1) The defense contends that the unit's (TF 1-27 IN) recent changes to the Rules of Engagement caused confusion, and a void existed in the decision making process for the use of deadly force. The defense states that the accused was attempting to prevent harm from coming to SGT [REDACTED], and deadly force had been previously authorized in such cases (TAB C – Summary and Analysis of Defense). The defense recommended dismissal of Article 118 - Murder charges.

(2) While this may have been the case, it was by omission that the accused did not acknowledge the fact that the victim was in fact secured and ready to be moved, thus not acting in a hostile capacity, nor was the victim ever proven to be a combatant. Moreover, no evidence existed for the victim's consideration thereof.

(3) The accused did not have adequate situational awareness that would have prevented any reasonable soldier from acting in kind. The accused was in an adequate position to observe SGT [REDACTED] control of the victim for the move, and subsequent turning thereof, yet failed to acknowledge these facts. This omission led to the accused mistaking the movements of the unarmed victim, as an assault. The focus of the accused was narrow and pinpointed on the sight picture through his scope.

3. Further actions taken by the IO. A verbatim testimony was requested by the Defense. The testimony on 17 April 2004 was captured via audio recording device, summarized, and subsequently reviewed/validated by the Investigating Officer. The transcript is enclosed as TAB D in the IO's investigation.

4. POC is MAJ [REDACTED], 2BCT S-6, at DNVT [REDACTED] or e-mail (NIPR) [REDACTED]@us.army.mil, (SIPR) [REDACTED]@us.army.smil.mil

b(6)-2; b(7)(C)-2

[REDACTED]

MAJ, SC
Investigating Officer

TAB A - Record of Investigation

28 Feb 04 – Incident in question

28 Feb–1 Mar – Statements taken

6 Apr 04 – Charges Preferred (Company and Battalion Commanders)

10 Apr 04 – Article 32 Investigating Officer appointed

11 Apr 04 – Article 32 Investigating Officer notified

11 Apr 04 – Witness Notification of Rights transmitted

11 Apr 04 – Article 32 Hearing date is set for 16 Apr 04

b(6)-2, b(7)(C)-2

11 Apr 04 – IO receives brief from Division Legal Advisor (CPT [REDACTED])

12-13 Apr 04 – Investigation conducted

14 Apr 04 – Defense requests delay for Article 32 Hearing (TAB E – Copies of Supporting Correspondence)

15 Apr 04 – Investigation delayed until 17 Apr 04

15 Apr 04 – Received Defense Request for Witnesses and Production of Evidence

16 Apr 04 – Final preparations made for Hearing, Evidence Acquired

17 Apr 04 – Defense cancels request for testimony from CPT [REDACTED] (same)

17 Apr 04 – 1200 hours - Article 32 Hearing Commences

17 Apr 04 – ~1600 hours – Hearing Closed

016662

**TAB A - Chronology
(estimated)**

27 Feb 04:

2200 – SL briefing (Richmond)

28 Feb 04:

0500 – Blocking positions established

0530 – Raid initiated

0615 – All target buildings seized

~0630 – Daybreak, farmer appears with cattle [REDACTED]

b(6)-4
b(7)(C)-4 (all)

~0730/0800 – Netcall from CPT [REDACTED] about “detention of all Iraqi males attempting to enter or leave the village.”

~0730/0800 – Farmer sighted [REDACTED]

~0830 – Farmer in field for about 60 minutes, moving to detain [REDACTED]

- SGT [REDACTED] places Richmond in security position
- SGT [REDACTED] conducts initial search for large weapons
- SGT [REDACTED] attempts to flex-cuff Iraqi
- SGT [REDACTED] directs Richmond to raise weapon as show of force
- Iraqi relaxes and allows himself to be cuffed
- SGT [REDACTED] secures cuffs
- SGT [REDACTED] pats detainee on shoulder
- SGT [REDACTED] looks at tells Richmond, “he’s good, let’s go”
- SGT [REDACTED] observes Richmond lowering weapon
- SGT [REDACTED] grabs detainee by the arm, and turns him to the left
- SGT [REDACTED] begins to escort detainee back to truck
- SPC [REDACTED] observes all three (detainee and 2 soldiers) returning

~0845/0900 – Shooting occurred (IO estimate)

~0915 – BN TOC notified of incident (CSM [REDACTED])

~0930 – Statements taken (Richmond)

~0940 – PFC Richmond advised of his rights.

016663

17 April 2004

MEMORANDUM FOR RECORD

SUBJECT: TAB B – Discussion of the Elements of Murder

1. The Manual for Courts Martial, Article 118 – Murder, lists the following elements in determining the relevant nature of the charge:

- a. That a certain named or described person is dead
- b. That the death resulted from the act or omission of the accused
- c. That the killing was unlawful
- d. That, at the time of the killing, the accused had a premeditated design to kill

2. Discussion of Elements.

a. Death. It is certain that the victim, [REDACTED], was in fact killed by a gunshot to the back of the head. This is uncontested. b(6)-4; b(7)(C)-4
(911)

b. Result. That the death was in fact a direct result of the accused firing the fatal shot that killed [REDACTED] on 28 Feb 04. This is uncontested. However, the investigation shows that a contributing factor for the shooting was also that of omission by the accused, in that the accused failed to maintain adequate situational awareness.

(1) The accused failed to observe the flex-cuffs. All the statements by the accused confirm that he made no attempt to look beyond the sight picture in his scope. The statements of the accused lead me to believe that he was totally focused on his sight picture, and only that.

(2) SGT [REDACTED] testimony, and all his statements, describes his final actions as "patting the male on the shoulder", looking at the accused, and telling the accused "he's good, let's go", at which point he turned the victim and began to escort him back to the vehicle. The victim, due to the rough ground, was not on stable footing, and was gaining his balance from SGT [REDACTED]. Had the accused acknowledged SGT [REDACTED] instructions, or had he observed more than the victim's head through the scope (accused statement on 28 Feb described having only one eye open), then he would have been more aware of his surroundings, and the actions being taken by SGT [REDACTED] and the subsequent nature of the victim's movements.

(3) The follow-up statement from the accused on 29 Mar 04, describes how all the stress, adrenaline, and pressure "probably" inhibited his ability to properly process, or perceive, all the events. While this would not justify his actions, they would lead to the conclusion that an omission had taken place. His testimony on 17 Apr 04, would lead me to believe no different.

c. Unlawful Killing. The whole case comes down to this particular element. The positions of both parties with regards to the lawfulness of this killing are as follows:

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(1) The Defense. It is the position of the defense that the killing, while unfortunate, was justifiable IAW RCM 916(c) in that the accused was performing his official duties in a combat zone. In that referring to the victim as an enemy combatant, the killing could be justified. The defense also contends that a similar event transpired the previous week (an incident where after an IED exploded, SGT [REDACTED] engaged and killed an unarmed Iraqi female) whereby no charges were filed. While the facts of that case were not considered in this investigation, the defense's position was that it was deemed a justifiable shooting then, just as this ought to be.

b(6)-4
b(7)(c)-4

(2) The Government. The victim had been searched, and successfully flex-cuffed. The victim was then turned in such a way as to reveal the detainees hands secured behind him, whether or not the cuffs were concealed by loose clothing or a long flowing scarf. SGT [REDACTED] had control of the Iraqi male. The government's position was that if the detainee had been an American with all situational facts remaining constant, the shooter would have been charged with murder as well. The Iraqi was a non-combatant in a combat zone, but the fact that he was an Iraqi should not change the matter. The thoughts and actions associated with applying the ROE (in self-defense or defense of others vis a vis Use of Deadly Force) requires common sense, and must be reasonable.

(3) Analysis. It is the belief of this investigating officer, that the shooting of a successfully secured (read: flex-cuffed) and unarmed "non-combatant" be an unlawful, thus one justifying the charges of murder. The burden of proof remains with the Defense to prove the shooting was justified or lawful, which could in turn, if successful, merit a change in the charges brought forth. This proof was not sufficient.

d. Premeditated (or unpremeditated) Intent to Kill.

(1) It is the position of the government that the accused killed the victim with unpremeditated intent. By admission, the accused intended to kill the victim (sworn statement by accused, 1 Mar 04) when he fired his weapon. While the Manual for Courts Martial states (para 43.c.(2)(a)) that premeditation does not need to be entertained for any length of time, just that the intent to kill be fixed and put into execution prior to the act.

(2) The accused did make a conscious decision when he move his selector switch from safe to fire, aimed his weapon at the victims head and fired his weapon. His intent to kill was clear and stated in his sworn statements. His intent to kill was uncontested.

(3) It is not the intent of this investigation to put forth the conclusion that the accused acted out of premeditation, only that the charge of unpremeditated murder now be considered in the specification for the charge of murder.

[REDACTED]

MAJ, SC
Investigating Officer

b(6)-2; b(7)(c)-2

016665

17 April 2004

MEMORANDUM FOR RECORD

SUBJECT: TAB C – Discussion of the Defense

1. The basis for the Defense is three-fold, in that 1) the Rules of Engagement for this operation underwent several modifications prior to the operation in question, causing uncertainty as to which to follow, thus leaving it to the individual to make the judgment call and take responsibility, 2) the killing was justified under RCM 916(c), thus not a case of murder, and 3) “looking through the eyes of the accused”, given his state of mind and inexperience, how would anyone else have reacted to a perceived assault on SGT [REDACTED] Each of these positions will now be addressed. b(6)-4; b(7)(C)-4

2. ROE.

a. Discussion. The testimony of all witnesses does show that the unit's ROE^(all) was modified on at least two occasions prior to the operation in question. The first stating that all targets would be positively identified prior to engaging and use best judgment (by the 1-27 IN BN CDR), and the second from CPT [REDACTED] (on 27 Feb 04 during the ROE brief, ~2200 hours) stating that all Iraqis attempting to flee the village were to be engaged.

b. Analysis. While the confusion may have existed, each soldier in their testimony (see Verbatim Testimony for SPC [REDACTED], PFC [REDACTED], and SGT [REDACTED]) understood that confirmation of the targets and permission to fire (gained by their respective Squad Leaders) was a prerequisite to engaging. However, the ROE is designed to protect non-combatants as much as it is to protect the Coalition Forces. Any reasonable person could not be expected to consider an unarmed and “cuffed” individual as an immediate threat requiring the application of deadly force, whether combatant or otherwise designated.

c. Conclusion. While confusion may have existed over the ROE guidance from the Battalion Commander and the adjusted guidance received from the Company Commander, it may have even contributed to the confusion of the soldiers on this mission, but it does not override the requirement for common sense in the reasonable application of deadly force.

3. Manual for Courts Martial, RCM 916(c).

a. Discussion. RCM 916(c) defines Justification (under Defenses) as: “A death, injury, or other act caused or done in the proper performance of a legal duty is justified and not unlawful.” The defense portends that this shooting, while unfortunate and the responsibility of the accused, was acting within the stated limits of proper performance of a legal duty described in referenced RCM. It states that “the killing of an enemy combatant in battle is justified.” Thus the defense attempts to make the case that the shooting was not unlawful.

b. Analysis. While the operation was in fact a legal duty, the detention of the Iraqi male during a tactical operation in no way immediately classifies him as an enemy combatant. Further analysis would call into question the definition of “proper performance”. It appears that the actions of the accused does not support that definition,

016666

in that he was not cognizant of the actions taking place within his immediate view. If he had been properly performing his duties, then he would have observed the "cuffing" of the detainee, and subsequent moving of said individual under the direct and positive control of SGT [REDACTED]

c. Conclusion. In this case, RCM 916(c) does not seem to apply to the killing of [REDACTED] in that 1) he was not an enemy combatant, and 2) he was under the direct and positive control of SGT [REDACTED], unarmed, and "cuffed" thus posing no immediate threat that would merit the application of deadly force; therefore the proper (and most reasonable) performance of this legal duty would not be to shoot and kill of said individual, but rather to subdue him had he in fact been attempting to escape or assault SGT [REDACTED]. In testimony by the accused, SGT [REDACTED] and SPO [REDACTED], the accused was no more than 6 feet from the victim at all times; thus making available alternate non-lethal means of interdicting any perceived threat. The United States Army does not advocate, or by action, direct or indirect, condone the killing of prisoners, be they combatant or otherwise. The investigation further determines that the victim made no attempt to escape or assault SGT [REDACTED], nor provide just cause for actors in this incident to believe that this may have been the case.

b(6)-4; b(7)(C)4
(all)

4. "Through the eyes of PFC Richmond".

a. Discussion. The defense makes the plea that the accused, being inexperienced and young, acted as any soldier may have if in his place under the same circumstances. Taking the position of Self-Defense IAW DA Pam 27-9 para 5-2-6, the Defense argued that the accused acted, in his state of mind, in a way that would justify his actions during a fast moving situation, where he may have paused only at his own peril.

b. Analysis. The accused has only been in the Army for less than 2 years. Has only been on a total of 10 combat patrols, and executed the duties of security during an EPW search on only two occasions prior to this incident. This would be the only time he had worked directly under SGT [REDACTED]

c. Conclusion. This investigation, while concerned with "what others may do in the same situation", cannot base its recommendation solely on the speculative nature of this argument and given the evidence put forth in this investigation. However, to address it briefly, it would be more correct to expect a soldier to seek more guidance and additional affirmation on his actions during the events leading up to the shooting. As a result, they may have paid closer attention to the directions and actions of their NCO. This argument remains wholly subjective, and was its due consideration.

[REDACTED]
MAJ, SC
Investigating Officer

b(6)-2; b(7)(C)-2

016667

**TAB E - Record of Correspondence
(Defense Request for Delay)**

Reply and Response (MAJ [REDACTED] sent 150845UAPR04)

b(6)-2; b(7)(C)-2

To: MAJ [REDACTED] CPT [REDACTED] SPC [REDACTED]

Since CPT [REDACTED] is enroute, this is for the record:

1) I will flex the start time on Saturday, only to ensure that the requested witnesses from 1-27 are readily available, and that we make a conscious effort to start as soon as prepared to do so, though NLT 1500 as originally stated.

If everything is set, then we will begin NET 1200 hours. Just expect nothing sooner for the time being.

2) I received and replied to an e-mail from the 1-27 XO stating his difficulty in arriving for a hearing at 0900... route clearance being the issue. First off, I informed him that I had set no such time (1500 being the hearing), but I proceeded to direct that they arrive as soon as possible (Saturday) to ensure adequate preparation time. I also informed him that we would start NET 1200. An ETA was requested.

[REDACTED]
MAJ, SC

(same)

----- Original Message -----

From: [REDACTED]@us.army.mil
Date: Thursday, April 15, 2004 10:18 am
Subject: Re: RE: Request for Delay

Sir,

Thank you.

(same)

I will arrive NLT 1000 tomorrow (SPC [REDACTED] I think the flight is about 50 minutes?).

Unfortunately, I think G3 Air can only get be back out on Saturday afternoon. As indicated I need to turn around here in Tikrit on Sunday to head to Baghdad; there are no direct flights from Kirkuk to Baghdad. I think the defense will be able to go on Saturday morning if that doesn't screw up the schedule yet again. Schedule permitting, the 32 should be complete by the time I'd need to catch my as yet unscheduled afternoon flight.

Thank you sir for your patience and understanding.

(same)

MAJ [REDACTED] & SPC [REDACTED] I look forward to seeing you tomorrow and I'll bring the recording equipment with me.

V/R
Jennifer

016668

[REDACTED]
CPT, JA
Trial Defense Counsel
Tikrit Branch Office (FOB Danger)
Region IX
DNVT: 553-9383 or 553-3362
E-mail: [REDACTED]@us.army.mil

b(6)-2; b(7)(c)-2
(all)

----- Original Message -----

From: [REDACTED]@us.army.mil
Date: Thursday, April 15, 2004 5:20 pm
Subject: Re: RE: Request for Delay

Okay then, consider it done. Hearing is set for 171500UAPR04, at FOB Warrior as discussed.

CPT [REDACTED], keep me posted on your travel arrangements... aircraft have a way of being cancelled just as soon as they are scheduled... continue to follow-up with me.

We also received and are working your witness and evidence requirements.

Any other outstanding issues from the government or defense???

[REDACTED]
MAJ, SC
DNVT: [REDACTED]
DSN: [REDACTED]

----- Original Message -----

From: [REDACTED]@MMCS.army.mil>
Date: Thursday, April 15, 2004 1:43 am
Subject: RE: Request for Delay

MAJ [REDACTED]

The Government has no objections at this time.

[REDACTED]
NCOIC, Criminal Law
DNVT 523-8558
"Warriors"

-----Original Message-----

From: [REDACTED]@us.army.mil
[REDACTED]@us.army.mil]
Sent: Thursday, April 15, 2004 9:57 AM
To: [REDACTED]@us.army.mil
Cc: [REDACTED]@us.army.mil; [REDACTED]@us.army.mil
Subject: Re: Request for Delay

016669

MAJ [REDACTED]

Based on travel conditions and aircraft availability, I am inclined to delay until 1500 Saturday, 17 Apr in order to give the defense adequate time to confer with the defendant in person.

What is the Government's position?

b(6)-2; b(7)(c)-2
(all)

[REDACTED]
MAJ, SC

----- Original Message -----

From: [REDACTED]@us.army.mil
Date: Wednesday, April 14, 2004 10:37 pm
Subject: Re: Request for Delay

Sir,

Thanks for your e-mail. As of 0930 today (Thursday) the G3 Air still thinks there will be a flight tomorrow but they don't have a time locked down. I was notified by e-mail on Monday, 12 Apr 04, of the date of the 32. The government e-mailed the sworn statements to me earlier this week so I have had a chance to review them.

Assuming I arrive tomorrow, I'd prefer to start the 32 early on Saturday morning instead of sometime Friday afternoon. Delaying just one day should give me a significant amount of time (hopefully) to meet with PFC Richmond on Friday afternoon and evening. The soldier is facing a potential court-martial for an extremely serious offense and it's my responsibility to spend the time with him that he needs. His unit does not have a private phone where he can talk to me one-on-one. Based on the packet, I believe I can still submit the witness request to you today; however, once I meet with PFC Richmond, he may request additional evidence and witnesses.

If the 32 can not be delayed until Saturday, can it at least be delayed until tomorrow evening with a flexible start time based on when I arrive in Kirkuk.

Thank you for your consideration of this matter.

V/R,
CPT [REDACTED]

[REDACTED]
CPT, JA
Trial Defense Counsel
Tikrit Branch Office (FOB Danger)
Region IX
DNVT: [REDACTED]
E-mail: [REDACTED]@us.army.mil

----- Original Message -----

016670

From: [REDACTED]@us.army.mil
Date: Thursday, April 15, 2004 6:50 am
Subject: Re: Request for Delay

CPT [REDACTED] (and MAJ [REDACTED]), my concern is on the defense's ability (or lack thereof) to spend adequate time with the defendant prior to the hearing. Travel here is certainly a matter for serious consideration.

While you should have made a better effort to confer with PFC Richmond on his case, I must ask for a better assessment of your ability to 1) appear prepared for the hearing during the evening of 16 Apr (as stated by the Government's response), and 2) if a delay was granted, of which I can delay no longer than 23 Apr, would that give you adequate time for travel and preparation, thus is that date even feasible given your schedule?

Otherwise, given the uncertain nature of your court and travel schedule, your initial request would force me to deny your request, and execute as planned on 16 Apr.

I will await reply and rebuttal before I make my decision.

[REDACTED]
MAJ, SC

----- Original Message -----

From: [REDACTED]@us.army.mil
Date: Wednesday, April 14, 2004 10:10 am
Subject: Re: Request for Delay

b(6)-2 (all)
b(7)(C)-2

Sir,

Government opposes the Defense request for a delay. Counsel stated she could get to Kirkuk on Friday, the day the 32 is scheduled.

We could do it in the evening, if needed.

V/R

MAJ [REDACTED]

----- Original Message -----

From: [REDACTED]@us.army.mil
Date: Wednesday, April 14, 2004 8:16 pm
Subject: Request for Delay

Sir,

Good evening. I am a defense attorney located at FOB Danger in Tikrit. I represent PFC Edward Richmond.

I have been coordinating with G3 Air to get to Kirkuk in a timely manner for Friday's Article 32 hearing. There were no flights today (Wednesday) and there are none scheduled for tomorrow.

016671

At the earliest, there is a flight leaving here on Friday morning at as yet an unscheduled time. My intent was to get to Kirkuk as soon as possible to meet with PFC Richmond. We have not yet met and have only spoken once by DNVT phone.

Previously, on behalf of another client, a delay was requested in her Article 32 hearing which is now scheduled for Tuesday (20 Apr 04) in Baghdad. I anticipate being in Baghdad from approximately 18-22 April.

Sir, based on logistical concerns alone, the defense requests a delay until approximately 24-25 April. I can fly to Kirkuk on Friday but my concern is that even given a one-day delay in the hearing, I may not make it to Baghdad with enough time to meet with that client prior to her 32 hearing. I will return to Tikrit from Baghdad as early as possible next week and immediately will again coordinate with G3 Air to get to Kirkuk without limitations or restrictions.

I apologize for the lateness of this request and look forward to your response.

V/R,

[REDACTED]
CPT, JA
Trial Defense Counsel
Tikrit Branch Office (FOB Danger)
Region IX
DNVT: [REDACTED] or [REDACTED]
E-mail: [REDACTED]@us.army.mil

b(6)-2; b(7)(C)-2

016672

MAJ 2BCT/BDE S6

From: [REDACTED] MAJ 2BCT/BDE S6
Sent: Friday, April 16, 2004 8:43 AM
To: [REDACTED] MAJ 2BCT/1-27 INF BN XO
Subject: RE:

b(6)-2 b(7)(C)-2

I do not know where the 0900 came from (probably for providing the witness briefings and ensuring adequate flex/preparation time).

I issued out the set time as Saturday at 1500. I am being flexible on the start time due to defense counsel's flight out that afternoon/evening.

Can you be here by 1000 or 1100? I cannot cut much more.

Give me an estimated ETA and I will adjust as necessary, but most likely my proceedings will not start any earlier than 1200.

From: [REDACTED] MAJ 2BCT/1-27 INF BN XO
Sent: Thursday, April 15, 2004 9:02 PM
To: [REDACTED] 1LT 2BCT/ 1-27 LNO
Cc: [REDACTED] MAJ 2BCT/BDE S6
Subject: RE:

(game)

Is the time for the Article 32 hearing flexible at all? You are asking for a company commander to come up and he will be executing operations on Friday and we cannot leave until mr. route is cleared on average between 0730 and 0800. 0900 is cutting it way to close – in fact, I can guarantee we cannot make it there by 0900.

From: [REDACTED] 1LT 2BCT/ 1-27 LNO
Sent: Thursday, April 15, 2004 3:03 PM
To: [REDACTED] MAJ 2BCT/1-27 INF BN XO
Cc: [REDACTED] MAJ 2BCT/1-27 INF S3
Subject:

(same)

Sir,

MAJ [REDACTED] just talked to me about the Richmond case. He will be sending you an e-mail regarding it. What I know now is that the article 32 hearing will be this Saturday the 17th at 0900. The defense according to MAJ [REDACTED] is requesting CPT [REDACTED], SPC [REDACTED] and PFC [REDACTED]. That is all I have for now and will update you as I receive more information.

1 LT [REDACTED]
1-27 LNO

b(6)-4; b(7)(C)-4

016673

4/16/2004

TAB F – IO Questions for Witnesses

The following answers were summarized by the Investigating Officer during the formal hearing on 17 Apr 04. I swear that the information contained is accurate and in keeping with the verbal testimony and intent of the witness. Official Verbatim Testimony (Summarized) is enclosed in TAB D.

Accused:

SPC Edward L. Richmond, HHC, 1-27 IN BN –

- How long have you been in Iraq now? With the Wolfhounds the whole time?
2.5 months, yes
- How many missions of this type had you participated in before 28 Feb 04?
~10 missions
- Prior to this day, had you ever provided security while someone was being searched and subsequently detained (excluding training events)?
twice
- How far away from SGT [REDACTED] and the Iraqi were you? Could you clearly see both?
Not asked *b(6)-4; b(7)(c)-4*
- Your statements just after the shooting said that the Iraqi lunged at SGT [REDACTED] but in your 29 Mar sworn statement, you recanted and stated that SGT [REDACTED] must have been turning the Iraqi, is that correct?
Not asked
- What brought on this change in perception?
Not asked
- You said, during the raid, that the adrenaline was rushing due to the pressure and stress, and you weren't perceiving things as they really were, is that correct?
Not asked
- You stated that "he moved out of your sight picture, and you reacted by shooting him". You consciously took your weapon off safe, and squeezed the trigger. is that correct?
Not asked
- Explain what you perceived as the threat?
Not asked
- Explain your sworn statement made on 1 March 2004 when asked if at anytime you ever stated that you were going to kill an Iraqi. Your answer was "yes, but everyone talks like that." Explain.
Not asked
- Before the shooting, do you think that this is an appropriate comment from a professional soldier even when joking? Does everyone really talk like that?
Not asked

016674

TAB F – IO Questions for Witnesses

Government:

b(6)-4; b(7)(c)-4

SGT [REDACTED], HHC, 1-27 IN BN –

- What was the ROE guidance you received? That you gave to your soldiers?
Select targets, ID the enemy, CPT [REDACTED] – engage anyone fleeing area, CPT [REDACTED] – engage if Hostile Action/Hostile Intent
- Did you get confirmation of their understanding? From PFC Richmond?
Yes
- When did you receive the new guidance about detaining all Iraqi males attempting to leave the village?
~0700
- How many missions of this sort had you and Richmond been on together?
1st time (been on 10 missions before, but not in his charge)
- Would you say that you know him pretty well?
Didn't know him that well
- How would you describe PFC Richmond's performance as a soldier?
Didn't know him that well
- How would you describe his personality? Friendly, abrasive, impetuous?
Assigned around time of OPOD
- During the mission, did PFC Richmond appear to you to be (seem) unduly anxious or overly nervous? More than would be expected or usual of him or any other soldier?
No more than expected of any soldier in same circumstances
- When you approached the Iraqi, how was PFC Richmond acting? Agitated?
Relaxed, no different than of any soldier in same circumstances
- (dependent/optional) Did you do or say anything to calm him down?
Not asked
- You directed PFC Richmond on where to stand, and his weapons status, is that correct?
Yes
- Was PFC Richmond responsive to your orders? Did you have to repeat yourself?
Yes
- Describe the expression on his face?
Really no change
- Did you do an initial search for weapons?
Yes
- Was PFC Richmond in a position to observe the search?
Yes
- How often did you make eye contact with PFC Richmond?
About two times that he knows of
- Did PFC Richmond appear to acknowledge your actions?
Yes
- While attempting to put the flex-cuffs on the detainee, did PFC Richmond seem to become increasingly agitated? Did he appear even more nervous? Fidgeting or shifting his stance more frequently? *NO*

016675

TAB F – IO Questions for Witnesses

- (dependent/optional) Did you attempt to calm him down?
Not asked
- What confirmation did you receive from PFC Richmond that you were about to move the detainee?
Nothing other than lowering his weapon and beginning to move forward
- How did PFC Richmond appear to react to this? Relaxed? Relieved? Or suddenly more tense?
Nothing noticeable
- How were you directing the movements of the detainee?
Had him by the arm, could feel detainee's weight shift onto shoulder to gain balance
- Once you observed the accused begin to lower his weapon, how many steps had you taken before the shot was fired?
We were fully turned and began walking, Iraqi's footing slipped or something, then shot was fired... not very far
- After the shooting, how did he react? Describe any facial expressions.
Face turned white, look of shock, really upset
- Did he seem convinced that his actions prevented harm from coming to you?
No
- Had you ever heard PFC Richmond joke about or seem anxious to shoot an Iraqi?
No

016676

TAB F – IO Questions for Witnesses

Defense: WITNESS DECLINED; NOT CALLED TO TESTIFY

CPT [REDACTED], A Co., 1-27 IN BN –

- How would you describe PFC Richmond's performance as a soldier?
 - Follow-ups on initiative, discipline, etc.
- How would you describe SGT [REDACTED] performance as an NCO?
 - Is he a dependable soldier and NCO?
 - Were soldiers in his charge disciplined?
 - Had you ever had any problems with him, or his team, executing your orders as directed?
 - Up to this point, would you say that your intent and guidance had been routinely disseminated to the soldiers in his charge?
- What was the ROE before the IED incident (the week prior to the mission in question)?
- After the IED incident, what additional ROE guidance was received?
 - To shoot fleeing Iraqi males?
- What time was the call about detaining all Iraqi males fleeing the village?
- What was this based on?
- Was the guidance to shoot or detain them?

b(6)-4

b(7)(c)-4

016677

TAB F – IO Questions for Witnesses

Defense:

b(6)-4; b(7)(c)-4

SPC [REDACTED] B/1-62 ADA –

- What was the ROE and Use of Force briefing you received prior to this mission?
Not asked, already covered
- Who briefed you on it?
Not asked, already covered

016678

TAB F – IO Questions for Witnesses

Defense:

PFC [REDACTED] HHC, 1-27 IN BN –

b(6)-4; b(7)(C)-4

- How long have you known the accused?
Since Nov 2002
- How would you describe your relationship with the accused?
Know each other, spent some time together
- Were you on speaking terms?
Yes
- You mentioned in your statement dated 1 Mar, that on numerous occasions the accused had asked permission to shoot an Iraqi, how many times would that be?
Just BS'ing around, he is very outspoken, joking around
- (dependant/optional) If you two weren't on speaking terms, how did you witness these occasions?
Not asked
- What was the ROE and Use of Force briefing you received prior to this mission?
Same > Brief by SGT [REDACTED] that shooting fleeing Iraqis was authorized
- You also mentioned in your statement dated 1 Mar that you observed all three soldiers walking in line to the northwest, with one soldier pulling the detainee by the shirt, but you didn't observe the shooting, is that correct?
Yes
- What span of time would you say elapsed between this particular observation, and when you heard the shot?
A couple of seconds
- As you scanned your sector of fire, you stated that you saw a soldier flex-cuffing the detainee, then at another time observed the soldier escorting the detainee back. How long would you say they were walking before the shot was fired? How far (number of steps)?
2-3 seconds, a couple steps

All the preceding answers were summarized by the Investigating Officer during the formal hearing on 17 Apr 04. I swear that the information contained is accurate and in keeping with the verbal testimony and intent of the witness.

[REDACTED]
MAJ. SC
Investigating Officer

b(6)-2
b(7)(C)-2

016679

b(6)-2; b(7)(c)-2

I.O. (To accused-counsel): This is a formal investigation into a certain charge(s) against **PFC Edward L. Richmond Jr.** ordered pursuant to Article 32(b), UCMJ, by COL [REDACTED]. On 5 April 2004, I informed you of your right to be represented by civilian counsel at no expense to the United States, military counsel of your own selection if reasonably available, or military counsel detailed by the Trial Defense Service. You informed me that you desired to be represented by CPT [REDACTED], Trial Defense Services.

Let the record show that CPT [REDACTED] is here present with you.

I.O. (To accused-counsel): I want to remind you that my sole function as the article 32 investigating officer in this case is to determine thoroughly and impartially all of the relevant facts of this case, to weigh and evaluate those facts and determine the truth of the matters stated in the charges. I shall also consider the form of the charges and make a recommendation concerning the disposition of the charges that have been preferred against you. I will now read to you the charge, which I have been directed to investigate. (At this point, the defense may waive reading of the charge(s).) They are as follows:

The Charge: Violation of the UCMJ, Article 118.

SPECIFICATION: In that Private First Class (E3) Edward L. Richmond Jr., U.S. Army, did, at or near Taal Al Jal, Iraq, on or about 28 February 2004, murder [REDACTED] by means of shooting him in the head with a rifle.

I will now show you the charges and specifications.

b(6)-4; b(7)(c)-4

I advise you that you do not have to make any statement regarding the offenses of which you are accused and that any statement you do make may be used as evidence against you in a trial by court-martial. You have the right to remain silent concerning the offense with which you are charged. You may, however, make a statement either sworn or unsworn and present anything you may desire, either in defense, extenuation, or mitigation. If you do make a statement, whatever you say will be considered and weighed as evidence by me just like the testimony of other witnesses.

You have previously been given a copy of the investigation file that has been compiled in your case. It contains (list all documents contained in the case file that will be considered). It is my intention to call as witnesses in this investigation **PFC [REDACTED] SPC [REDACTED] SGT [REDACTED] CPT [REDACTED]**. After these witnesses have testified in response to my questions, you or your counsel will have the right to cross-examine them. You also have the right to call available witnesses for my examination and to produce other evidence in your behalf. I have arranged for the appearance of those witnesses previously requested by you. If you desire additional witnesses, I will help to arrange for their appearance or for the production of any available evidence relating to your case.

016680

I.O. (To accused-counsel): Before proceeding further I now ask you whether you have any questions concerning your right to remain silent, concerning the offenses of which you are accused, your right to make a statement either sworn or unsworn, the use that can be made of any statement you may make, your right to cross-examine witnesses against you, or your right to present anything you may desire in your own behalf and have me examine available witnesses by you either in defense, mitigation, or extenuation.

(Counsel-Accused): (Yes/no).

Note. At this point, answer any questions that the accused may have with respect to rights or as to procedural or other matters concerning the investigation. You should not proceed further until convinced that the accused understands these rights. If the accused is represented by counsel, however, the latter will generally indicate that he or she has explained these matters to the accused and that they are understood.

I.O. (To accused-counsel): Do you want me to call any witnesses to testify in your defense or to testify in mitigation or extenuation on your behalf?

(Counsel-Accused): (Yes/no).

I.O. (To accused-counsel): Do you want me to call any other witness(es) in this case for cross-examination? If so, provide name(s) and organization(s) or address(es). If you are aware of any military records that you want me to consider and that you have been unable to obtain, provide a list of these documents.

(Counsel-Accused): (Yes/no).

Oath for Witnesses

I.O. Do you swear that the evidence you shall give in the case now being investigated shall be the truth, the whole truth, and nothing but the truth, so help you God?

Affirmation

I.O. Do you affirm that the evidence you shall give in the case now being investigated shall be the truth, the whole truth, and nothing but the truth?

Oath for Interpreter

I.O. Do you (swear) (affirm) that in the case now being investigated you will interpret truly the testimony you are called upon to interpret (so help you God).

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Introductory questions to witnesses

(Swear witness)

I.O.: State your full name, grade, organization, and branch of service.

WITNESS: (Complete response).

I.O.: Do you know the accused in this case?

WITNESS: (Yes/no).

Note. If the identification of the accused is not an essential part of the expected testimony of the witness, this question may be omitted. If the witness identifies the accused, the witness should normally be asked to state the accused's name and organization if known. If the identity of the accused is particularly relevant in a case, and the identity of the accused as the perpetrator of the offense depends upon the ability of the witness to identify the accused, the accused's counsel may request that the witness be required to identify the accused from a nonsuggestive lineup of persons similar in appearance to the accused. This request should be granted whenever possible. Otherwise the ability of the witness to identify the accused as the offender may be based on the fact that the accused is the only person whose conduct is being investigated. In any event in this situation, you should inquire into the basis for the witness's identification of the accused.

Government Witness

You determine the order of questioning of all witnesses and you may conduct the first questioning.

Note: If Government counsel is present, he or she may first examine Government witnesses, followed by cross-examination by the accused or defense counsel, then followed by questioning by you if further clarification is necessary.

* * * * *

Cross-Examination of Government Witness

Note. When you or Government counsel have completed an examination of a witness, you should advise the accused and counsel (if the accused is represented by counsel) substantially as follows:

I.O. (To accused-counsel): You may now cross-examine this witness concerning any of his/her testimony, any knowledge possessed of the offense(s), or concerning the witness's worthiness of belief. Do you wish to cross-examine this witness?

016682

(Counsel) (Accused): (Yes/no).

I.O. (to accused-counsel): Do you have any further questions you want this witness to answer?

(Counsel) (Accused): (Yes/no).

I.O.: The witness is excused.

* * * * *

Calling Defense Witnesses

I.O. (to accused-counsel): I have now called all witnesses I contemplate calling and have revealed to you all evidence I intend to consider in the preliminary portions of this investigation. As I have previously advised you, you may now present any evidence you desire. Do you have any witnesses to testify in your defense or in extenuation and mitigation? If so, I will call them at this time.

(Counsel) (Accused): (No/yes, with name(s) and address(es)).

Note. If witnesses are to be called to testify on the accused's behalf, you should advise the accused substantially as follows:

I.O. (to accused-counsel): You may question each of the witnesses who are to testify for you.

Note. If the accused is represented by counsel, you should assume that counsel will conduct the examination of the witness and present evidence in a planned procedure. The procedure for administering the oath (fig 3-3) and for introductory questioning of the witness set forth above should be followed for defense witnesses. After the accused or counsel has completed examination of the defense witness, or you have done so, you may cross-examine the witness.

Calling Additional Witnesses

Note. When all witnesses who were initially called have testified, you should determine whether other witnesses should be called in the interests of justice, fairness, and a complete investigation. In addition, inquire of the accused substantially as follows:

I.O. (to accused-counsel): (I do not intend to call any additional witnesses.) (I intend to call (name(s)) as additional witnesses.) (I am going to recall (name(s)) for further questioning.) Are there any witnesses you want me to recall or are there any new witnesses?

(Counsel) (Accused): (No/yes, with name(s) and address(es)).

Explanation of Accused's Rights as a Witness

016683

Note. After all the witnesses have testified and the accused or his counsel indicate that they have no further evidence to present, you should inquire of accused and counsel, if the accused has not previously made a statement, substantially as follows:

I.O. (to accused): Earlier in this investigation, I advised you of your rights to make a statement or to remain silent. Do you want me to repeat this advice? Do you desire to make a statement in any form?

(Counsel) (Accused): (Yes/no).

Real Evidence (Physical Objects)

I.O. (To witness): This is a knife which I have designated as (exhibit number).

Note. The accused and counsel should be permitted to examine the exhibit at this point.

I.O. (To witness): Do you recognize this knife?

WITNESS: (Yes/no).

I.O. How do you recognize it?

WITNESS: I recognize it by (witness describes how he or she recognizes the knife).

I.O. When did you first see this knife?

WITNESS: I got my first look at the knife when I found it under the accused's bunk.

I.O. (To accused-counsel after questioning the witness further as to the circumstances under which the knife was found, and after cross-examination, if any, of the witness): Do you have any objection to my considering this exhibit as evidence?

(Counsel) (Accused): (Yes, stating reason(s)/no).

Documentary Evidence **Authenticated Official Record**

I.O. (to accused-counsel): I have SIDPERS document of (unit designation), for (inclusive dates), which I have designated (exhibit number). It appears to be certified as a true copy by (rank, name, organization, and duty position of authenticating official). I now hand you this exhibit for your examination.

I.O. (to accused-counsel after permitting him to examine the document): Do you have any objection to my considering this exhibit as evidence?

016684

(Counsel) (Accused): (Yes, stating reason(s)/no).

I.O. (to both accused and counsel):
I declare the taking of the evidence closed.

CLOSING

IO: _____

016635

The Article 32 Investigation in the case of United States v. Private First Class Edward L. Richmond Jr., Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk, Iraq APO AE 09347-9998, was called to order at 1205 hours on 17 April 2004.

PERSONS PRESENT

INVESTIGATING OFFICER
GOVERNMENT COUNSEL
CO-GOVERNMENT COUNSEL
DEFENSE COUNSEL
ACCUSED
REPORTER

MAJ [REDACTED]
MAJ [REDACTED]
CPT [REDACTED]
CPT [REDACTED]
PFC Edward L. Richmond Jr.
SPC [REDACTED]

b(6)-2; b(7)(C)-2

PERSONS ABSENT

None

(Same)
The accused was represented by CPT [REDACTED] of the United States Army Trial Defense Service, Region IX, FOB Danger Branch Office, and was present. The Investigating Officer identified himself and stated he was appointed by Colonel [REDACTED] under Article 32(b), UCMJ.

The Investigating Officer stated that his sole function as the Investigating Officer was to determine thoroughly and impartially all the relevant facts of the case and to weigh and evaluate those facts and to determine the truth of the matter stated in the charges. The IO stated he would also consider the form of the charges and make a recommendation as to the disposition of the charges that have been preferred.

Investigating Officer reads the charge and specification to the accused.

The Charge: Violation of the UCMJ, Article 118.

b(6)-4; b(7)(C)-4
SPECIFICATION: In that Private First Class (E3) Edward L. Richmond Jr., U.S. Army, did, at or near Taal Al Jal, Iraq, on or about 28 February 2004, murder [REDACTED] by means of shooting him in the head with a rifle.

The accused acknowledges the charge and specification.

The Investigating Officer stated he intends to call the following witness:

SGT [REDACTED] HHC, 1/27th IN Bn, Mortars FOB Mchenry
SPC [REDACTED] HHC, 1/27th IN Bn, FOB Mchenry
SPC [REDACTED] HHC, 1/27th IN Bn, FOB Mchenry

(Same)

016686

b(1)-4; b(7)(C)-4 (ML)

Government request for the investigating officer except the:

SF 95 dated 10 March 2004, for a [REDACTED] be admitted as Exhibit 1.

PFC Edward L. Richmond's Sworn Statement dated 1 March 2004, at 1810, be admitted as Exhibit 2.

PFC Edward L. Richmond's Sworn Statement dated 29 March 2004, at 1419, be admitted as Exhibit 3.

DA PAM 27-9, Paragraph 3-43-2, be admitted as Exhibit 4.

The Defense has no objection.

The Investigating Officer puts in the record that he accepts the government's request.

SGT [REDACTED] Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk, Iraq APO AE 09347-9998. Was called as a witness for the prosecution, was sworn, and testified as follows:

QUESTIONS BY THE GOVERNMENT

I got to FOB Mchenry, too support HHC 1-27th, about 9 February 2004. I am a fire direction control chief I suppress calls for fire for battalion Mortars. I know PFC Richmond and he is in this room today. He is the gentleman to my left. I recall 28 February 2004. The night before the 28th I was told by my platoon leader CPT [REDACTED] that I'll be going out on a mission that morning at 0400. I got the OPORDER from CPT [REDACTED] Alpha Companies Commander. Alpha Company was going to be doing a mission on a city to obtain some adult males that we had on our black list, who were known to be in the city and have weapons. Our part of the mission was that my squad would maintain a TCP on the north side of the city. In the OPORDER, I was given the order to conduct searches and if there were any males fleeing the village to shoot them, or put them down as CPT [REDACTED] said. We were told if we found anything suspicious, weapons, or vehicles coming in and out the city, that we were to detain them. We got out there about 0530 in the morning. It was still dark at that time. Let me backup a little after I came out the OPORDER I gathered up the guys in my squad that I was supposed to be going on the mission with. I explained the mission from the notes I took at the OPORDER. I told them CPT [REDACTED] exact words on ROE, that if you saw any one running across the field you were supposed to shoot them. That didn't follow the ROE that my platoon usually gets, that my platoon leader Captain [REDACTED] puts out, and I let my squad know that. And I said if anyone was to be shooting anyone today, if possible to let me know first before you shoot, especially if somebody was just trying to flee the field. And then I went on to let them know what the rest of the mission was. So the next morning about 0530 it was still dark outside and there's gun shots going off in the back ground. It was mainly shotguns going off on locked doors. You couldn't really see anything even with NODS. There was a wall around the village too. So you couldn't see well. Everything started to calm

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down. Then I got on the phone with Black 6, which is CPT [REDACTED] call sign. At that time Black 6 said over the net to everybody, "Detain all males in the area". I wasn't sure if I was part of that because we were outside the city. I called in on the radio for clarification. Then he replied over the net rather firmly to "detain all males in the area". I saw the closest Iraqi male to me and turned to PFC Richmond's truck and said lets go. PFC [REDACTED] asked if he could come and I said no. Richmond grabbed some flexi cuff and started walking with me. I told Richmond that I would be flexi cuffing and he would be pulling security. We walked out to the individual about 200 hundred meters away from the truck. The individual began to get upset that we were coming to detain him. He knew we were going to detain him by the flexi cuffs in my hands. Richmond was at the low ready. With his muzzle pointed to the ground and I had mine slung. I raised my hand up when the guy noticed that we were coming for him to show him what I wanted him to do. The Iraqi put his hands up, but when I put my hands down he put his hands down like he didn't understand. I did a quick search of his arms and upper torso just to ensure there were no weapons. My intent was to detain him first then do a regular search on him. He was still upset not yelling but talking loudly. I told him to turn around by signaling with my hands. I started checking for weapons. I tried to take his left hand with my left hand to pull it down. He didn't want to, so he resisted with his hand. So I applied more pressured and he loosened his hand and I pulled it down. I had no problem with the right hand. He started to move hands and body back and forth so I couldn't put the flexi cuffs on. At that time I told Richmond to put his weapon up. I told Richmond to do that as a show of force. I wanted the guy to take it seriously. I wasn't sure if the Iraqi man had any other weapons on him. The man was still talking loudly and I didn't want the situation to escalate any more than it already had. So PFC Richmond put his weapon up. PFC Richmond was standing off to the right of the Iraqi man and to my right. He put his weapon up to the high ready. With the barrel of his weapon up and around the shoulder chest area.

I finally got the Iraqi man in flexi cuffs, I zipped it real fast and he relaxed. He stopped resisting. I looked at him over his left shoulder, gave him a pat on the back and looked at Richmond and the Iraqi and said "he's good let's go". I grabbed his left arm and pulled him and turned him and started walking towards our TCP.

We walked about two steps.

Then I heard a gun shot. It was real loud and painful. I never heard a M4 that loud. And I turned around and look at Richmond, his weapon was in one hand, pointed to the ground. He said something around the lines of "he came at you, he jumped at you". Then the Iraqi man fell to his knees and on to the ground. My first thought when I heard the shot was, we are being shot at.

Then I looked at Richmond and he told me that he thought he was jumping at me.

I notice that Richmond had a look on his face that I never saw Richmond have before, a look of shock, his face looked really pale and white. I was trying to think as fast as I could how I was going to handle this. At that time I notice everyone was looking at us and I waved over at the TCP and asked for one guy to come over. I knew I had to go over to the radio, but I didn't want to leave Richmond in the field by himself or the Iraqi man just laying there. At

b(6)-4; b(7)(C)-4

that time PFC [REDACTED] came over to Richmond. I turned to Richmond and said "your okay stay calm". I told [REDACTED] to stay with him and pull security. I called Black 6, CPT [REDACTED] and told him that we had a civilian Killed in Action.

The gun shot struck the Iraqi, and it's safe to say the bullet caused the death of the Iraqi.

At no time did anyone in the group check the Iraqi, but if they did I didn't see them.

I didn't check the Iraqi's body because even without me being a doctor, from my eyes I could see he was obviously dead.

The TCP was about 200 meter from the village.

When I was putting the flex cuffs on the Iraqi man PFC Richmond's weapon was at the high ready the butt stock was in his right shoulder, his left hand was on the grip in front and he was looking over the sight I could see Richmond's eyes. It was a M4 weapon with a 68 scope.

When I said "lets go" I saw Richmond lower his weapon and start to walk with us.

I didn't see PFC Richmond looking through his scope of his M4 at any time.

When the shot went off he was about 3 meters away and his weapon was about arms length away from me.

The Iraqi man's head was about 12 inches from mine when the shoot went off.

I turned to walk with the Iraqi about my second step he lost his balance and leaned into me. His ankle rolled. He didn't fall down but I supported his weight and pushed him back up.

QUESTIONS BY THE INVESTIGATING OFFICER

The man was fully turn and walking with me when he stumbles.

QUESTIONS BY THE GOVERNMENT

I was behind the Iraqi maybe off to the left a little and Richmond was to the side of both of us to the right.

Richmond had a view of the flexi cuffs and in my opinion he saw the flexi cuff being put on.

QUESTIONS BY THE DEFENSE

The Iraq man was wearing a flannel shirt I think it was black and red and he had dark pants. I don't recall any kind of scarf or field equipment. When I was putting the flexi cuffs on, his arm was behind him. I don't recall a scarf. I was looking at Mr. [REDACTED] back and PFC

(Same)

016689

4

b(6)-4. b(7)(c)-4 (all)

Richmond was facing both of us. He could see both my hands and the flexi cuffs being placed on Mr. [REDACTED] from where he was standing. My reason for believing this is he was standing to the right side of both of us with a clear view. When the Iraqi man was talking loudly it sounded like this (SGT [REDACTED] makes example by raising his voice different levels). I spoke at a normal tone of voice. Mr. [REDACTED] was not being cooperative. I had my weapon where Mr. [REDACTED] could see. Mr. [REDACTED] did not put his hands where I wanted him to, and I struggled to put the flex cuffs on him. I did not speak to Mr. [REDACTED] while I was cuffing him. The altercation from the time Mr. [REDACTED] put his hands up to the moment he was shot was about three to five minutes. Mr. [REDACTED] struggled with his left arm and right hand, so I put my hand on Mr. [REDACTED] shoulder and my other hand on his wrist and forced his left arm behind his back. At that point he gave me his right hand. Up to this time PFC Richmond had done everything I asked of him. I told PFC Richmond to put his weapon up and go to the "high ready" position, which is where you have your weapon at the highest point of readiness, and you have your eye on the target without looking through the scope. When the individual who is holding the weapon feels he is in danger they can elevate their position from high ready. We don't go by a color coded weapon status. As soon as we leave our FOB we are locked and loaded. PFC Richmond, who is 20 or 21 years old, does not speak Arabic. I have worked with him in the unit for 1 year. I don't know how his performance has been. I've never been on a detail with PFC Richmond. My job is not really to interact with the soldiers. The week before I went on a mission with PFC Richmond but he wasn't in my squad. What stands out in my mind the most about those missions is that we received a few pot-shots on one, and we encountered an IED on another. There was one KIA that week. I killed an Iraqi woman on the same mission we encountered an IED. Our battalion commander tightened the ROE. We had to positively identify our target before we could engage. After the KIA that week the ROE changed so that we were not to engage anyone without them engaging us. During that week we were also trained to take an aimed shot and not spray our weapon randomly. I have been trained in ROE. A hostile act is an act of violence or intended violence against me, my soldiers or any military personnel. A hostile intent is the intent to perform a hostile act. Pointing a weapon would be a hostile intent. But throwing a rock would not be a hostile intent. The soldier decides what a hostile intent and hostile act is. I grabbed Mr. [REDACTED] upper left bicep with my right hand and I turned away from PFC Richmond and so did Mr. [REDACTED] and neither of us had a view of PFC Richmond. After the shot was fired PFC Richmond told me that Mr. [REDACTED] jumped at me, and I did not have a response. I just told PFC Richmond to stay calm. I had a reason to doubt PFC Richmond because Mr. [REDACTED] did not jump at me. When Mr. [REDACTED] was resisting I told him to put his weapon up.

No I didn't say "shoot him if he fucking moves." And if other soldiers tell you that I said that yes their lying.

CPT [REDACTED] gave a verbal OPORDER. I gave the CPT [REDACTED] ROE brief and combined some of our platoons ROE briefing. For example CPT [REDACTED] ROE briefing told us to shoot anyone fleeing the village, CPT [REDACTED] briefing told us to shoot only when there is hostile act or hostile intent. So I told them if any one is flee the village to tell me and I would be the deciding factor. I didn't go to anyone to receive clarification on the CPT [REDACTED] ROE and CFLCC ROE. I told my soldiers not to fire warning shots. I indicated

016690
5

b(6)-4; b(7)(c)-4 (all)

that if an Iraqi is not aiming a weapon at me but at one of my teammates that's hostile intent. I could see Mr. [REDACTED] at the same time while having a hold of him. I never gave statements that I could not see Mr. [REDACTED]. (SGT [REDACTED] draws two diagrams of Mr. [REDACTED] and himself before and during the shooting). There was never a point I could not see Mr. [REDACTED] I pulled Mr. [REDACTED] to my side, but I did not turn my back on Mr. [REDACTED] However I did not have a clear view of PFC Richmond at the time.

I was never told ROE didn't apply. ROE always applies in IRAQ. There never a game off when in IRAQ regarding the ROE.

Article 32 Investigation Officer explains the difference between the CFLCC and CJTF7 while the Defense shows SGT [REDACTED] a picture of MR [REDACTED] lying on the floor.

Mr. [REDACTED] is lying on the Floor.

I signaled for SPC [REDACTED]. I was walking away to me SPC [REDACTED] at that point PFC Richmond was to my left rear and he was still in my Peripheral vision.

QUESTIONS BY THE INVESTIGATING OFFICER

I had seven soldiers present for my brief and all soldiers confirm that they understood the brief I gave.

CPT [REDACTED] added the "flee" part to our old ROE. I told my soldiers to contact me first before you go forth with that part of the OORDER.

I've been on no mission previously with PFC Richmond in my squad. But I've done ten missions with him in the element that was conducting the mission, but he was not in my charge until this mission. I don't know him personally, I just know him because he was in my platoon.

He was put in my Charge that night for the first time by CPT [REDACTED] instructions. We were down a man so we needed PFC Richmond to stand in.

He did not seem nervous about the mission. He had the normal level of attention. PFC Richmond was willing to go out to detain the individual when I asked. No problem and wasn't over anxious. I pointed to where I wanted Richmond to stand. We go over detaining individuals all the time in my platoon.

When he was pulling security he looked the same.

Richmond was observing while I was conducting the initial search the whole time. I probably made eye contact with Richmond a few times while conducting the search. I asked him to raise the weapon he raised it. While the Iraq was struggling PFC Richmond didn't become anymore agitated during me flexi cuffing Mr. [REDACTED] from what I observed.

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I looked at PFC Richmond when I said "he's good let's go". He showed signs that he acknowledged and understood what I said by putting his weapon down and beginning to walk with us. He didn't say anything to confirm, but I saw him start to move forward.

I maintained physical control of the Iraqi by holding his left arm with my right hand. He was requiring my body for balance.

After the shot PFC Richmond had a pale look on his face.

QUESTION BY THE GOVERNMENT

This is a photo Graph of Mr. [REDACTED] Yes he had a scarf on the photo refreshes my recollection.

Government admits photo as exhibit 5

b(6)-4; b(7)(C)-4 (all)

The Iraqi didn't show any signs of fleeing

The scarf did not get in the way of me applying the flexi cuff. I didn't even notice it.

QUESTION BY THE DEFENSE

We left FOB Mchenry at 0400. We met at 0345. The convoy took a half hour to get to the village. Briefing was at 2200 the night before.

Nothing Further.

Neither side nor the Investigating Officer having any further questions, the witness was duly warned and temporally excused.

SPC Richard D. [REDACTED] Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk, Iraq APO AE 09347-9998. Was called as a witness for the defense, was sworn, and testified as follows:

QUESTIONS BY THE DEFENSE

I know PFC Richmond from my platoon and my squad members before I came to Iraq.

I've been through ROE training with Richmond and I received two ROE cards one here and one back at Schofield. When I got here to Iraq my squad leader SPC [REDACTED] gave me one.

I received the ROE briefing from SGT [REDACTED] on 27 February 2004. The thing I remember most about it was that SGT [REDACTED] told us that we were authorized by CPT [REDACTED] to

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shoot anyone fleeing the village. The other ROE told me don't shoot anyone unless they are a direct threat. And that you are supposed to use commonsense in the ROE. I decided what is commonsense.

I didn't hear SGT [REDACTED] say shoot anything that moves.

b(6)-4, b(7)(c)-4 (all)

He told us the ROE that was given for our mission. And I did not doubt the ROE for that mission because I didn't know what higher knew about that mission.

I received a briefing about the incident the day we got back that we were not to talk about the events that happen with anybody. Then we also had a briefing with the chaplain, SGM and the Battalion commander and he said that we screwed up as a team, but we are okay in his book. PFC Richmond was present for all our briefings. We also got spoken to by the platoon SGT's.

I was manning a traffic control point. And I didn't see PFC Richmond shoot Mr. [REDACTED] I heard the shot. I saw the two soldiers standing at that point. I remember once the guy was flexi cuffed one of them which was SGT [REDACTED] had the Iraq in positive control.

(SPC [REDACTED] proceed to draw a visual depiction of the distance between PFC Richmond, MR [REDACTED] and SGT [REDACTED]

PFC Richmond looked like he was a couple feet behind SGT [REDACTED] and Mr. [REDACTED]

It appeared that SGT [REDACTED] was looking toward the direction he was walking.

The Iraqi was probably wearing a head dress but I really don't remember if I saw anything on his head.

Me and the other soldiers talked about the changes in the ROE before the mission. SPC [REDACTED] said that he didn't want to go because this completely contradicted the previous ROE that we've been taught. SPC [REDACTED] also said that if something like an Iraqi flees the field and he shoots them really happened he could get in trouble.

PFC Richmond I believe was in that conversation.

We met at the vehicle I think about 0230. And the brief was about 1030 the other night. I went to bed that night right after the OPORDER brief.

QUESTIONS BY THE GOVERNMENT

Base on everything around me that morning the shot that killed Mr. [REDACTED] didn't know where it came from. I was confused about the whole situation especially when I saw the Iraqi drop.

No, I didn't see a weapon in Mr. [REDACTED] hands.

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QUESTION BY THE INVESTIGATING OFFICER

I've know Richmond since November 2002. We mostly known each other through work, we went out a couple of time had a few laughs.

Before we deployed Richmond said a couple of times that he wanted a bayonet kill. But we all kind of had that type of mind frame but Richmond was the most out spoken about it. I wasn't taken count but there was a joke said that day of the incident. There was a little kid walking by with some sheep. And PFC Richmond said "There's a kid walking by, he's got sheep, can I shoot him." It was a joke that I thought was funny so I laughed.

There was a matter of seconds between the time I saw them walking and I turned my head to stop a vehicle approaching then I heard a shot.

QUESTIONS BY THE DEFENSE

PFC Richmond is outspoken and has a lot of friend and he's kind of a jokester kind of loud. We did PT together.

I've been to SGT [REDACTED] living quarters and I've never heard of him keeping track of how many people he killed. I heard that SGT [REDACTED] was having a hard time dealing with the incident the week before when he shot that lady.

I've never seen a piece of 5 50 cord filled with knots around his bed. We all have a curiosity, what it would be like to kill an Iraqi. I use to joke about shooting someone back at Schofield. I used too say I bet I get the first confirmed kill, because I'm the SAW gunner, I lay out the suppressive fire, I spray everywhere. We stopped joking about that because we always get attacked so we don't joke about it anymore because its very hostile and very realistic everyday stuff.

b(7)-4; b(7)(C)-4 (all)

Nothing Further.

Neither side nor the Investigating Officer having any further questions, the witness was duly warned and temporally excused.

The Article 32 Investigation recessed at 1325 hours, 17 April 2004 and reconvened at 1332 hours, 17 April 2004.

SPC [REDACTED] Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk, Iraq APO AE 09347-9998. Was recalled as a witness for the defense, and was sworn, and testified as follows:

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b(7)-4; b(7)(c)-4
(61)

QUESTIONS BY THE DEFENSE

Battalion commander gave a brief at about 1100 at night. The same day of the incident, the briefing was given in a tent right next to our connex on FOB Mchenry. The Battalion Commander is LTC [REDACTED] and yes he does live at FOB Mchenry. I was trying to get some sleep when I was informed of the briefing. Our squad leaders told us that at some point the LTC would want to talk to us.

We got attacked and about 5 minutes or so later the Iraqi was killed I think.

Another CPT I didn't know his name, but he said over the radio to detain all males in the village.

I wrote a sworn statement that day of the incident my squad leaders told me to write it but my squad leaders never collected it.

It was not odd that the Battalion Commander decided to brief us on that night. We were released after the briefing.

QUESTIONS BY THE GOVERNMENT

Yes, this was after the IED incident.

Nothing Further.

Neither side nor the Investigating Officer having any further questions, the witness was duly warned and temporally excused.

SPC [REDACTED] Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk, Iraq APO AE 09347-9998. Was called as a witness for the defense, was sworn, and testified as follows:

QUESTIONS BY THE DEFENSE

I don't know PFC Richmond. I never had previous contact with him before that day. I was given a ROE briefing that day. I remember the ROE briefing that day and one thing that was added is that it's a high priority target containing the people on the black list so shoot people fleeing the area. I knew we would be facing danger from Iraqi's turning on us and that thought process between the troops.

This mission was different from other mission. SGT [REDACTED] told me before I engage a target to get the okay from him. If SGT [REDACTED] is being shot at I can fire on them it would be a natural response. The only rules I know is if you're being fired on fire back. If a vehicle is

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speeding up from behind, you can disable the vehicle. Myself and SGT [REDACTED] communicate through CVC radios all the time.

Nothing Further.

b(6)-4; b(7)(C)-4 (all)

Neither side nor the Investigating Officer having any further questions, the witness was duly warned and temporally excused.

Investigating Officer ask Private Richmond if he would answer some questions from him.

The defense agrees under the condition that subject to objection on a question to question basis PFC Richmond will respond.

The government request that if the Investigating Officer ask question, can the government cross.

The Defense states that PFC Richmond will only answer questions from the Investigating Officer not the government.

The Investigating Officer recess the proceedings to consult with his Legal Advisor at 1400 hours, 17 April 2004 and reconvened at 1410 hours, 17 April 2004.

PFC Edward L. Richmond Jr., Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk, Iraq APO AE 09347-9998. Was called by the Investigating Officer to make an unsworn statement, and testified as follows:

QUESTION BY THE INVESTIGATING OFFICER

I've been in Iraq for 2 months. I've been with the Wolfhounds the whole time. I've been on ten TCP missions with the Wolfhound since I've been in Iraq.

I've detained 2 individuals previously before 28 February 2004.

On my sworn statement dated 29 March 2004, I clarified my testimony from my previous sworn statements. Originally I said that the Iraqi had lunged at SGT [REDACTED]. And in the latest sworn statement I state that SGT [REDACTED] was turning the victim. That was derived from my further understanding of the facts, reading statements, hearing testimonies and hearing everything. That was not what I thought or knew at the time. During the incident, the adrenalin and the stress was affecting my perception. I wouldn't say that was everything in the situation the way I saw it. The reason I shot him was because this guy was jumping at SGT [REDACTED] that's why I shot him.

Looking back on the statement now I think it appears somewhat misleading. I quote "I had to know he had on flexi cuffs before I shot him but it just didn't register in my mind at the time", that can be misinterpreted. The way I meant that to sound. I had to know

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this information to be able to deal with the situation to address the situation properly. In order for me to deal with a detainee tripping and falling I would have to know that he was detained and flexi cuffed. By me saying I did not know, I could not take everything into consideration, being that I did not know these facts at this time it was like a split second decision. The Iraqi's back was facing me but I didn't see his arms or his hands.

The reason for that was the way I was facing him, I was facing the front right of the person and SGT [REDACTED] and the persons hands were out of my sight pictures because I could see the guys chest. Once SGT [REDACTED] told me to raise my weapon to the guys head if he moves fucking shoot him. That's were I was looking at, his head. I was very close to him about 3 feet and all I could see was his head. And when he turned around swiftly I just didn't see it. I didn't hear SGT [REDACTED] say "he's good to go" or anything of that nature. I made eye contact with SGT [REDACTED] when he was putting on the flexi cuffs.

When SGT [REDACTED] noticed the guy was resisting. He basically looked at me and said "put your fucking weapon on his head, if he fucking moves shoot him". SGT [REDACTED] was screaming at me so that's what I did.

Nothing Further.

b(6)-4; b(7)(c)-4

The Defense requested that the Investigation Officer admit a newspaper article from the 5 March 2004 Stars and Strips.

The government objects to this article being admitted. Government states that this Article is post both incident and has absolute nothing to do with the purpose of this investigation.

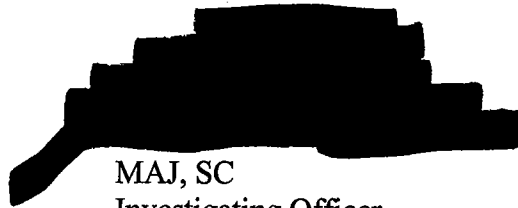
The investigation Officer agrees with the government after reviewing the article. The investigating officer declines the article to be admitted into evidence. The basis of the investigating officer's decision was he sees no relevance to this Article.

Closing statements were given by the Government and the Defense.

The Article 32 Investigation adjourned at 1505 hours, 17 April 2003.

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I certify that this is a true and accurate summarization of the testimony heard during the Article 32 Investigation in the case of U.S. v PFC Edward L. Richmond Jr.



b(6)-2; b(7)(c)-2

MAJ, SC
Investigating Officer

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13

PRETRIAL ALLIED PAPERS

016699

DEPARTMENT OF THE ARMY
286th MILITARY POLICE DETACHMENT (CID)
22nd MILITARY POLICE BATTALION, 3rd MILITARY POLICE GROUP
UNITED STATES ARMY CRIMINAL INVESTIGATION COMMAND
APO AE 09392

CIRB-KAW

30 April 2004

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: CID Interim Report – 0040-04-CID469-79638–5H1A/5M3/9G1

DATES/TIMES/LOCATIONS OF OCCURRENCES:

1. 28 FEB 2004/0855; GRID COORDINATE 38S LE825101, TAAL AL JAL, IRAQ
2. 1 MAR 2004/1810/29 MAR 2004/1419; FOB WARRIOR, KIRKUK, IRAQ

DATE/TIME REPORTED: 28 FEB 04, 1800

b(6)-1; b(7)(c)-1

INVESTIGATED BY: SA [REDACTED], 5922, SA [REDACTED] 5593

b(6)-5; b(7)(c)-5

SUBJECT: 1. RICHMOND, EDWARD LYNN; PFC; [REDACTED] 7 JUL 83; BATON ROUGE, LA; M; WHITE; HEADQUARTERS AND HEADQUARTERS COMPANY (HHC), 1/27 IN BN, 25TH ID (HOME BASE: SCHOFIELD BKS, HI), FORWARD OPERATING BASE (FOB) MCHENRY, IRAQ, APO AE 09347; CT; [MURDER][FALSE OFFICIAL STATEMENT]

VICTIM: 1. [REDACTED] LOCAL IRAQI NATIONAL, TAAL AL JAL, IRAQ; ZZ; (NFI); [MURDER]

b(6)-4; b(7)(c)-4

2. U.S. GOVERNMENT; [FALSE OFFICIAL STATEMENT]

INVESTIGATIVE SUMMARY:

This is an "Operation Iraqi Freedom" investigation.

This office was notified by the Staff Judge Advocate (SJA), 4th Infantry Division, Camp Iron Horse, Tikrit, Iraq, APO AE 09323, of a soldier who shot and killed a local national who was flexi cuffed.

Investigation established probable cause to believe PFC RICHMOND committed the offense of Murder when he shot and killed Mr [REDACTED] while he was flexi cuffed and detained by unit personnel following a cordon and search in Taal Al Jal, Iraq.

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Further, investigation established probable cause to believe PFC RICHMOND committed the offense of False Official Statement when he knowingly provided a false written statement to this office, which stated he (PFC RICHMOND) did not know Mr [REDACTED] was flexi cuffed when he shot him.

b(6)-4; b(7)(c)-4

STATUTES:

Article 118, UCMJ: Murder

Article 107, UCMJ: False Official Statement

EXHIBITS/SUBSTANTIATION:

Attached:

1. Agent's Investigation Report (AIR) of SA [REDACTED] 5 Mar 04, detailing the Basis for Investigation; unit coordination; witness interviews of CPT [REDACTED] SPC [REDACTED] PFC [REDACTED] SPC [REDACTED] CPL [REDACTED] SPC [REDACTED] SGT [REDACTED] and SGT [REDACTED] subject interview of PFC RICHMOND; collection of evidence and coordination with SJA.

b(6)-1; b(7)(c)-1

b(6)-4; b(7)(c)-4

b(6)-4; b(7)(c)-4

2. Serious Incident Report, dated 28 Feb 04 and bearing SIR number 4ID04052.

3. 15-6 investigation packet containing the statements containing the statements of CSM [REDACTED] DA form 3881 and statement of SGT [REDACTED] statement of CPT [REDACTED] DA form 3881 and statement of PFC RICHMOND; statement of 2LT [REDACTED] Handwritten statement of PFC RICHMOND; Handwritten statement of SGT [REDACTED]

4. Photographic packet depicting the crime scene comprised of 8 photos.

b(6)-4; b(7)(c)-4
(c11)

5. Compact Disc containing all photographic images of the originals of Exhibit 4 (USACRC Copy only).

6. Sworn Statement of SPC [REDACTED] 1 Mar 04, detailing his knowledge of this incident.

7. Sworn Statement of PFC [REDACTED] 1 Mar 04, detailing his knowledge of this incident.

8. Sworn Statement of PFC [REDACTED] 1 Mar 04, detailing his knowledge of this incident.

9. Sworn Statement of SPC [REDACTED] 1 Mar 04, detailing his knowledge of this incident.

10. Sworn Statement of CPL [REDACTED] 1 Mar 04, detailing his knowledge of this incident.

11. Sworn Statement of SPC [REDACTED] 1 Mar 04, detailing his knowledge of this incident.

12. Sworn Statement of SGT [REDACTED] 1 Mar 04, detailing his knowledge of this incident.

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13. DA form 3881, Rights Warning Waiver Certificate and DA form 2823, Sworn Statement of PFC RICHMOND, dated 1 Mar 04, wherein; PFC RICHMOND admitted to killing Mr [REDACTED] an Iraqi National, however, PFC RICHMOND denied he knew Mr [REDACTED] was flexi cuffed at the time of the shooting.

14. DA form 2823, Sworn Statement of SGT [REDACTED], 1 Mar 04, detailing what he witnessed and observed during this incident.

b(6)-4; b(7)(c)-4 (c1)

15. Waiver Certificate and Sworn Statement of PFC RICHMOND, 29 Mar 04, wherein; PFC RICHMOND admitted he killed Mr [REDACTED] knowing he was flexi cuffed at the time of the shooting.

16. AIR of SA [REDACTED] 16 Apr 04, detailing the re-interview of PFC RICHMOND and coordination with the SJA and unit commander.

17. Polygraph Examination Report pertaining to PFC RICHMOND, 30 Mar 04.

18. DA Form 4137, Evidence/Property Custody Document, 8 Nov 03, voucher #252-04.

Not Attached:

Retained in the files of the evidence depository, 22nd Military Police Battalion (CID), Baghdad International Airport, Baghdad, Iraq:

19. M-4 Rifle bearing serial number WO55444 (PFC RICHMOND), Voucher #252-04

Retained in the files of the U.S. Army Crime Records Center (USACRC), Fort Belvoir, VA:

20. Polygraph authorization (PFC RICHMOND), 29 Mar 04.

21. Polygraph examination statement of consent (PFC RICHMOND), 29 Mar 04.

22. Seven polygraph charts (PFC RICHMOND), 29 Mar 04.

The originals of Exhibits 1 through 16 are forwarded with the USACRC copy of this report. The original of Exhibit 17 is maintained in the files of the United States Army Crime Records Center (UDACRC). The original of Exhibit 18 is maintained in the files of the 22nd Military Police Battalion (CID), Baghdad International Airport, Baghdad, Iraq.

STATUS: This is a Final "C" Report. This investigation is being terminated in accordance with Section V, paragraph 4-17(6), CIDR 195-1, in that the Special Agent in Charge has determined that furtherance of this investigation would be of little or no value and that leads remaining to be developed are not significant. Remaining leads include additional canvass interviews and full identification of Mr [REDACTED] Commander's Report of Action (DA Form 4833) is pending.

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016702

Report Prepared By:

[REDACTED] b(6)-1; b(7)(c)-1
Special Agent, 5922

Report Approved By:

b(6)-1
b(7)(c)-1
[REDACTED]
Special Agent-in-Charge

DISTRIBUTION:

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THRU: CDR, 3rd MP Group (CID), ATTN: OPS, Ft Gillem, GA
TO: HQUSACIDC, ATTN: CIOP-COP-CO, Fort Belvoir, VA 22060-5505 (email only)
1-Director, Armed Forces Institute of Pathology, Attn: Armed Forces Medical Examiner, 1413
Research Blvd, Annex Building 102, Rockville, MD 20850 (w/exhibits)
1-PMO, 1st ID (email only)
1-PMO, CJTF-7 (email only)
1- SJA, 1st ID (Attn: MAJ [REDACTED]) b(6)-2; b(7)(c)-2
1-Chief of Staff, 1st ID
1-File

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016703

SWORN STATEMENT

For use of this form: AR 190-45; the proponent agency is Office of The Deputy Chief of Staff for Personnel.

LOCATION SJA, 2nd BCD, 25 INF DIV	DATE 1 MAR 04	TIME 1145	FILE NUMBER 0046-04-020464-79638
LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	SOCIAL SECURITY NUMBER [REDACTED]		GRADE/STATUS PFC/E-3
ORGANIZATION OR ADDRESS HHC 1-27 MARS 25th INF			

WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On the 28th of February 2004 the HHC 1-27 MARS #1 gun, along with PFC Richmond (gunner for #2 gun) and Sgt. [REDACTED] from F.D.C went out with Alpha Co. 1-27 to provide extra security for a raid that they were conducting. We arrived at the said site at approx. 0500 hrs. Our mission was to block the main road to the town from the village from vehicles coming in or out and to watch for people running from the raid site. There was no sign of any activity till about 0800 hrs. We had some farmers that came past us and we had been told not to worry about the farmers. At about 0835 we received a call from Alpha Co. that said detain all male coming in or out of the village to include farmers. As soon as the call came down, Sgt. [REDACTED] and PFC Richmond headed about 150 meters to the right hand side of the road to detain a male that was herding cattle. While they were detaining this man. Myself, Cpl. [REDACTED] PFC [REDACTED] 1 Wpc. from A Co., Sgt. [REDACTED] and an avenger crew man were formulating a plan for the vehicles that were starting to come in to the village. At that time I heard a shot from the direction of the field. I turned around to see Sgt. [REDACTED] and PFC Richmond standing and no one else. Everyone was unsure what happened. During all this I had to head about 50 meters down the road to stop a vehicle that was attempting to enter the village. It was not until about an hour later that I found out that someone had been shot. No one could give any reason for what happened or how it was later back at the F.O.B that I got the specifics.

Q: SA [REDACTED] (b)(6)-1; b(7)(C)-1

A: PFC [REDACTED]

Q: Did members of your team receive a Use of Force Brief prior to this mission?

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF 3 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED] CONTINUED"

b(6)-4
b(7)(C)-4

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EX

016704

STATEMENT OF PFC [REDACTED]

TAKEN AT STA, 2 OCT
15 INF

DATED 1 MAR 04 CONTINUED

A: We received a brief on the R.O.E from Sgt. [REDACTED] that the rules were the same. That you use deadly force only if you feel your life is in danger or the lives of your teammates fellow soldiers etc... That you do not fire your weapon unless you are fired upon.

Q: Who would there be any reason Richmond would have had his weapon on "Fire" as he and SGT [REDACTED] were dealing with the Iraqi man?

A: No. There is no reason that his weapon should have been set the high ready or off safe. The only reason he should have his weapon off safe is if he was going to engage a target.

Q: Had Richmond give any indications that he was looking forward to "engaging the enemy" or that he wanted to fire his weapon during this mission?

A: No. Not during this mission. In the past he had joked and bragged about different scenarios that he would do this and that and different things that could happen in a mission or convoy. How was his demeanor after the incident?

A: I only saw him for a few seconds, but he seemed more scared about the punishment facing him than his actions.

Q: Prior to this mission, had Richmond have any Accidental discharge incidents with this weapon?

A: No.

Q: Do you have any thing to add to this statement?

A: NO. /// END STATEMENT ///

b(6)-4; b(7)(c)-4 (all)

STATEMENT (Continued)

b(6)-1 ; b(7)(C)-1

NOT USED

[REDACTED] (same)

AFFIDAVIT

[REDACTED] HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

(same)

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

[REDACTED]
(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 1 day of MAR, 2004 at SSA, 28th ST, 25th INT, KICKAP, JTCY

[REDACTED]
(Person Administering Oath)

SA [REDACTED]

(Typed Name of Person Administering Oath)

Art 136, OCM 5

(Authority To Administer Oaths)

b(6)-1

b(7)(C)-1

(same)

016706

DATA REQUIRED BY PRIVACY ACT
AUTHORITY: Title 10, United States Code Section 3012 (g) **ROUTINE USES:** Your social security number and other personal information are used as an additional/alternate means of identification to facilitate and retrieval.

PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified. **DISCLOSURE:** Disclosure of your social security # is voluntary

1. Rec Code: 2. Action Code: 3. Date: 4. Rel to Case: 5. Control: 6. Sequence # 7. Year: 8. Office 9. ROI # Offense:
0046-04-CEJ469-79638

10. Last Name: 11. First Name: 12. Middle Name: 13. Grade/Rank:
PFC

14. Social Security Number: 15. Other ID Number: 16. Date of Birth: 17. POB City: 18. POB St: 19. POB Zip:
Richmond IN

20. Race: 21. Sex: 22. Ethnic: 23. Height: 24. Weight: 25. Hair: 26. Eye Color: 27. Citizen: 28. Educ: 29. Prior Record: 30. Marital
M C 22 56 127 BRN BRN US 12 N M

31. MOS: 32. Job Description/Location: 33. MC: 34. Security Clr: 35. Physical Marks/ Tattoos: 36. Spouse Military: Branch
11C 81 mm motor - None Yes: ☐ No: ☐

37. Alias/Nicknames: 38. Alias/Nicknames: 39. Alias/Nicknames:

40. Unit/ Organization: 41. Unit Phone Number: Home: Cell/Pager:
HHC 1-27 motors

42. Military Service: 43. Sub Unit: 44. Fort/City: 45. State: 46. Country: 47. Zip Code/APO:
Rob McHenry

48. Home Address: 49. City: 50. State: 51. Country: 52. Zip Code/APO:

53. JUV: 54. Family Rel: 55. Last Name: 56. First Name: 57. Middle Name:

58. Social Security: 59. Grade/Rank: 60. MC: 61. Unit:

62. City: 63. State: 64. ZIP/APO: 65. Phone: Wk: Hm:

66. Offense Code: 67. UFC: 68. Offense Code: 69. UFC: 70. Offense Code: 71. UFC: 72. Offense Code: 73. UFC:

Telephone: ETS: PCS/DEROS: Date / Time Interview START: Date: Time:

Place of Interview: Date / Time Interview END: Date: Time:

Disposition:

74. Category: 75. Type: 76. Recovered: Yes: ☐ No: ☐ 77. Value: 78. Insurer: Policy: Year/Date:

81. Model: 82. Vehicle Style: SUV 83. # of Doors: 2 84. Color: Blue 85. Size: Mid size

86. V.I.N: 87. License Plate: 88. State: 89. DOD Decal Number:

NOTES:
0500

For Official Use Only

016707

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1983 /SSN/.

PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.

USE: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.

DISCLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION FOB McHENRY, HUWAYJAH, IRAQ	2. DATE (YYYYMMDD) 2004/02/28	3. TIME 1615	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN [REDACTED]	7. GRADE/STATUS CPT/CDR	
8. ORGANIZATION OR ADDRESS Aco, 1-27IN(L), 2nd BCT, 25th I.D. (L), Schofield, Barracks, HI.			

9. I, CPT [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH: b(6)-y; b(7)(c)-y (all)

On DTG 280530FEB04 Aco, 1-27IN(L) and attachments conducted an early morning raid on the village of Tel Hussein LE 82551100 IOT capture specified High Value Targets (HVT's) and then search for enemy caches in the area. The Company had six target houses to seize and search for HVT's in the village. The village only had one North/South road which ran through the center of town. The plan was for two platoons to attack simultaneously from the North and South each seizing three buildings and using blocking positions to prevent vehicle escape during the raid. The Northern Blocking position (BP) was established by a section of AT attached to 2nd platoon. The southern BP was established by an advenger and battalion mortar squad attached to the 1st platoon. The BP's were in position by 0530hrs and I gave the word for the platoon's to initiate the seizure of their buildings. 2nd platoon seized HVT buildings 1, 2 & 3. 1st platoon seized 4 & 5 and realized from the informant that there was no building six. All five building were seized by 0615. 2nd platoon had seized three of the five HVT's that were targeted. They seized an HVT in each house targeted. The HVT in house number three was captured as he tried to escape out of the back of his house and ran into the squad blocking off the rear entrance. 1st platoon did not have any HVT's in their building's. The HVT for building four was reported to be in Musel by his family. After the building's were seized the platoons began a detailed search of the HVT's houses for weapon caches. 2nd platoon found an AK-47 hiding in the HVT #1 barn. 1st Platoon found a cache in a hay stack in a barn which included an AK-47 and a 1944 german Mauser. Both weapons included ammunition and magazine for the AK. They traced the barn to an owner of another house that was not on the HVT list. I ordered it to be searched. The female of the house stated that the male subject fled the house when we found the weapons. We had photo ID seized from the house so I ordered the platoons to search all adult males so that we could find the individual who belonged to the photo and weapons. We never found the men who in the photo I.D.'s.

While the search was being conducted the southern cordon reported that they had killed one enemy personnel at the southern BP. I called back and asked if the enemy personnel was armed and the radio message said "no and he was flexed cuffed when he was shot." I immediately called my ISG and he followed me with a medic from 1st platoon to the southern BP. Upon our arrival we were directed to the East of the BP approximately three hundred meters to an open farm field. When we arrived I met SGT [REDACTED] and PFC Richmond from the battalion mortar's who were part of the southern BP. I immediately noticed that the male subject was dead from the exit wound out of his forehead. At that location was a male subject who was face up with his hands behind his back. The head was facing to the north. I immediately asked the NCO who shot the male subject. He stated PFC Richmond shot him after I flexed cuff the individual. I then ordered the ISG to disarm PFC Richmond and remove all weapons from his person. I then separated the NCO and soldier so that they could not speak to one another. I then called for my vehicle to come to my location with the company XO and a digital camera. Upon the arrival I directed my XO to get witness statements from the two soldiers involved in the shooting. I then directed for the body to be photo graphed as it was found. After they took pictures of the body and shell casing from the M4 I directed them to turn over the body. When the body was turn over you could see both arms were securely flexed cuffed with white flex cuffs behind the male subject's body. I then directed the XO to take photo's of the back of the body and the hands as it lay on the ground. Once that was complete I called the FOB and submitted a situation report on the mission and the shooting and requested that the battalion CDR, XO or S3 come to the incident site. The battalion CSM responded to the scene with CPT [REDACTED] the assistant AS3.

While we waited for the CSM to Arrive I read the two individual their rights and then question each one individually. I recorded all questions and answers by each soldiers and turned that into the CSM along with their witness statements for further investigation. We then put the subject into a body bag and I ordered the flex cuffs to be removed from the body before it was turned over to the ICDC or police in Huwayjah. The CSM secured the two soldiers involved in the shooting and the body and returned to the FOB. Upon completion of that mission I then ordered each platoon to move to their next mission which was to raid two separate residences in two different location's looking for an HVT. Both houses failed to turn up the HVT. The platoons then returned to the FOB and conducted AAR and written reports along with photo's of the days missions and turned them into the battalion S3 and S2 for analysis. Nothing else follows. SWC

10. EXHIBIT	11. INITIALS [REDACTED] MAKING STATEMENT	PAGE 1 OF 1 PAGES
-------------	--	-------------------

ALL ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF

TAKEN AT DATED

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

DA FORM 2823, DEC 1998

DA FORM 2823, JUL 72, IS OBSOLETE

USAPA V1.00

For official use only

016708

1110, 1 MAR 04

DATA REQUIRED BY PRIVACY ACT									
AUTHORITY:		Title 10, United States Code Section 3012 (g)				ROUTINE USES: Your social security number and other personal information are used as an additional/alternate means of identification to facilitate and retrieval.			
PRINCIPAL PURPOSE:		To provide commanders and law enforcement officials with means by which information may be accurately identified.				DISCLOSURE: Disclosure of your social security # is voluntary			
1. Rec Code:	2. Action Code:	3. Date:	4. Rel to Case:	5. Control:	6. Sequence #	7. Year:	8. Office	9. ROI #	Offense:
					0040-04-CI0469-79638				
10. Last Name:		11. First Name:		12. Middle Name:		13. Grade/Rank:			
				b(6)-2		CPT			
14. Other ID Number:		15. Date of Birth:		17. POB		18. POB St:		19. POB Zip:	
				Phoenix		AZ			
20. Race:	21. Ethnic:	22. Height:	23. Weight:	24. BRN	25. BRN	26. Citizen:	27. Educ:	28. Prior Record:	29. Marital Status:
M	C	22	68	BRN	BRN	US	16	N	M
30. MOS:	31. Job Description/Location:	32. MC:	33. Security Clr:	34. Physical Marks/ Tattoos:			35. Spouse Military:		
11A	Infantry		Sec				Yes: <input type="checkbox"/> No: <input type="checkbox"/>		
36. Alias/Nicknames:			37. Alias/Nicknames:			38. Alias/Nicknames:			
39. Unit/ Organization:				40. Unit Phone Number:		Home:		Cell/Pager:	
A Co 1-27									
41. Military Service:		42. Sub Unit:		43. Fort/City:		44. State:		45. Country:	
				Ft D McHenry					
46. Home Address:		47. City:		48. State:		49. Country:		50. Zip Code/APO:	
51. JUV:	52. Family Rel:	53. Last Name:		54. First Name:		55. Middle Name:			
56. Social Security:		57. Grade/Rank:		58. MC:		59. Unit:			
60. City:		61. State:		62. ZIP/APO:		63. Phone:		64. Wk:	
65. Offense Code:		66. UFC:		67. Offense Code:		68. UFC:		69. Offense Code:	
70. Telephone:		71. ETS:		72. PCS/DEROS:		73. Date / Time Interview START:			
						Date: Time:			
74. Place of Interview:		75. Date / Time Interview END:		76. Date:		77. Time:			
78. Disposition:									
79. Category:		80. Type:		81. Recovered:		82. Value:		83. Insurer:	
				Yes: <input type="checkbox"/> No: <input type="checkbox"/>				Policy:	
84. Model:		85. Vehicle Style:		86. # of Doors:		87. Color:		88. Size:	
		SUV		2		Blue		Mid size	
89. V.I.N:		90. License Plate:		91. State:		92. DOD Decal Number:			

NOTES:

Company commander
BN
TOC DNVY

MAT - BN S-3

COL

b(6)-2; b(7)(c)-2

- shell casing
- weapon
secured by BN

016710

CRIME LABORATORY EXAMINATION REQUEST		LAB USE ONLY	
For use of this form, see A 195-5 the proponent agency is the United States Army Criminal Investigation Command.		REFERRAL NUMBER	
TO: (Include Zip Code) LABORATORY DIRECTOR US ARMY CRIMINAL INVESTIGATION LABORATORY 4553 N. 2 ND STREET FOREST PARK, GA 30297-5122 ATTN: Firearms Division	FROM: (Include Zip Code) SPECIAL AGENT IN CHARGE 43 RD MILITARY POLICE DETACHMENT 10 TH MILITARY POLICE BATTALION (CID) TIKRIT, IRAQ APO AE 09323-2647 <div style="text-align: center; font-size: 1.2em;">b(6)-1; b(7)(c)-1</div> EMAIL: [REDACTED]@us.army.mil	<div style="border: 1px solid black; padding: 2px;">RECEIVED</div> <div style="border: 1px solid black; padding: 2px;">REGIS MAIL</div> <div style="border: 1px solid black; padding: 2px;">RY EXP</div> <div style="border: 1px solid black; padding: 2px;">HAND</div> <div style="border: 1px solid black; padding: 2px;">DATE</div> <div style="border: 1px solid black; padding: 2px;">RECEIVED BY</div>	<div style="border: 1px solid black; padding: 2px;">RETURNED</div> <div style="border: 1px solid black; padding: 2px;">REGIS MAIL</div> <div style="border: 1px solid black; padding: 2px;">RY EXP</div> <div style="border: 1px solid black; padding: 2px;">HAND</div> <div style="border: 1px solid black; padding: 2px;">DATE</div> <div style="border: 1px solid black; padding: 2px;">EVIDENCE RECEIPT</div> <div style="border: 1px solid black; padding: 2px;">RECEIVED</div> <div style="border: 1px solid black; padding: 2px;">INITIATED</div>
1. CONTRIBUTOR CASE NUMBER 0040-04-CID469-79638	2. INVESTIGATOR'S NAME SA [REDACTED]	3. AUTOVON AND PHONE NUMBER DNVT [REDACTED]	
4. SUSPECT(S) (Last, first and middle name(s)) PFC RICHMOND, Edward Lynn (same)			
5. VICTIMS(S) (Last, first and middle name(s)) Mr. [REDACTED] b(6)-4; b(7)(c)-4			
6. TYPE OF OFFENSE Murder	7. ONE COPY OF EVIDENCE RECEIPT INCLOSED WITH EVIDENCE <div style="text-align: center;"> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO </div>	8. OTHER EVIDENCE PREVIOUSLY SUBMITTED ON THIS CASE <div style="text-align: center;"> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO </div>	
IF "YES" IN ITEM 8, LIST OTHER SUSPECT(S), DATE SUBMITTED, UNIT CASE AND LABORATORY REFERRAL NUMBERS(S)			
10. EVIDENCE SUBMITTED			
a. EXHIBIT	b. DESCRIPTION OF EXHIBIT		
1	Rifle (Item 1, Voucher 010/04)		

DA FORM 3655
1 AUG 74

REPLACES DA FORM 3665-R, 1 NOV 70 WHICH IS OBSOLETE

For Official Use Only

Ex

016711

10. EVIDENCE SUBMITTED (Continue)

a. EXHIBIT

b. DESCRIPTION OF EXHIBIT

11. EXAMINATION(S) REQUESTED (Briefly furnish any information or instructions that might assist the laboratory in examining, evaluating or returning evidence and/or report).

NOPSIS:

See attached Initial Report.

Firearms Division: Please examine Exhibit 1 to determine if the rifle functions properly.

Conduct any other tests you deem necessary.

b(6)-1; b(7)(c)-1

Evidence above has not been examined by another expert in the same scientific field.

TYPED NAME OF REQUESTER

SIGNATURE

DATE

03 Mar 04

016712

EVIDENCE/PROPERTY CUSTODY DOCUMENT

For use of this form see AR 190-45 and AR 195-5; the proponent agency is US Army
Criminal Investigation Command

MPR/CID SEQUENCE NUMBER

CRD REPORT/CID ROI NUMBER

RECEIVING ACTIVITY

43rd MP Det (CID) (FWD) APO AE 09323

LOCATION

STA 2 BCT, 25th INF, Kirkuk Iraq

NAME, GRADE AND TITLE OF PERSON FROM WHOM RECEIVED

☐ OWNER☒ OTHER

ADDRESS (Include Zip Code)

HHC 1/27 motor, 25th INF
FOB Mc Henry, Iraq APO AE 09347-9998

LOCATION FROM WHERE OBTAINED

from the hands of SGT
while inside
STA, 2 BCT, 25th INF, Kirkuk, Iraq

REASON OBTAINED

Evidence

TIME/DATE OBTAINED

1146/1 MAR 04

ITEM
NO.

QUANTITY

DESCRIPTION OF ARTICLES

(Include model, serial number, condition and unusual marks or scratches)

1

1

Rifle, M-4 carbine, serial number W055444, 5.56mm, containing the Colt manufacturers label and "property of US Government". rifle is unloaded and magazine well is empty. Rifle contains an attached Nylon sling. weapon is black in color, metal and plastic in construction. The barrel, stock and bolt were each marked for ID with "1146/1 MAR 04/MSZ". (HANDS OF SGT WARUCH)

LAST ITEM

b(6)-4; b(7)(C)-4

b(6)-1; b(7)(C)-1

CHAIN OF CUSTODY

ITEM
NO.

DATE

RELEASED BY

RECEIVED BY

PURPOSE OF CHANGE
OF CUSTODY

1

1 MAR
04

[REDACTED]

[REDACTED]

Evaluation as Evidence

1

[REDACTED]

[REDACTED]

SIGNATURE

SIGNATURE

NAME, GRADE OR TITLE

NAME, GRADE OR TITLE

SIGNATURE

SIGNATURE

NAME, GRADE OR TITLE

NAME, GRADE OR TITLE

SIGNATURE

SIGNATURE

NAME, GRADE OR TITLE

NAME, GRADE OR TITLE

016713

CASE NUMBER: 0040-04-CID469-79638

NUMBER:

DESCRIPTION OF PHOTOGRAPH

1

Photograph depicting where the remains of Mr [REDACTED] ay after he was shot

2

Photograph depicting the flexi-cuffs bound to Mr [REDACTED] wrists

3

Photograph depicting a close-up image of the Flexi-cuffs

4

Photograph depicting the front side of Mr

5

Photograph depicting the front side of Mr

6

Photograph depicting the head of Mr

7

Photograph depicting injuries to the head of Mr

8

Photograph depicting the spent cartridge, rifle and the remains of Mr [REDACTED] from the shooting

$$b(6) = 4; \quad b(7)(6) = 4$$

EXHIBIT

FOR OFFICIAL USE ONLY

016714

**16715 is a duplicate of Pages 17791-94, 17796-99
which are photographic exhibits withheld based
on 5 USC 552(b)(6), (b)(7)(C), and (b)(7)(F)**

**16716-16724 (including 16720A and B)
are duplicates of pages 17791-17800 which are
photographic exhibits withheld based on 5 USC
552(b)(6), (b)(7)(C), and (b)(7)(F)**

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is Office of The Deputy Chief of Staff for Personnel.

LOCATION FOB Warrior, Kirkuk, Iraq	DATE 1 Mar 2004	TIME 1358	FILE NUMBER 0040-04- 010469 -79638
LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	SOCIAL SECURITY NUMBER [REDACTED]		GRADE/STATUS E-5/RA
ORGANIZATION OR ADDRESS B Battery, 1/62 nd Air Defense Artillery, FOB McHenry, Iraq			

T&H I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:
On 28 Feb 04 I was attached to 1-27th Infantry for an operation they were conducting in the village of Taal Al Jal, Iraq. SPC [REDACTED] and myself are Air Defense Artillery and the main reason 1-27 needed us was because we have a 50 Caliber machine gun mounted to the avenger we drive. During the mission I was at a Traffic Control Point located southwest of the village. My mission was to block off the road so the infantry could conduct their mission. We did not let anyone out or into the village while the operation was going on. Around 1000 I heard a call come over the radio to detainee any Iraqi males in the area. After the call came over the radio I observed one vehicle approaching my location with one Iraqi male inside the vehicle. I detained the male driving the vehicle when a second vehicle approached. The vehicle contained two Iraqi males, one female and five children. I then detained the two Iraqi males and the rest of the people sat in their vehicle because they did not know they could leave. After the two Iraqi males were detained I walked back to my vehicle and attached my CVC helmet cord back in so I could hear the radio traffic. When I attached the cord I heard on the radio that shots have been fired. About one minute later a call came over the radio, which stated one shot had been fired at an Iraqi and he was killed. After that I continued to sit inside of my vehicle and watch my area for approaching vehicles and the detainees we had previously detained [REDACTED]

Q: SA [REDACTED]
A: SGT [REDACTED]
Q: Did you hear the shot fired?
A: No because I had my CVC helmet on so I could not hear.
Q: Did you see who shot the Iraqi male?
A: No.
Q: Prior to this operations did you met PFC RICHMOND?
A: [REDACTED]
Q: [REDACTED] someone brief the Rules of Engagement to you?
A: Yes, CPT [REDACTED]. We also have the ROE cards on us at all time.
Q: What did CPT [REDACTED] brief that was different to the ROE cards you have?
A: He stated when the mission took place if we could positively identify any Iraqi males fleeing from the city deadly force was authorized.
Q: Did anyone flee the village?
A: No.
Q: When did you first see the Iraqi Cow herder in the field?
A: When SGT [REDACTED] and PFC RICHMOND started to walk to his location.
Q: How far away was the Iraqi Cow Herder from the TCP?
A: 200 meters.
Q: Did the Iraqi Cow Herder make any threats towards coalition forces in the area?
A: Not that I saw.
Q: Do you have anything else to add to this statement?
A: No.///End of Statement/// [REDACTED]

b(6)-y; b(7)(c)-y
(all)

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF 2 PAGES
---------	---	-------------------

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED] CONTINUED."
1 BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE
INITIALED AS "PAGE [REDACTED] OF [REDACTED] PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE
LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

DA FORM 2823
1 JUL 72

SUPERSEDES DA FORM 2823, 1 JAN 68, WHICH WILL BE USED.

For Official Use Only

Ex
016725

b(6)-4; b(7)(C)-4

b(6)-4; b(7)(C)-4

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

WITNESSES:

[REDACTED] (Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 1st day of March, 2004 at FOB Warrior, Kirkuk, Iraq

ORGANIZATION OR ADDRESS

[REDACTED] (Signature of Person Administering Oath)

b(6)-1; b(7)(C)-1

SA [REDACTED] (Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

Article 136(b)(4), UCMJ (Authority To Administer Oaths)

IN. OF PERSON MAKING STATEMENT

PAGE 2 OF 2 PAGES

For Official Use Only

b(6)-4; b(7)(C)-4

Ex

016726

INVESTIGATIVE WORKSHEET

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code Section 3012 (g) **ROUTINE USES:** Your social security number and other personal info are used as an additional/alternate means of identification to facilitate and retrieval

PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified. **DISCLOSURE:** Disclosure of your SSN# is voluntary.

1. Rec Code: 2. Action Code: 3. Date: 4. Rel to Case: 5. Control #: 6. Sequence #: 7. Year: 8. Office: 9. ROI #: 10. Offense:

0040 - 04 - CID 469 - 79638 -

INDIVIDUAL DATA

11. Last Name: 12. Middle Name: 13. First Name:

14. Social Security Number: 15. Other ID Number: 16. Date of Birth: 17. POB City: 18. POB ST: 19. POB ZIP:

20. Sex: 21. Race: 22. Height: 23. Weight: 24. Hair Color: 25. Eye Color: 26. Citizen: 27. Educ: 28. Prior Record: 29. Marital:

30. MOS: 31. Job Description/Location: 32. MCAC: 33. Security Clr: 34. Physical Marks/or Tattoos: 35. Spouse Military Y/N: 36. Service #:

37. Alias/Nicknames: 38. Alias/Nicknames: 39. Alias/Nicknames:

40. Unit/Organization: 41. Unit Phone Number: 42. Home/Cell Phone Number:

43. Sub Unit: 44. Fort/City: 45. State: 46. Country: 47. Zip Code/Apo:

48. Home Address: 49. City: 50. State: 51. Country: 52. Zip Code/Apo:

FAMILY MEMBER DATA

53. JUV: 54. Family Rel: 55. Sponsor Last Name: 56. Sponsor First Name: 57. Sponsor Middle Name:

58. Sponsor Social Security: 59. Sponsor Grade: 60. Spon MCAC: 61. Sponsor Unit:

62. Sponsor City: 63. Sponsor St: 64. Sponsor City: 65. Sponsor Zip/ APO:

OFFENSE

66. Offense Code: 67. UFC: 68. Offense Code: 69. UFC: 70. Offense Code: 71. UFC: 72. Offense Code: 73. UFC:

ADMINISTRATIVE DATA

Telephone: ETS: PCS/DEROS: Date Interv Start: Time Interv Start:

Place of Interview Start: Date Interv End: Time Interv End: Place of Interview End:

Disposition:

VEHICLE DATA

74. Category (lost, stolen, Damaged, Info): 75. Type (Gov, Pov, Unk): 76. Recovered: 77. Value: 78. Insurer: 79. Policy #: 80. Year/date Exp:

79. Year: 80. Make: 81. Model: 82. Vehicle Style: 83. # of Doors: 84. Color: 85. Vehicle Size:

86. V.I.N.: 87. License Plate: 88. State: 89. DOD Decal Number:

NOTES:

Last HIV Test:

CID FORM 44-R

EDITION OF 1 AUG 87 WILL BE USED UNTIL EXHAUSTED

016727

For ALL info in this

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is Office of The Deputy Chief of Staff for Personnel.

LOCATION FOB Warrior, Kirkuk, Iraq	DATE 1 Mar 2004	TIME 12 43	FILE NUMBER 0040-04-CID469-79638
LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	SOCIAL SECURITY NUMBER [REDACTED]	GRADE/STATUS E-3/RA	
ORGANIZATION OR ADDRESS HHC, 1-27 th Infantry Division			

b(6)-4; b(7)(D)-4 (all)

I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:
On 26 Feb 04 my squad (1st), was detailed out to provide a traffic control point west of the village of Taal Al Jal, Iraq. My squad consisted of four personnel plus we had two additional personnel attached to us. While we were at the TCP a call came over the radio to detainee all Iraqi males in the area. When this call came out we observed an Iraqi cow herder out in a field about 200 meters south of the TCP. SGT [REDACTED] and PFC RICHMOND preceded out to detainee the Iraqi male in the field. SGT [REDACTED] instructed me to pull security for them since I was the only gunner at this TCP. I pointed my M249 in the direction of the detainee and observed SGT [REDACTED] and PFC RICHMOND walk out to the Iraqis location. From my location I could not determine who was placing the flexi-cuffs on the Iraqi male. I then observed the Iraqis hands behind his back and a soldier escorting him to my location. The soldiers and the Iraqi took a few steps towards my location and I heard a shot being fired. I was scanning the areas to my left and right on various occasions so I did not see the shot fired. Once I heard the shot I looked towards them and I observed the Iraqi fall to his knees and then to his face. A few seconds later a call came over the radio requesting information on where the shots were being fired. SPC [REDACTED] proceeded to the location of the Iraqi to relieve SGT [REDACTED] so he could make the call back to higher about the shooting. SGT [REDACTED] came back to the TCP and reported to higher that PFC RICHMOND shot an Iraqi detainee in the head and the detainee was flexi-cuffed at the time of the shooting. About ten minutes later the 1SG and Commander came to the location to verify the incident. About 40 minutes later they called up and stated they needed a body bag so I grabbed one and took it to the body. Once I dropped off the body bag I returned to the TCP and manned the M249 again.

Q: SA [REDACTED]
A: PFC [REDACTED]
Q: Who was located at the TCP?
A: SGT [REDACTED] SPC [REDACTED] PFC RICHMOND, CPL [REDACTED] PFC [REDACTED] and myself. There was also [REDACTED] personnel in the avenger vehicle, but I don't know their names.
Q: Did you observe the Iraqi Cow Herder out in the field prior to the call coming over the radio to detainee any Iraqi males?
A: Yes, He was there since daybreak.
Q: Did the Iraqi Cow Herder do anything suspicious throughout the day?
A: No.
Q: How far away were you pulling security when SGT [REDACTED] and PFC RICHMOND were detaining the Iraq?
A: 200 meters.
Q: When you heard the shot fired and looked to that direction where was everyone located?
A: The three were in a line walking towards the northwest. I saw one soldier in front of the detainee pulling the detainee by the shirt and the other soldier was right behind the detainee.
Q: Did you get a Rules of Engagement (ROE) Brief prior to this mission?
A: Yes, SGT [REDACTED] gave us the brief and he stated if people are running from the village shoot them.
Q: Was deadly force authorized if a detainee was flexi-cuffed?
A: No.
Q: When would deadly force be authorized?
A: When a hostile threat towards coalition forces is made.
Q: Did PFC RICHMOND receive the ROE brief?
A: Yes
Q: What kind of person is PFC RICHMOND?
A: He is an asshole because he thinks he is better than everyone.

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF 2 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED] CONTINUED."
BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE [REDACTED] OF [REDACTED] PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

DA FORM 2823
1 JUL 72

SUPERSEDES DA FORM 2823, 1 JAN 68, WHICH WILL BE USED.

For official use only

016728

STATEMENT OF PFC [REDACTED] TAKEN AT FOB WARRIOR DATED 1 March 2004 CONTINUED:
STATEMENT (Continued)

Q: Did PFC RICHMOND ever state before this incident that he wanted to kill an Iraqi?

A: Yes on numerous occasions. I could not tell if he was joking but he would always see any Iraqi and ask if he could see them.

Q: Did PFC RICHMOND shot any Iraqis prior to this incident?

A: No.

Q: Did PFC RICHMOND make any indication he was going to shot and kill an Iraqi on the mission you were conducting on 28 Feb 04?

A: No.

Q: When you went out to the location of the Iraqi to drop off the body bag what did the Iraqi look like?

A: I was about 25 meters away and the only thing I could see is that the Iraqi had flexi-cuffs bound behind his back and he was laying face down. I could also see that his head was bloody.

Q: While you were pulling security for SGT [REDACTED] and PFC RICHMOND did the Iraqi struggle with anyone?

A: Not that I noticed.

Q: Do you have anything else to add to this statement?

A: No///End of Statement/// [REDACTED]

b(6)-4; b(7)(c)-4

b(6)-1, b(7)(c)-1

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

[REDACTED] (Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 1st day of March, 2004 at FOB WARRIOR, KIRKUK, IRAQ

[REDACTED] (Signature of Person Administering Oath)

SA [REDACTED] (Typed Name of Person Administering Oath)

Article 136(b)(4), UCMJ (Authority To Administer Oaths)

PAGE 2 OF 2 PAGES

For Official Use Only

016729 Ex

INVESTIGATIVE WORKSHEET

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code Section 3012 (g) **ROUTINE USES:** Your social security number and other personal info are used as an additional/alternate means of identification to facilitate and retrieval

PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified. **DISCLOSURE:** Disclosure of your SSN# is voluntary.

1. Rec Code: 2. Action Code: 3. Date: 4. Ref to Case: 5. Control #: 6. Sequence # 7. Year: 8. Office: 9. ROI #: Offense:
 0040 - 04 - CID 469 - 79638 -

INDIVIDUAL DATA

10. Last Name: [REDACTED] 11. First Name: [REDACTED] 12. Middle Name: [REDACTED] 13. Grade: PFC
 14. SSN: [REDACTED] 15. Other ID Number: [REDACTED] 16. Date of Birth: [REDACTED] 17. POB City: Dallas 18. POB ST: TX 19. POB ZIP: [REDACTED]
 20. [REDACTED] 21. [REDACTED] 22. [REDACTED] 23. Height: 6'7" 24. Weight: 152 25. Hair Color: BRN 26. Eye Color: BRN 27. Citizen: US 28. Educ: 12 29. Prior Record: [REDACTED] 30. Marital: [REDACTED]
 31. MOS: 11C 32. Job Description/Location: Plotter 33. MCAC: [REDACTED] 34. Security Clr: [REDACTED] 35. Physical Marks/or Tattoos: [REDACTED] 36. Spouse Military Y/N Service # [REDACTED]
 37. Alias/Nicknames: [REDACTED] 38. Alias/Nicknames: [REDACTED] 39. Alias/Nicknames: [REDACTED]
 40. Unit/Organization: HHC 41. Unit Phone Number: [REDACTED] Home /Cell Phone Number: [REDACTED]
 42. Military SVC: [REDACTED] 43. Sub Unit: [REDACTED] 44. Fort/City: [REDACTED] 45. State: [REDACTED] 46. Country: [REDACTED] 47. Zip Code/Apo: [REDACTED]
 48. Home Address: [REDACTED] 49. City: [REDACTED] 50. State: [REDACTED] 51. Country: [REDACTED] 52. Zip Code/Apo: [REDACTED]

FAMILY MEMBER DATA

53. JUV: [REDACTED] 54. Family Rel [REDACTED] 55. Sponsor Last Name: [REDACTED] 56. Sponsor First Name: [REDACTED] 57. Sponsor Middle Name: [REDACTED]
 58. Sponsor Social Security: [REDACTED] 59. Sponsor Grade: [REDACTED] 60. Spon MCAC: [REDACTED] 61. Sponsor Unit: [REDACTED]
 62. Sponsor City: [REDACTED] 63. Sponsor St: [REDACTED] 64. Sponsor City: [REDACTED] 65. Sponsor Zip/ APO: [REDACTED]

OFFENSE

66. Offense Code: [REDACTED] 67. UFC: [REDACTED] 68. Offense Code: [REDACTED] 69. UFC: [REDACTED] 70. Offense Code: [REDACTED] 71. UFC: [REDACTED] 72. Offense Code: [REDACTED] 73. UFC: [REDACTED]

ADMINISTRATIVE DATA

Telephone: [REDACTED] ETS: Jun 19, 2005 PCS/DEROS: NONE Date Interv Start: 4 Mar 04 Time Interv Start: 1135
 Place of Interview Start: [REDACTED] Date Interv End: 1 Mar 04 Time Interv End: 1243 Place of Interview End: [REDACTED]
 Disposition: [REDACTED]

VEHICLE DATA

74. Category (lost, stolen, Damaged, Info) 75. Type (Gov, Pov, Unk) 76. Recovered: [REDACTED] 77. Value: [REDACTED] 78. Insurer: [REDACTED] Policy # [REDACTED] Year/date Exp: [REDACTED]
 79. Year: [REDACTED] 80. Make: [REDACTED] 81. Model: [REDACTED] 82. Vehicle Style: [REDACTED] 83. # of Doors: [REDACTED] 84. Color: [REDACTED] 85. Vehicle Size: [REDACTED]
 86. V.I.N.: [REDACTED] 87. License Plate: [REDACTED] 88. State: [REDACTED] 89. DOD Decal Number: [REDACTED]

NOTES:

Last HIV Test: [REDACTED]

CID FORM 44-R

EDITION OF 1 AUG 87 WILL BE USED UNTIL EXHAUSTED

016730

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is DCSOPS

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
PRINCIPAL: To provide commanders and law enforcement officials with means by which information may be accurately identified.
TIME USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION <u>F.O.B. McHenry</u>	2. DATE (YYYYMMDD) <u>20040228</u>	3. TIME <u>1910</u>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. [REDACTED]	7. GRADE/STATUS <u>2LT</u>	
8. ORGANIZATION OR ADDRESS <u>Acc F27 INF</u>			

9. I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

During the operations order the Company commander put out the ROE for the mission. The guidance for the blocking position was put out that you only engage adult males if they try to run from the town during the cordon search. Also when handling detainees do not put bags over their heads unless they are combative or loud, to include cuffing females with hands in front if you need to detain them. AT 0500 I moved into my southern blocking position and stopped to give my last talk to BN Mortars. I told them to only engage adult males if they run from the town during the mission. I also told the NCO for the vehicle that make sure that you make a positive I.D. of males before engagement, and try to detain at all cost. He said he understood and I then moved out to the first house to search. My understanding of the ROE put out by the BC was we do not go around and spray rounds down range. We must identify the threat before we engage. Make well aimed shots. Make sure we treat the detainees right, and do not put bags on their heads unless last resort.

10. SIGNATURE OF PERSON MAKING STATEMENT [REDACTED] PAGE 1 OF 1 PAGES

ADDITIONAL PAGES MUST BE INDICATED. THE HEADING "STATEMENT" TAKEN AT _____ DATED _____

BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

For Official Use Only

016731

0040-04-CF0469-79638

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately and possibly discovery of unauthorized weapons in Aco, 1/27's sector. Additional units involved were portions of the 81mm mortar platoon and the ADA section assigned to the battalion task force. I was walking around the FOB ensuring that we were policed and ready for a Korean delegation which was to arrive in aprox. 15 minutes. Additionally we, the battalion were in the process of setting up two TCP locations due to a message recieved from brigade which stated that there was a report of an attack on a US military base operating in our vicinity.
ROUTINE USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION FOB McHenry, Iraq	2. DATE (YYYYMMDD) 2004/02/28	3. TIME 1350	4. FILE NUMBER
----------------------------------	----------------------------------	-----------------	----------------

5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN [REDACTED]	7. GRADE/STATUS E9/CSM
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8. ORGANIZATION OR ADDRESS
HQ, 1st BN, 27th IN, 2BCT, FOB McHenry, IRAQ

b(6)-4; b(7)(c)-4 (c11)

9. [REDACTED] CSM [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On or about 0915, 28 FEB, 2004 I was notified by SSG [REDACTED], a NCO working night shift at the 1/27 IN TOC that a shooting had occurred on a mssion which was occurring. The mission was being ran by Aco, 1/27 to locate and detain personnel for questioning and possible discovery of unauthorized weapons in Aco, 1/27's sector. Additional units involved were portions of the 81mm mortar platoon and the ADA section assigned to the battalion task force. I was walking around the FOB ensuring that we were policed and ready for a Korean delegation which was to arrive in aprox. 15 minutes. Additionally we, the battalion were in the process of setting up two TCP locations due to a message recieved from brigade which stated that there was a report of an attack on a US military base operating in our vicinity.

Upon notification I made a communication check with Aco commander, CPT [REDACTED] and was told that a soldier from our mortar platoon had shot an Iraqi citizen in the back of the head. Guidance was given by me for the soldiers involved to be seperated and statements taken of what occurred. The battalion commander, LTC [REDACTED] directed that myself and the assitant S3 CPT [REDACTED] go to the scene to obtain infromation and get an assesment of the situation.

I arrived at the scene and went to the location where the incident occurred. CPT [REDACTED] and ISG [REDACTED] had already read [REDACTED] and Richmond their rights and questioned them of what occurred. CPT [REDACTED] gave the statements to me, and I then passed them to CPT [REDACTED]. The man which had been shot had been rolled over, he remained in the same location from where he fell, the only mkovement was to roll him over in order to obtain photos. Photos were taken by Aco and by CPT [REDACTED]. The soldier whichs hot the Iraq was PFC Richmond, the NCO on the scene was SGT [REDACTED].

SGT [REDACTED] explanation of what occurred was that they were dircted to detain all male perrsonnel, he was manning a TCP located on the western edge of the town being searched. He spotted a herd of cows and a male with them approx 100 meters away on a 210 degree nagnatic azimuth. He radioed for guidance from CPT [REDACTED] and was directed to detain the male.

Enroute to the male, SGT [REDACTED] informed Richmond that he would secure as [REDACTED] secured the male. [REDACTED] obtained the zip-cuffs from Richmond and approached the male with his hands up gesturing to have the male do the same. [REDACTED] had his weapon slung and not in his hands.

The male appeared upset of the actions and due to the communication problems was not cooperating peacfgully. The male was padded down quickly on his upper body alone and from the front. He was turned around and made to palce his hands behind his back. This was difficult due to the language barrier. While attempting to secure the flex-cuffs on the male, [REDACTED] directed to Richmond to raise his weapon as a show of force.

[REDACTED] as able to secure the flex cuffs, he then patted the male on the shoulder, looked at Richmond where he states he recieved eye to eye contact, then began to move out, aproximately a step or two walking away, with his hand on the male, he heard the shot from Richmond which struck the male in the head, killing him. [REDACTED] states Richmond was less than 2 meters away when the shot ws fired.

[REDACTED] states he briefed his men the night prior that their job was to stop all soldiers fleeing from the village, that the use of deadly force was authorized by CPT [REDACTED]. He further states that he told his men that they would not fire unless he authorized it. This was not confirmed from the soldiers at his TCP except for one, SPC [REDACTED]. The others explained that SGT [REDACTED] briefed them to fire at anyone leaving the village, they were CPL [REDACTED], PFC [REDACTED] and PFC [REDACTED]. Others on the TCP were two ADA soldiers SHYT [REDACTED] and SPC [REDACTED]. One soldeir from Aco was there, SPC [REDACTED]. All soldiers manning the TCP engaged in other activities and did not observe the shot being fired.

10. EXHIBIT	11. INITIALS OF [REDACTED] MAKING STATEMENT	PAGE 1 OF 2 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED]"

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE BE INDICATED.

016732

STATEMENT OF [REDACTED] TAKEN AT 1350 DATED 2004/02/28

STATEMENT (Continued)

Richmond's story differs from [REDACTED] in the following manner, he states that he was directed to put the barrel of his weapon on the detained man's head. He states from then on he just looked at the man's head through the site. He states that without a doubt he had his weapon on safe, that he did not witness the flex-cuffs being placed on the man's hands, that he did not witness any search of the detained man, nor did he ever hear [REDACTED] tell him that he was secured and to move out. He states that the detained man lunged at [REDACTED] at which time he fired and struck the man in the back of the head from less than 2 meters away. He confirmed that he was looking at the back of the detained man but did not see the man's hands flex-cuffed behind him. When questioned, he says he remembers putting the weapon on semi, pulling the trigger, then placing it back on safe afterwards. Richmond states he knew the ROE as explained by me to his platoon less than a week prior, that he was not to fire unless a deadly and threatening act of violence was being done to himself or, his fellow soldiers. He states that the man had no visible weapons on him and did not see him pull any out, the sudden movement of the detained man was the reason for firing the weapon.

-The area in which this occurred was a plowed field, making walking a difficult event unless moving slowly or watching where you place the feet.

-After the weapon was fired, the man shot fell, SGT [REDACTED] immediately went to get help and report what had occurred, sending [REDACTED] to the scene where Richmond and the felled man remained [REDACTED]

b(6)-4; b(7)(c)-4

(c11)

Nathaniel Follans

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE.

[REDACTED] (Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of _____, _____ at _____

ORGANIZATION OR ADDRESS

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

PAGE OF PAGES

016733

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately
NE USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
OSURE: Disclosure of your social security number is voluntary.

1. LOCATION FOB McHenry, Iraq	2. DATE (YYYYMMDD) 2004/02/28	3. TIME 1350	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN [REDACTED]	7. GRADE/STATUS E9/CSM	
8. ORGANIZATION OR ADDRESS HQ, 1st BN, 27th IN, 2BCT, FOB McHenry, IRAQ			

9. [REDACTED] SM [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

-On or about 0915, 28 FEB, 2004 I was notified by SSG [REDACTED], a NCO working night shift at the 1/27 IN TOC that a shooting had occurred on a mission which was occurring. The mission was being run by Aco, 1/27 to locate and detain personnel for questioning and possible discovery of unauthorized weapons in Aco, 1/27's sector. Additional units involved were portions of the 81mm mortar platoon and the ADA section assigned to the battalion task force. I was walking around the FOB ensuring that we were policed and ready for a Korean delegation which was to arrive in approx. 15 minutes. Additionally we, the battalion were in the process of setting up two TCP locations due to a message received from brigade which stated that there was a report of an attack on a US military base operating in our vicinity.

-Upon notification I made a communication check with Aco commander, CPT [REDACTED] and was told that a soldier from our mortar platoon had shot an Iraqi citizen in the back of the head. Guidance was given by me for the soldiers involved to be separated and statements taken of what occurred. The battalion commander, LTC [REDACTED] directed that myself and the assistant S3 CPT [REDACTED] go to the scene to obtain information and get an assessment of the situation.

-We arrived at the scene and went to the location where the incident occurred. CPT [REDACTED] and 1SG [REDACTED] had already read both [REDACTED] and Richmond their rights and questioned them of what occurred. CPT [REDACTED] gave the statements to me, and I then passed them to CPT [REDACTED]. The man which had been shot had been rolled over, he remained in the same location from where he fell, the only movement was to roll him over in order to obtain photos. Photos were taken by Aco and by CPT [REDACTED]. The soldier which shot the Iraq was PFC Richmond, the NCO on the scene was SGT [REDACTED].

[REDACTED] explanation of what occurred was that they were directed to detain all male personnel, he was manning a TCP located on the western edge of the town being searched. He spotted a herd of cows and a male with them approx 100 meters away on a 210 degree magnetic azimuth. He radioed for guidance from CPT [REDACTED] and was directed to detain the male.

-Enroute to the male, SGT [REDACTED] informed Richmond that he would secure a [REDACTED] secured the male [REDACTED] obtained the zip-cuffs from Richmond and approached the male with his hands up gesturing to have the male do the same. [REDACTED] had his weapon slung and not in his hands.

-The male appeared upset of the actions and due to the communication problems was not cooperating peacefully. The male was padded down quickly on his upper body alone and from the front. He was turned around and made to place his hands behind his back. This was difficult due to the language barrier. While attempting to secure the flex-cuffs on the male [REDACTED] directed to Richmond to raise his weapon as a show of force.

[REDACTED] was able to secure the flex cuffs, he then patted the male on the shoulder, looked at Richmond where he states he received eye to eye contact, then began to move out, approximately a step or two walking away, with his hand on the male, he heard the shot from Richmond which struck the male in the head, killing him. [REDACTED] states Richmond was less than 2 meters away when the shot was fired.

[REDACTED] states he briefed his men the night prior that their job was to stop all soldiers fleeing from the village, that the use of deadly force was authorized by CPT [REDACTED]. He further states that he told his men that they would not fire unless he authorized it. This was not confirmed from the soldiers at his TCP except for one, SPC [REDACTED]. The others explained that SGT [REDACTED] briefed them to fire at anyone leaving the village, they were CPL [REDACTED], PFC [REDACTED] and PFC [REDACTED]. Others on the TCP were two ADA soldiers SHYT [REDACTED] and SP [REDACTED], one soldier from Aco [REDACTED], SPC [REDACTED]. All soldiers manning the TCP were engaged in other activities and did not observe the shot being fired.

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF 2 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" TAKEN AT _____ DATED _____

BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

EXHIBIT B3

016734

STATEMENT (Continued)

Richmond's story differs from [REDACTED] in the following manner, he states that he was directed to put the barrel of his weapon on the detained man's head. He states from then on he just looked at the man's head through the sight. He states that without a doubt he put his weapon on safe, that he did not witness the flex-cuffs being placed on the man's hands, that he did not witness any search of the detained man, nor did he ever hear [REDACTED] tell him that he was secured and to move out. He states that the detained man was at [REDACTED] at which time he fired and struck the man in the back of the head from less than 2 meters away. He confirmed that he was looking at the back of the detained man but did not see the man's hands flex-cuffed behind him. When questioned, he says he remembers putting the weapon on semi, pulling the trigger, then placing it back on safe afterwards. Richmond states he knew the ROE as explained by me to his platoon less than a week prior, that he was not to fire unless a deadly and threatening act of violence was being done to himself or his fellow soldiers. He states that the man had no visible weapons on him and did not see him pull any out, the sudden movement of the detained man was the reason for firing the weapon.

-The area in which this occurred was a plowed field, making walking a difficult event unless moving slowly or watching where you place the feet.

-After the weapon was fired, the man shot fell, SGT [REDACTED] immediately went to get help and report what had occurred, sending [REDACTED] to the scene where [REDACTED] and the felled man remained. [REDACTED]

b(6)-4; b(7)(c)-4
(011)

Nothing follows

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE [REDACTED] ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

b(6)-2; b(7)(c)-2

(Person Making Statement)

WITNESSES

Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of _____, _____ at _____

ORGANIZATION OR ADDRESS

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

(Authority To Administer Oaths)

LIST OF PERSON MAKING STATEMENT

PAGE OF PAGES

016735

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is Office of The Deputy Chief of Staff for Personnel.

LOCATION FOB Warrior, Kirkuk, Iraq	DATE 1 Mar 2004	TIME 1810 ELR	FILE NUMBER 0040-04-CID469-79638
LAST NAME, FIRST NAME, MIDDLE NAME RICHMOND, Edward, Lynn	SOCIAL SECURITY NUMBER [REDACTED]		GRADE/STATUS E-3/RA
ORGANIZATION OR ADDRESS HHC, 1-27 th Infantry Battalion, FOB McHenry, Iraq		b(6)-5; b(7)(C)-5 b(6)-4; b(7)(C)-4 (all below)	

Edward L. RICHMOND, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:
On 28 Feb 04 around 0530 I was attached to 1st squad as a gunner and I went with this squad to a Traffic Control Point (TCP) west of the city of Taal Al Jal. The squad was supporting A Company, 1-27th Infantry Battalion who was conducting a cordon and search operation to search for weapons and selected personnel. The squad's main responsibility was to insure that nobody left the village and came into the village while the operation was being conducted. The operation had no time limit so we were never told when it would end. When we arrived at the TCP it was still dark and very foggy so we could not see very far away. We could see about 20 meters utilizing are night vision devices. Once daybreak came we began to see the town and could hear the raid being conducted. Around 0800 we began to see local Iraqi nationals walking around in the fields herding their cows and sheep's. The Iraqis herding there cows and sheep did not pose a threat to us or the infantry men conducting the raid so we left them alone. About 0900 we received a call over the radio, which stated any males in the area must be detained. There was never a reason given to why these Iraqis are being detained. Once the call came in we observed one male Iraqi Cow Herder about 200 meters away from the TCP. I saw this same farmer come out of the city and start herding his cows around 0800, but once we received the call to detainee all Iraqis myself and SGT [REDACTED] went out to the farmers location to detainee him. Once we saw this herder after the call came over the radio I told SGT [REDACTED] I would go detainee him with you. SGT [REDACTED] told me "lets go detainee this Iraqi herder". So SGT [REDACTED] and myself proceeded to the Iraqi Herders location. While we were walking towards the Iraqi SGT [REDACTED] stated to me that I would be the security for him and that he would be putting the flexi-cuffs on the Iraqi. Once we arrived to the location of the Iraqi SGT [REDACTED] informed the Iraqi to place his hands behind his back. The Iraqi just kept pointing back to the village and seemed upset that we were out at his location. Since the Iraqi did not understand English SGT [REDACTED] grabbed his hands and attempted to place them behind his back. The Iraqi complied with SGT [REDACTED] and his hands were placed behind his back however, when SGT [REDACTED] attempted to place the flexi-cuffs around his wrists the Iraqi started to resist by pulling his arms. SGT [REDACTED] then stated to me "place my weapon on his head and if he so much as moves shot him", which I did. I originally had my weapon pointed at the Iraqis chest, but when SGT [REDACTED] told me to place it by the Iraqis head so I did. Once I directed my weapon towards the Iraqis head I started looking through the scope and site just in case I had to shoot the Iraqi. I wanted to get a good site picture because I knew SGT [REDACTED] was close by and I did not want to shoot him. While I was looking through the scope and site I saw the Iraqi spin around to the left and lung towards SGT [REDACTED] so I shot and killed him. I shot him in the back of the head. Once I shot the Iraqi he dropped to the ground. The position of the Iraqis body when he fell to the ground was his chest was facing up and his head was turned to the left. After I shot the Iraqi SGT [REDACTED] complained to me that he could not hear anything because of the gunshot then he proceeded to go to the TCP to call this incident to higher. I was the only one there for about 5 minutes then SPC [REDACTED] came to my location. SPC [REDACTED] asked me if I was ok and if I wanted to smoke a cigarette. So I did. SPC [REDACTED] asked me if the Iraqi was flexi-cuffed, but I told him I did not no. We then sat around and waited for someone to give me guidance. About 20 minutes after I shot the Iraqi CPT [REDACTED] the 1SG for A Company and some other people I did know should up at my location. The 1SG then seized my weapon and told me to go sit down. About two hours later I went back to FOB McHenry. Once I arrived at FOB McHenry CSM [REDACTED] told me to wait in the Chaplains tent, which I did for about eight hours. From the chaplains tent I went back to my platoon for the night and then the following day I was transported to FOB Warrior.

Q: SA [REDACTED]
A: PFC RICHMOND ELR
Q: At anytime did you ever state that you were going to kill an Iraqi?
A: Yes, but everyone talk s about that.
Q: Why would you say you would kill an Iraqi?

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT ELR	PAGE 1 OF 5 PAGES
<p>ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____ CONTINUED." BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE _____ OF _____ PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.</p>		

DA FORM 2823
1 JUL 72

SUPERSEDES DA FORM 2823, 1 JAN 68, WHICH WILL BE USED.

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016736

Ex

STATEMENT OF PFC RICHMOND TAKEN AT FOB Warrior DATED 1 March 2004 CONTINUED

A: Because some of them are trying to kill us.

Q: Did you want to kill an innocent Iraqi?

b(6)-4; b(7)(c)-4 (all)

Q: What position was the Iraqi being detained at when SGT [REDACTED] was attempting to place the flexi-cuffs on him?

A: His right side was facing me. He was at a slight angle so some of his front was also facing me.

Q: Did you know the Iraqi was flexi-cuffed?

A: No, I found out after I shot him.

Q: Did SGT [REDACTED] tell you he finished placing the flexi-cuffs on the Iraqi?

A: No.

Q: When the Iraqi was getting flexi-cuffed what were you observing?

A: In the beginning I was observing everything around us, but after the Iraqi started to resist I focused on his head.

Q: When you were focusing on the Iraqis head what did you see?

A: I was focusing on the right side of the Iraqis head. I don't know the exact spot but it was above the Iraqis ear.

Q: What could you see through the scope of your weapon when SGT [REDACTED] was attempting to flexi-cuff the Iraqi?

A: As far as I remember all I could see was the Iraqis chest and up.

Q: What part of the chest could you see?

A: I could see from the pectoral region and up, but I was only focused on the Iraqis head.

Q: How did you see the chest on the Iraqi if you were focused on his head?

A: That is what I could see looking through the scope. I was mostly focused on the red dot from my scope, which was placed on the Iraqis head.

Q: Did you intend on killing the Iraqi?

A: I did not intend on killing the Iraqi when we went out to detainee him; however I intended on killing the Iraqi when he lunged at SGT [REDACTED]

Q: Why did you kill the Iraqi when you thought he lunged at SGT [REDACTED]

A: I felt the Iraqi was attacking SGT [REDACTED] I felt SGT [REDACTED] life was in danger so I shot to kill the Iraqi.

Q: While you were looking through your scope on your weapon could you see the Iraqis arms?

A: Not fully.

Q: What part of the arms could you see?

A: I could see the shoulders on the Iraqi.

Q: Were the shoulders on the Iraqi canted to the front of his body?

A: I don't know.

Q: Were the shoulders in a way that you could tell the Iraqis arms were behind him?

A: I could not tell.

Q: When was the last time you saw the Iraqis hands behind his back?

A: When SGT [REDACTED] told me to raise my weapon to his head and shot him if he moves.

Q: While you were looking through your scope on your weapon could you see SGT [REDACTED]

A: No.

Q: How did you know the Iraqi was lunging towards SGT [REDACTED]

A: Because the way the Iraqi turned I thought he was attempted to attack SGT [REDACTED]

Q: Describe to me what you saw when the Iraqi lunged?

A: I saw his head and shoulders quickly turn to the left and I also saw the Iraqi move forward.

Q: Did the Iraqi say anything when he was lunging forward?

A: No.

Q: Did the Iraqi have anything covering his eyes?

A: No.

Q: How far away from the detainee were you standing?

A: About one to two meters.

Q: What is the name of the scope you have on your weapon?

A: M68.

Q: What is the M68 used for?

A: It is an aiming device and it puts a red dot on the target.

Q: Does the M68 have any type of magnification?

Q: Why were you looking through your scope of your weapon when you were so close to the detainee?

INITIALS OF PERSON MAKING STATEMENT: ELR

PAGE 2 OF 5 PAGES

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EL

STATEMENT OF PFC RICHMOND TAKEN AT FOB Warrior DATED 1 March 2004 CONTINUED

A: Because over the last week are chain of command stressed to us that anytime we took a shot it had to be aimed.

Q: You wanted to make sure I was taking an aimed shot so I did not shot SGT [REDACTED]

Q: You did not know where SGT [REDACTED] was why did you fire your weapon?

A: When I went to fire my weapon I opened my left eye and saw SGT [REDACTED] standing on the side.

Q: What type of firer are you?

A: Right handed.

Q: Which eye do you use to site in an object?

A: Right.

Q: You say you observed SGT [REDACTED] before you fired your weapon, did you see his hands?

A: No, I just took a quick glance to confirm SGT [REDACTED] was out of the way.

Q: Why did you shoot the detainee?

A: I felt like he was attempting to kill SGT [REDACTED]

Q: Why did you feel like the Iraqi was going to kill SGT [REDACTED]?

A: He originally resisted being flexi-cuffed, we did not search him yet, the raid being conducted focused on old Iraqi army personnel who do not like coalition forces, and I did not know he was flexi-cuffed. So when the Iraqi lunged towards SGT [REDACTED] I took that as a direct threat against his life.

Q: Was the detainee searched prior to being flexi-cuffed?

A: No.

Q: Why wasn't the detainee search before he was flexi-cuffed?

A: I don't know. I was just the security personnel.

Q: Why did you not know the detainee was flexi-cuffed?

A: Because SGT [REDACTED] never gave me any indication the Iraqi was flexi-cuffed and I never saw the flexi-cuffs on the Iraqi.

Q: When you shot your weapon was it your intent to kill the Iraqi?

A: Yes.

Q: After the Iraqi was shot did you recover any weapons from him?

A: No.

Q: Did you shot the Iraqi?

A: He made a threat against SGT [REDACTED]

Q: Describe to me what your definition of lung is?

A: Shift movement towards something.

Q: What threat did you perceive the Iraqi was making?

A: I thought he was going to stab SGT [REDACTED]

Q: What was the Iraqi wearing?

A: He was wearing a brown coat, which was open in front. I can't remember anything else.

Q: Why did you think the Iraqi was going to stab SGT [REDACTED]?

A: Because I could not see his hands so I thought he wasn't flexi-cuffed.

Q: Did the Iraqi make any indication he was pulling something out of his coat?

A: I could not see that area.

Q: Did you see the Iraqi lung at SGT [REDACTED]?

A: All I saw was the Iraqi moving towards SGT [REDACTED]

Q: Could it be possible that SGT [REDACTED] was pulling the Iraqi?

A: Yes.

Q: Did you see SGT [REDACTED] pull the Iraqi?

A: No, because I could not see SGT [REDACTED] arms.

Q: When the Iraqi lunged at SGT [REDACTED] what did you see?

A: I saw the Iraqi's head and shoulders move towards SGT [REDACTED]

Q: How did you know the Iraqi lunged at SGT [REDACTED]?

A: I assumed he was lunging towards SGT [REDACTED] because SGT [REDACTED] was in the direction the Iraqi was lunging to.

Q: Did the Iraqi touch SGT [REDACTED] when he lunged towards him?

A: No.

Q: Is this killing unlawful?

A: No.

INITIALS OF PERSON MAKING STATEMENT: ELR

PAGE 3 OF 5 PAGES

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STATEMENT OF PFC RICHMOND TAKEN AT FOB Warrior DATED 1 March 2004 CONTINUED

Q: Why wasn't the killing of the Iraqi unlawful?

A: According to the Rules of Engagement card I have it states a hostile intent directed towards coalition forces authorizes coalition forces to use deadly force.

Q: What was the hostile intent directed towards SGT [REDACTED]

A: The way I perceived the situation I thought the Iraqi was going to kill SGT [REDACTED]

Q: Do you feel remorseful about killing the Iraqi?

A: No.

Q: When did you find out the Iraqi was flexi-cuffed?

A: When CPT [REDACTED] arrived and they began to look at the body.

Q: Why did you feel the Iraqi was a threat?

A: Because there were hostile forces in the area, he wasn't searched and I did not know he was flexi-cuffed.

Q: When you shot your weapon at the detainee did you know you would kill him if you shot him?

A: Yes

Q: When did you place your weapon onto fire?

A: After I saw the Iraqi make a sudden movement towards SGT [REDACTED]

Q: What type of weapon did you shoot the Iraqi with?

A: M4

Q: Were you coerced into providing this statement?

A: No

Q: How were you treated while you were being interviewed?

A: Good

Q: Were you given breaks throughout the interview?

A: Yes

Q: Do you have anything else to add to this statement?

A: No.///End of Statement///

ELR

b(6)-4; b(7)(c)-4

INITIALS OF PERSON MAKING STATEMENT: ELR

PAGE 4 OF 5 PAGES

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016739

AFFIDAVIT

I, Edward L. RICHMOND, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 5. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

Edward L. Richmond
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 1st day of March, 2004 at FOB Warrior, Kirkuk, Iraq

ORGANIZATION OR ADDRESS

b(6)-1; b(7)(C)-1

(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

SA [REDACTED]
(Typed Name of Person Administering Oath)

Article 136, UCMJ
(Authority To Administer Oaths)

I, 5 OF PERSON MAKING STATEMENT

ELR

PAGE 5 OF 5 PAGES

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Ex

016740

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

RECEIVED OF DT LOMB 3291

For use of this form, see AR 190-30. The proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

THORITY: Title 10, United States Code, Section 3012(g)
NCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION <i>FOB Warrior, Kirkuk, Iraq</i>	2. DATE <i>1 MAR 04</i>	3. TIME <i>1440</i>	4. FILE NO. <i>0040-04-CI4469</i>
5. NAME (Last, First, MI) <i>Richmond, Edward, L.</i>	8. ORGANIZATION OR ADDRESS <i>HHC, 1-27th INF BN FOB McHenry, Iraq</i>		
6. SSN <i>[REDACTED]</i>	7. GRADE/STATUS <i>E-3/RA</i>		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army *Criminal Investigation*
Command as a special agent and wanted to question me about the following offense(s) of which I am
 suspected/accused: *Murder*

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

- I do not have to answer any question or say anything. *EL*
- Anything I say or do can be used as evidence against me in a criminal trial. *EL*
- (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both. *EL*

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below. *EL*

5. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me. *EL*

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE <i>Edward Richmond</i>
1a. NAME (Type or Print)		4. SIGNATURE <i>[REDACTED]</i> <i>b(6)-1,</i>
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME <i>S.A. [REDACTED]</i> <i>b(7)(c)-1</i>
2a. NAME (Type or Print)		6. ORGANIZATION OR ADDRESS AND PHONE <i>43rd MA BCT (G), Tikrit, Iraq</i>
b. ORGANIZATION OR ADDRESS AND PHONE		

Section C. Non-waiver

1. I do not want to give up my rights

☐ I want a lawyer

☐ I do not want to be questioned or say anything

SIGNATURE OF INTERVIEWEE

016741

PART II - RIGHTS WARNING PROCEDURE

THE WARNING

WARNING - Inform the suspect/accused of:

- a. Your official position.
- b. Nature of offense(s).
- c. The fact that he/she is a suspect/accused.

2. **RIGHTS** - Advise the suspect/accused of his/her rights as follows:

"Before I ask you any questions, you must understand your rights."

- a. "You do not have to answer my questions or say anything."
- b. "Anything you say or do can be used as evidence against you in a criminal trial."
- c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer

can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."

- or -

(For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."

- d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

THE WAIVER

"Do you understand your rights?"

(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"Have you ever requested a lawyer after being read your rights?"

(If the suspect/accused says "yes," find out when and where. If the request was recent (i.e., fewer than 30 days ago), obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"

(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)

SPECIAL INSTRUCTIONS

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.

2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning must not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong you shouldn't need an attorney.")

COMMENTS (Continued)

016742

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
PRINCIPAL: To provide commanders and law enforcement officials with means by which information may be accurately identified.
TIME USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
CLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION <i>AO WEST / FOB McHenry</i>	2. DATE (YYYYMMDD) <i>2004 02 28</i>	3. TIME <i>1704</i>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME <i>Richmond, Edward Lynn</i>	6. [REDACTED]	7. GRADE/STATUS <i>E3</i>	
8. ORGANIZATION OR ADDRESS <i>HHC 1-27</i>			

b(6)-5; b(7)(c)-5

9. I, _____, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:
 What guidance did you receive from your chain of command regarding weapon control status and Rules of Engagement for the mission today? I was told the weapon control status for this morning was red (locked and loaded, weapon on safe). The ROE I was briefed was to engage ~~and~~ any person running away from the town being raided with aimed shots, and I was reminded that the Hostile Act Hostile threat rule was still in effect where I am authorized deadly force if I feel myself or a fellow soldier is in danger. Sgt. [REDACTED] gave this briefing around 2200 27 Feb *b(6)-4; b(7)(c)-4 (all)*

Please describe your actions upon meeting with the man in the field. As I approached the man on foot, I went to the high ready with his chest in my sight, weapon on safe. I moved within 2-3 meters from the subject while Sgt. [REDACTED] attempted to flex cuff him. After he began resisting the attempt to cuff him, I was instructed and did raise my cross hair from his chest to his face, ~~ELR~~ 1-2 meters from him as a final show of force. ~~ELR~~ a few seconds after that, Sgt. [REDACTED] and the individuals hands were no longer in my view, and I saw the individual spin around to face Sgt. [REDACTED] and begin to lunge toward him. At that time, I put an aimed shot in the back of his head.

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT <i>ELR</i>	PAGE 1 OF _____ PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" _____ TAKEN AT _____ DATED _____
 BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

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016743

SWORN STATEMENT

For Use of this form, see AR 190-45; the proponent agency is ODCSOPS

PRIVACY ACT STATEMENT

IMPORTANCE: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
IMPORTANCE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION <u>FOP McHenry</u>	2. DATE (YYYYMMDD) <u>20040228</u>	3. TIME <u>19:05</u>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME <u>Richmond, Edward Lynn</u>	6. SSN <u>[REDACTED]</u>	7. GRADE/STATUS <u>PFC</u>	
8. ORGANIZATION OR ADDRESS <u>HHC, 1/27 IN (MTRs)</u>			

9. PFC Edward Richmond, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q: What was your mission?

A: Responsible for watching fields and make sure no one ran away, and to prevent vehicles and personnel from entering the city.

Q: How do you prevent them from running away?

A: I was briefed that if people were running away during the raid, that I was to engage them. Stop them with direct fire.

Q: Who briefed you that b(6)-4; b(7)(C)-4

A: SGT [REDACTED] briefed the squad because he was at the opord. I believe it was the company opord.

Q: Did he make any distinction between whether you should shoot if they did not have a weapon?

A: He said just to engage during the time of the raid. If it wasn't during the time of the raid, it was to my understanding that we use common sense.

Q: Was there shooting today during the time of the raid?

A: No, not really, the raid had slowed down.

Q: Was individual running away or standing in the field?

A: The individual was just standing in the field. We had seen him come from the town we were conducting the raid.

10. IIBIT	11. INITIALS OF PERSON MAKING STATEMENT <u>ELK</u>	PAGE 1 OF <u>5</u> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" TAKEN AT _____ DATED _____

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

016744

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF _____ TAKEN AT _____ DATED _____

9. STATEMENT (Continued)

on approximately 1 hr before. We were keeping an eye on him

Q: Why didn't you detain him before when he came out of the town

A: He wasn't running and we didn't perceive him as a threat.

Q: What triggered you to detain him?

A: It came out over the radio that all males in the town should be detained and any in the general vicinity that came from the town should be detained

Q: Did the farmer have a weapon?

A: NO

b(6)-4; b(7)(C)-4

Q: Did the farmer resist you from trying to detain him?

A: Roger. At first when we approached him, he tried to redirect us. When a Sgt [REDACTED] tried to flexcuff him, he resisted.

Q: What was your responsibility in detaining the individual?

A: Pull security on the individual and make sure he didn't hurt either one of us.

Q: What did you perceive as a threat?

A: First, he resisted the flexcuffing. Second, he appeared to make a lunging move at Sgt [REDACTED]. Third, he hadn't been searched before we attempted to flexcuff him, so I was worried about what he had in his pocket.

From the angle I was looking, I could not tell if he had been flexcuffed. [before shooting] and after the fact.

INITIALS OF PERSON MAKING STATEMENT

FLR

PAGE 2 OF 5 PAGES

016745

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
PRINCIPAL: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION <i>FOB McHenry</i>	2. DATE (YYYYMMDD) <i>20040228</i>	3. TIME <i>14:05</i>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME <i>Richmond Edward Lynn</i>	6. SSN [REDACTED]	7. GRADE/STATUS <i>PFC</i>	
8. ORGANIZATION OR ADDRESS <i>HTC, 1/27 IN (MTRs)</i> <i>b(6)-5, b(7)(C)-5</i>			

9. *PFC Edward Richmond*, I WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q: where were you aiming?
A: At his head.
Q: who directed you to aim at his head? *b(6)-4; b(7)(C)-4*
A: SGT [REDACTED] I understood that it was not a command to fire, but ~~it was~~ more as a show of force.
Q: what sight were you using
A: *68*
Q: Did you have one eye closed *(same)*
A: one eye ^{was} closed. I could see the back of his head and upper shoulders [through the sights]
Q: what triggered you to fire.
A: I felt he was attacking SGT [REDACTED]
Q: what did you think he was attacking him with
A: Don't know. I felt it could be a knife or something but could only see the backside
Q: Did SGT [REDACTED] give you any indication that he had the detainee flex cuffed
A: Negative *(same)*

10. EXHIBIT 11. INITIALS OF PERSON MAKING STATEMENT *ELK* PAGE *3* OF *5* PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" TAKEN AT DATED

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

016746

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF _____ TAKEN AT _____ DATED _____

9. STATEMENT (Continued)

Q: Were you at the incident with the IED the week before and did you receive any further ROE guidance afterward?

A: Roger.

Q: What was that guidance?

A: We are now only going to take armed shots and we will shoot when your life feels threatened or another soldier's life is threatened.

Q: Did you perceive someone's life being threatened?

A: Roger. [REDACTED]. b(6)-4; b(7)(C)-4

Q: If a person is running away from you when you told them to stop, would you shoot?

A: No, but this morning guidance was if they are running away, shoot them. Otherwise, the person must have a weapon in hand [as a general rule when they are running away].

Q: Who gave you the amended ROE guidance after the IED incident?

A: The CSM, the BC, my PL and SL. Everyone did.

Q: Was the shooting today within that guide?

A: Roger. The BC, the CSM, ... everyone.

Q: What did you understand the guidance was on detainees?

INITIALS OF PERSON MAKING STATEMENT

E-LR

PAGE 4 OF 5 PAGES

016747

STATEMENT OF _____

TAKEN AT _____

DATED _____

STATEMENT (Continued)

A: After they are flexcuffed, then it is stay alert, but no reason to have your weapon pointed at them. Treat them with as much respect and dignity as possible.

— Nothing Follows —

b(6)-2, b(7)(C)-2

Person Asking Questions: MAJ [REDACTED] S3 1-27

AFFIDAVIT

I, Edward Richmond, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 5. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

Edward Richmond
(Signature of Person Making Statement)

b(6)-2, b(7)(C)-2

WITNESSES:

[REDACTED]
MAJ
S3, 1/27/20
ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of _____ at _____

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

PAGE 5 OF 5 PAGES

016743

RICHMOND, EDWARD LYNN

[REDACTED] b(6)-5; b(7)(c)-5

RIGHTS READ @ 0940 28 FEB 03

Q: AT WHAT TIME DID YOU NOTE
MALE WALKING AWAY FROM ULLIA

A: 1 HR AGO

Q: WHAT WAS HE DOING THAT DREW
YOUR ATTENTION?

A: NOTHING RECEIVED ORDERS TO
DETAIN ALL MALE LEAVING ULLIA

Q: WHAT HAPPEN WHEN YOU WALKED
OVER TO MALE SUBJECT.

A: MALE DID NOT MAKE ANY MOVES
THAT CAUSED US CONCERN AS I APPROX

Q: WHAT ORDERS DID YOUR NCO GET
YOU AS YOU APPROACHED

A: I WAS SECURITYMAN AND WAS TOLD
TO RAISE MY WPN AND POINT IT AT
HIS HEAD.

Q: WHAT DID YOUR NCO SAY TO THE
MALE SUBJECT AS YOU APPROACHED HIM

A: PUT YOUR FUCKING HANDS BEHIND YOUR
BACK.

016749

Q: WHAT DID THE MALE SUBJECT DO?

A: HE WAS TALKING TO US BUT IT DID NOT SEEM ^{TO BE} FRIENDLY.

Q: DID NCO MOVE BEHIND SUBJECT TO FLEX CUFF HIM.

A: RODGER THAT, SUBJECT WAS ~~BE~~ MOVING AROUND WHILE NCO WAS ATTEMPTING TO FLEX CUFF HIM. NCO STATED TO RAISE MY WEAPON TO HIS HEAD.

Q: AFTER SUBJECT WAS FLEX CUFFED, WHAT DIRECTION OR ORDERS WERE GIVEN.

A: I DID NOT KNOW HE WAS FLEX CUFFED AND NO ORDERS WERE GIVEN.

Q: WHAT HAPPENED WHILE NCO WAS ATTEMPTING TO FLEX CUFF.

A: YOU THINK HE SWIFTLY TURNED AND LUNGED AT THE NCO.

016750

Q: WHICH WAY WAS THE SUBJECT FACING
WHEN YOU SHOT HIM.

A: HE WAS FACING AWAY FROM ~~ME~~ ^{ME}
1 TO 2 METERS AWAY. TURNING
~~TO~~ TOWARDS THE NCO.

Q: DID ~~THE~~ NCO SEARCH HIM
WHEN ATTEMPTING TO FLEX CUFF HIM

A: NO

Q: WHAT MADE YOU THINK SUBJECT
WAS A THREAT TO NCO.

A: 1ST CAUSED PROBLEM WHILE
FLEX CUFFING HIM.

2ND CAUSE OF HIM MOVEMENT WAS
LUNGING TOWARD NCO.

3RD HE HAD NOT BEEN SEARCHED
4TH AT TIME DID NOT NO HE WAS
FLEX CUFFED.

Q: DID YOU RECOMMEND TO SEARCH FOR WPN.

A: NO, I'M JUST A PUT AND I THOUGHT
HE WOULD AFTER HE WAS FLEX CUFFED.

016751

~~Q~~
A: I FELT HE WAS A THREAT.

~~Q~~
A: ~~HE~~ NCO GAVE ORDER PUT YOUR
WEAPON TO HIS HEAD AS HE WAS TRY
TO FLEX CUFF HIM.

NO OTHER ~~REMARKS~~ ELEMENTS.

CPT ~~REDACTED~~

ACC, 1-27 IN (C)

COMMANDING

b(6)-2

b(7)(C)-2

016752

Richmond, Edward / van

[REDACTED] E3

After hearing on the radio
to detain any males who had
left the village on foot,
myself and Sgt. [REDACTED] b(6)-4
saw a man walking toward a b(7)(D)-4
single man who appeared
to be watching over
some cows. We approached
him, and I was designated
the person to pull security
on the individual. I had
my weapon on his chest
while Sgt. [REDACTED] began
attempting to flex cuff
him. The man began talking
and moving his hands and
arms around, and Sgt.
[REDACTED] told me to raise
my weapon to his head
after that, I was to

016753

on his face, and I
saw him turn around
swiftly and lunge toward
Sgt. [REDACTED]. I shot 4 b(6)-4;
once in the head. b(7)(C)-4

Nothing Follows

28 Feb 04 0930

Edward Richard

Witnessed by:

28 Feb 04 0930

SG [REDACTED]

b(6)-2

b(7)(C)-2

016754

RIGHTS WARNING PROCEDURE/WAIVER CERT

For use of this form, see AR 190-30; the proponent agency is ODCSUS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
SURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION AO WEST / FOB McHENRY	2. DATE 28 FEB 04	3. TIME 1633	4. FILE NO.
5. NAME (Last, First, MI)	8. ORGANIZATION OR ADDRESS		
6. SSN	7. GRADE/STATUS		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army **HHC, 1-27 INF** and wanted to question me about the following offense(s) of which I am suspected/accused: **shooting of a suspected enemy combatant**

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

- I do not have to answer any question or say anything.
- Anything I say or do can be used as evidence against me in a criminal trial.
- (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.
- (For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.
- If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE Edward Rahm
1a. NAME (Type or Print)		4. SIGNATURE [Redacted]
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME OF INVESTIGATOR [Redacted] CPT, IN
2a. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR HHC, 1-27 INF
b. ORGANIZATION OR ADDRESS AND PHONE		6(6)-2; 6(7)(9)-2

Section C. Non-waiver

- I do not want to give up my rights
☐ I want a lawyer
☐ I do not want to be questioned or say anything
- SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

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016755

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

AUTHORITY
PRINCIPAL PURPOSE

Under the Uniformed Services of America
to provide compensation and benefits to uniformed services members and their families

RIGHTS/USES

Your Social Security Number is an additional/alternative means of identification
in military/other matters (event)

DISCLOSURES

Disclosure of your Social Security Number is voluntary

LOCATION: [redacted]

DATE: 19 Mar 04

TIME: 1005 ER

FILE NUMBER: 00101110469-79538

NAME (Last, First, MI): RICHMOND, EDWARD L

SSAN: [redacted]

GRADE/STATUS: PFC

ORGANIZATION OR ADDRESS: HHC 1/27 Infantry Battalion, FOB McNamara, APO AE 09342 ER

RIGHTS WAIVER/NON-WAIVER CERTIFICATE

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command as a Special Agent and wanted to question me about the following offense(s) of which I am suspected/accused: Murder, False Official Statements, False Swearing ER

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with, or without a lawyer present, I have the right to stop answering questions at any time or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS:

ER I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me. ER

Witness# 1

Signature

Witness# 2

Signature of Witness

Signature of Interviewee

SA [redacted]
22nd MP BN (CID)
APO, AE 09342

NON-WAIVER CERTIFICATE

I do not want to give up my rights: I want a lawyer: ☐ I do not want to be questioned or say anything: ☐

Signature of Interviewee: _____

DA Form 3881-E

016756

FOR OFFICIAL USE ONLY

SWORN STATEMENT

LOCATION: Kirkuk, Iraq

FILE NUMBER: 0040-04-CID469-79638

DATE: 29 Mar 04

TIME: 1419 ER

NAME: RICHMOND, EDWARD L.

SSAN: [REDACTED]

GRADE/RANK: PFC

ORGANIZATION OR ADDRESS: HHC, 1/27th Infantry Battalion, FOB McHenry, Kirkuk, Iraq,
APO, AE 09347

b(6)-5; b(7)(c)-5

b(6)-4

b(7)(c)-4 (all)

ER I, Edward L. RICHMOND, want to make the following statement under oath:

I provided a sworn statement on 1 Mar 04 concerning the incident in which I shot and killed an Iraqi farmer during a raid. Looking back on the entire situation, I would like to make some corrections to that statement at this time. Prior to the raid, the rules of engagement were put out that if anyone tried to flee the villiage, we were to shoot them. After arriving to the villiage and setting up, I could hear some shotgun blasts going off in the villiage where the raid was taking place. I then noticed an Iraqi male walking his cattle away from the villiage. Since the rules of engagement were put out that we were to shoot anyone fleeing the villiage, I asked if I should shoot the farmer because he was leaving the villiage. I was told by SGT [REDACTED] to not shoot him. About an hour later, someone, maybe CPT [REDACTED] put out over the radio to apprehend all males leaving the villiage. At that time, we decided to apprehend the farmer. Myself and [REDACTED] each had a set of flexicuffs and began walking into the field where the farmer was still with his cattle. My adrenaline was already pumping because of the raid and then even more so as we approached the farmer to apprehend him. Myself and [REDACTED] decided that [REDACTED] would place the flexicuffs on the farmer, while I stood guard. The farmer seemed to be directing our attention to something else as we approached him, and then as SGT [REDACTED] began placing the flexicuffs on him, he started resisting. Already at that point I had a lot of adrenaline going through my system and [REDACTED] shouted at me to point my rifle at the Iraqi's head. I then pointed my rifle at his head and he stopped resisting. In my previous statement I put in that I did not realize the Iraqi was wearing flexicuffs when I shot him. Looking back now, I think it would be more accurate to say that I did not register in my mind that he was wearing flexicuffs. The adrenaline was affecting my perception of the situation. I remember seeing [REDACTED] putting flexicuffs on him and I saw him with his arms behind his back as I pointed my rifle at his head. I had to know he had on flexicuffs before I shot him, but it just did not register in my mind at the time. Also in my previous statement, I said that the Iraqi lunged at [REDACTED]. Again, looking back on it now, I don't think the Iraqi actually lunged. What happened is [REDACTED] turned him to walk away; however, because of the adrenaline, when [REDACTED] moved the Iraqi out of my sight picture, I just reacted by shooting him. I would have never shot that man had I been thinking clearly. I would never shoot someone who was wearing flexicuffs if I registered in my mind that they were wearing them. It is everything combined between the pressure of the raid, the new rules of engagement, the Iraq resisting his detention, and the whole situation in general that caused me to not be react like I normally would. ER

INITIALS OF PERSON MAKING STATEMENT

ER

PAGE 1 OF 2 PAGES

ER

DA Form 2823-E

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016757

ER Q. SA [REDACTED]

b(6)-4; b(7)(C)-4

A. PFC RICHMOND

Q. Did you hear [REDACTED] tell you "he's good, let's go"?

A. No. He might have said it, but if he did, I did not hear it because of the adrenaline and the situation. It just did not register.

Q. How do you feel you were treated today?

A. Good.

Q. Were you given the opportunity to drink, eat, and use the restroom today?

A. Roger.

Q. Is there anything else you would like to add to this statement?

A. No///End of Statement/// ER

AFFIDAVIT

ER I, Edward L. RICHMOND, have read or have had read to me this statement which begins on page 1 and ends on page 2. I fully understand the contents of the entire statement made by me. The statement is true. I have initialed all corrections and have initialed the bottom of each page containing the statement. I have made this statement freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence or unlawful inducement. ER

Witness #1:

[REDACTED]
[REDACTED] 5593
[REDACTED]

Witness #2:

b(6)-1; b(7)(C)-1

Edward Richmond
(Signature of Person Making Statement)

Subscribed and sworn before me, a person authorized by law to administer oaths, this 29th day of March 2004, at Kirkuk, Iraq

[REDACTED]
(Signature of Person Administering Oath)

SA [REDACTED]

(Typed name of Person Administering Oath)

Article 136 (b) (4) UCMJ

(Authority to Administer Oath)

b(6)-1; b(7)(C)-1

INITIALS OF PERSON MAKING STATEMENT ER

PAGE 2 OF 2 PAGES

DA Form 2823-E

FOR OFFICIAL USE ONLY

016758

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is Office of The Deputy Chief of Staff for Personnel.

LOCATION FOB Warrior, Kirkuk, Iraq	DATE 1 Mar 2004	TIME 1323	FILE NUMBER 0040-04-CID469-79638
NAME, FIRST NAME, MIDDLE NAME [REDACTED]	SOCIAL SECURITY NUMBER [REDACTED]	GRADE/STATUS E-4/RA	
ORGANIZATION OR ADDRESS HHC, 1-27 th Infantry Battalion			

WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On 28 Feb 04 I was working at a Traffic Control Point (TCP) for a mission are unit was conducting. My main responsibility was to search the vehicles, which approached the TCP. Around 1100 a call came over the radio to detainee any Iraqi males in the area. The was one Iraqi male in the field herding cows so SGT [REDACTED] and PFC [REDACTED] went out to the Iraqis position to detainee him. While the soldiers walk out to the Iraqis position I observed two trucks coming from the east and west so I was kept eyes on to see where they were going. While I was watching the trucks I heard a shot fired. I did not know where the shot came from so I began to scan the area, when I heard a call over the radio requesting information on who fired the shot. I then observed SGT [REDACTED] in the field motioning over to us to send someone out to his location. I also saw the Iraqi male lying on the ground but I could not tell if he was shot. SPC [REDACTED] proceeded to SGT [REDACTED] location to relieve him so he could call higher about the incident. When SGT [REDACTED] arrived to the TCP he stated to me he had detained the Iraqi and flexi-cuffed his hands behind his back and was walking the Iraqi detainee towards the TCP when he heard a shot fired. SGT [REDACTED] stated to me he could hear the round go by his head and it was shot by PFC RICHMOND who was behind the detainee and me. SGT [REDACTED] then called in the incident to black six, who is CPT [REDACTED]. Once the call was made the 1SG and CSM should up at the scene. I continued to look out for vehicle approaching the TCP while the chain of command took care of the Iraqi [REDACTED].

Q: SA [REDACTED]
A: CPL [REDACTED]
Q: Did PFC RICHMOND ever state he wanted to kill an Iraqi?
A: Nothing that I have heard.
Q: How far away from the TCP was the Iraqi at when he was shot?
A: 7 Meters north of the TCP.
Q: How many shots did you hear?
A: Just one.
Q: Where you briefed on the Rules of Engagement prior to this mission?
A: Yes, by SGT [REDACTED]
Q: What was briefed on the aspect of deadly force?
A: When the initial raid took place if anyone was seen fleeing the village deadly force was authorized.
Q: When did the initial raid take place?
A: At 0500.
Q: How long was the Iraqi cow herder out in the field?
A: 30 minutes.
Q: Did the Iraqi cow herder make any threats towards coalition forces at any time?
A: No.
Q: Do you have anything else to provide to this statement?
A: No.///End of Statement/// [REDACTED]

b(6)-4
b(7)(c)-4

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF 2 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED] CONTINUED."
BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE [REDACTED] OF [REDACTED] PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

DA FORM 2823
1 JUL 72

SUPERSEDES DA FORM 2823, 1 JAN 68, WHICH WILL BE USED.

For Official Use Only

016759 Ex

b(6)-4

b(7)(c)-4

(Same)

(Same)

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

SIGNATURE OF PERSON MAKING STATEMENT [REDACTED]

[REDACTED] (Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 1st day of March, 2004 at FOB Warrior, Kirkuk, Iraq

b(6)-1; b(7)(c)-1

SA [REDACTED]
(Typed Name of Person Administering Oath)

Article 136(b)(4), UCMJ
(Authority To Administer Oaths)

PAGE 2 OF 2 PAGES

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016760

Ex

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is Office of The Deputy Chief of Staff for Personnel.

LOCATION FOB Warrior, Kirkuk, Iraq	DATE 1 Mar 2004	TIME 1130	FILE NUMBER 0040-04-CID469-79638
NAME, FIRST NAME, MIDDLE NAME [REDACTED]	SOCIAL SECURITY NUMBER [REDACTED]	GRADE/STATUS E-4/RA	
ORGANIZATION OR ADDRESS HHC, 1-27 Infantry Battalion, FOB McHenry, Iraq			

I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On 28 Feb 04 around 1100 SGT [REDACTED] received a call over the radio requesting a medic to come to there location, which was at a Traffic Control Point (TCP) north of the village. I was presently in the village of Taal Al Jal waiting for the cordon and search to be conducted. I was standing by in case someone needed medical treatment. After the call came over the radio I ran over to the location of the TCP with CPT [REDACTED]. The area was about three hundred meters away. When I arrived at the TCP I observed one Iraqi male lying in a field with his face up. I proceeded to assess the Iraqi male and verified the Iraqi was shot in the back of the head. I checked for a pulse on the Iraqi, which met with negative results.

Q: SA [REDACTED]

A: SPC [REDACTED]

Q: Describe the injuries sustained by the Iraqi?

A: Gunshot wound to the upper left side of his head. The size of the entrance wound was approximately the size of a 5.56MM round. I did not observe any exit wounds. While I was observing the eyes on the Iraq I could see what appeared to be brain matter coming out from the eyes.

Q: Did you provide any treatment to the Iraqi male who was shot?

A: I just checked for a pulse, which he did not have.

Q: Describe what the Iraqi male looked like?

A: He was wearing a green sweat top with a red and white scarf, black leather shoes and sweat pants. He had black hair, a black beard, approximately 5'9, 170. I could not tell what color his eyes were.

Q: Was the Iraqi male bound with flexi-cuffs?

A: Yes, they were bound behind his back.

Q: When you arrived at the scene how was everything acting?

A: The people were mad because the Iraqi was shot while he was flexi-cuffed.

Q: How far away was the body of the Iraqi male in relation to the TCP?

A: About 200 meters north of the TCP.

Q: Do you have anything else to add to this statement?

A: No.///End of Statement/// [REDACTED]

b(6)-4 (all)
b(7)(c)-4

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF 2 PAGES
ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED] CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE [REDACTED] OF [REDACTED] PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.		

DA FORM 2823
1 JUL 72

SUPERSEDES DA FORM 2823, 1 JAN 68, WHICH WILL BE USED.

IN ADDITION TO THE

016761

Ev

b(6)-4
b(7)(c)-4

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

[REDACTED]
(Signature of Person Administering Oath)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 1st day of March, 2004 at FOB Warrior, Kirkuk, Iraq

[REDACTED]
(Signature of Person Administering Oath)

SA [REDACTED]
(Typed Name of Person Administering Oath)

Article 136(b)(4), UCMJ
(Authority To Administer Oaths)

PAGE 2 OF 2 PAGES

For Official Use Only

016762 Fv

INVESTIGATIVE WORKSHEET

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code Section 3012 (g) ROUTINE USES: Your social security number and other personal info are used as an additional/alternate means of identification to facilitate and retrieval

PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified. DISCLOSURE: Disclosure of your SSN# is voluntary.

1. Rec Code: 2. Action Code: 3. Date: 4. Rel to Case: 5. Control #: 6. Sequence #: 7. Year: 8. Office: 9. ROI #: Offense:

INDIVIDUAL DATA

10. Last Name: [REDACTED] 11. First Name: [REDACTED] 12. Middle Name: [REDACTED] 13. Grade: SPC

14. Social Security Number: [REDACTED] 15. Other ID Number: [REDACTED] 16. Date of Birth: [REDACTED] 17. POB: [REDACTED] 18. POB ST: SC 19. POB ZIP: [REDACTED]

20. Sex: M 21. Race: B 22. Ethnic: [REDACTED] 23. Height: 5'9" 24. Weight: 170 25. Hair Color: BLK 26. Eye Color: BLU 27. Citizen: US 28. Educ: 12 29. Prior Record: [REDACTED] 30. Marital: [REDACTED]

31. MOS: 91W 32. Job Description/Location: [REDACTED] 33. MCAC: [REDACTED] 34. Security Clr: [REDACTED] 35. Physical Marks/or Tattoos: [REDACTED] 36. Spouse Military Y/N: [REDACTED] Service #: [REDACTED]

37. Alias/Nicknames: [REDACTED] 38. Alias/Nicknames: [REDACTED] 39. Alias/Nicknames: [REDACTED]

40. Unit/Organization: HHC 1-27th Comp Infantry 41. Unit Phone Number: [REDACTED] Home /Cell Phone Number: [REDACTED]

42. Military SVC: [REDACTED] 43. Sub Unit: [REDACTED] 44. Enr/City: Schofield 45. State: [REDACTED] 46. Country: [REDACTED] 47. Zip Code/Apo: [REDACTED]

48. Home Address: [REDACTED] 49. City: Newark, NJ 50. State: [REDACTED] 51. Country: [REDACTED] 52. Zip Code/Apo: [REDACTED]

FAMILY MEMBER DATA

53. JUV: [REDACTED] 54. Family Rel: [REDACTED] 55. Sponsor Last Name: [REDACTED] 56. Sponsor First Name: [REDACTED] 57. Sponsor Middle Name: [REDACTED]

58. Sponsor Social Security: [REDACTED] 59. Sponsor Grade: [REDACTED] 60. Spon MCAC: [REDACTED] 61. Sponsor Unit: [REDACTED]

62. Sponsor City: [REDACTED] 63. Sponsor St: [REDACTED] 64. Sponsor City: [REDACTED] 65. Sponsor Zip/ APO: [REDACTED]

OFFENSE

66. Offense Code: [REDACTED] 67. UFC: [REDACTED] 68. Offense Code: [REDACTED] 69. UFC: [REDACTED] 70. Offense Code: [REDACTED] 71. UFC: [REDACTED] 72. Offense Code: [REDACTED] 73. UFC: [REDACTED]

ADMINISTRATIVE DATA

Telephone: [REDACTED] ETS: Feb 7, 2005 PCS/DEROS: 1014 Date Interv Start: 1 Mar 04 Time Interv Start: 1050

Place of Interview Start: [REDACTED] Date Interv End: 1 Mar 04 Time Interv End: 1130 Place of Interview End: [REDACTED]

Disposition: [REDACTED]

VEHICLE DATA

74. Category (lost, stolen, Damaged, Info) 75. Type (Gov, Pov, Unk) 76. Recovered: [REDACTED] 77. Value: [REDACTED] 78. Insurer: [REDACTED] Policy # [REDACTED] Year/date Exp: [REDACTED]

79. Year: [REDACTED] 80. Make: [REDACTED] 81. Model: [REDACTED] 82. Vehicle Style: [REDACTED] 83. # of Doors: [REDACTED] 84. Color: [REDACTED] 85. Vehicle Size: [REDACTED]

86. V.I.N.: [REDACTED] 87. License Plate: [REDACTED] 88. State: [REDACTED] 89. DOD Decal Number: [REDACTED]

NOTES:

Last HIV Test:

CID FORM 44-R

EDITION OF 1 AUG 87 WILL BE USED UNTIL EXHAUSTED

1 Dec 87

016763

SWORN STATEMENT

For use of this form,

VR 190-45; the proponent agency is Office of The Deputy Chief of Staff for Personnel.

LOCATION SJA, 2 BCT, 25 INF, Kirkuk, Iraq

DATE
1 MAR 04

TIME
1350

FILE NUMBER
0000-01-CEN469-79638

LAST NAME, FIRST NAME, MIDDLE NAME

SOCIAL SECURITY NUMBER

GRADE/STATUS

SPC/E-4

ORGANIZATION OR ADDRESS

Btry, 1-62 (attached to 1-27) FOB McHenry

b(6)-4; b(7)(C)-4

WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

My mission was to block the south entrance of the village while Alpha Company raided the suspected houses in search of members wanted on the black list and caches of weapons. When we arrived the road was blocked off by the 5 ton mortar team than us in that order. A couple of hours into the mission we had only found 3 so we were told to detain all males in the area we had 2 cars with 1 male in the first 2 males in the second and a man in the field walking. The mortars set and 1 soldier as far as I could tell went out to detain the man when I heard a mortar shot. I had my 50 cal pointed in that direction. I heard no gun shots because my chc helmet was on. Then Dan Pound 5 came over the net and said I enemy KIA. So I then faced in that general direction and saw soldier standing out there. Later the commander of Alpha company arrived and they took pictures of the body than the body was put in a body bag.

Q: SA [redacted] b(6)-1; b(7)(C)-1

sec [redacted] b(6)-4; b(7)(C)-4

Prior to or during the mission, did you hear any of the team member talking about wanting to shoot an Iraqi?

A: No.

Q: Did your team members receive a use of force brief prior to the mission?

A: yes.

Q: Did you have anything further to add to this statement?

A: NO /// END OF STATEMENT ///

b(6)-4; b(7)(C)-4

EXHIBIT

INITIALS OF PERSON MAKING STATEMENT

PAGE 1 OF 2 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____ CONTINUED

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Ex

016764

STATEMENT OF [REDACTED]
STATEMENT (Continued)

TAKEN AT SJA, 2BCT, 25 INF

FILE NUMBER 0040-04-CEJ469-79638

DATED 1 MAR 04 CONTINUED:

b(6)-4
b(7)(C)-4

NOT USED

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

b(6)-4; b(7)(C)-4

WITNESSES:

(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 1 day of MAR, 2004 at SJA, 2BCT, 25 INF KIRKUK IR27

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

[REDACTED]
[REDACTED]
[REDACTED]
(Typed Name of Person Administering Oath)

Art 136, Ucm J

(Authority To Administer Oaths)

b(6)-1; b(7)(C)-1

Page 2 of 2

016765

AUTHORITY:

Title 10, United States Code Section 3012 (g)

DATA REQUIRED BY PRIVACY ACT

ROUTINE USES: Your social security number and other personal information are used as an additional/alternate means of identification to facilitate and retrieval.

PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.

DISCLOSURE: Disclosure of your social security # is voluntary

1. Rec Code:	2. Action Code:	3. Date:	4. Rel to Case:	5. Control:-	6. Sequence #	7. Year:	8. Office	9. ROI #	Offense:			
					0040-04-CT0469-79638							
10. Last Name:			11. First Name:			12. Middle Name:			13. Grade/Rank:			
									SPC/E-4			
14. Social Security Number:		15. Other ID Number:		16. Date of Birth:		17. POB City:		18. POB St:	19. POB Zip:			
						Zanesville		OH				
20. Sex:	21. Race:	22. Ethnic:	23. Height:	24. Weight:	25. Hair:	26. Eye Color:	27. Citizen:	28. Educ:	29. Prior Record:	30. Marital		
M	C	22	70	178	BRN	BLU	US	12	N	S		
31. MOS:		32. Job Description/Location:		33. MC:	34. Security Clr:		35. Physical Marks/ Tattoos:		36. Spouse Military: Branch			
14S		Avenger crew			Sec				Yes: <input type="checkbox"/> No: <input type="checkbox"/>			
37. Alias/Nicknames:				38. Alias/Nicknames:				39. Alias/Nicknames:				
member												
40. Unit/ Organization:					41. Unit Phone Number:					Home:	Cell/Pager:	
B Btry, 1-62 / attached to 1-27												
42. Military Service:		43. Sub Unit:		44. Fort/City:		45. State:		46. Country:		47. Zip Code/APO:		
				FOB McHenry								
48. Home Address:			49. City:			50. State:		51. Country:		52. Zip Code/APO:		
53. JBV:		54. Family Rel:		55. Last Name:		56. First Name:		57. Middle Name:				
58. Social Security:				59. Grade/Rank:		60. MC:		61. Unit:				
62. City:			63. State:		64. ZIP/APO:		65. Phone:		Wk:	Hm:		
66. Offense Code:		67. UFC:		68. Offense Code:		69. UFC:		70. Offense Code:		71. UFC:	72. Offense Code:	73. UFC:
Telephone:		ETS:		PCS/DEROS:		Date / Time Interview START:						
		25 May 05				Date: Time:						
Place of Interview:						Date / Time Interview END:						
						Date: Time:						
Disposition:												
74. Category:		75. Type:		76. Recovered: Yes: <input type="checkbox"/> No: <input type="checkbox"/>		77. Value:		78. Insurer:		Policy:		Year/Date:
				81. Model:		82. Vehicle Style:		83. # of Doors:		84. Color:		85. Size:
						SUV		2		Blue		Mid size
86. V.I.N:				87. License Plate:		88. State:		89. DOD Decal Number:				

NOTES:

For Official Use Only

016766

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately
ROUTINE USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION SJA, 2BCT 25 INF. Kirkuk, Iraq	2. DATE (YYYYMMDD) 2004/03/01	3. TIME 1720-1450	4. FILE NUMBER 0040-04-020464-79638
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN [REDACTED]	7. GRADE/STATUS E5/Sgt	
8. ORGANIZATION OR ADDRESS HHC 1/27 Inf. Mortars FOB McHenry			

9. [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

My mission given in the OPORDER by Cpt. [REDACTED] was to set up a traffic control point on the north side of the village. My team and I were to search all traffic coming in or out of the village, and to deny entry or exit of the village. If we were to find any weapons, or anything that looked suspicious we were to detain the individual, and call it in to Red 6 (11). I was also told in the OPORDER, that if we saw any adult male running from, or fleeing the village we were to put him down. Kill him. When I briefed my team on the mission, I told them Cpt. [REDACTED] exact words. I then added that in my opinion, The mission sounded serious, and that the unit was going into houses and detaining alot of adult males. I said that the chance of us seeing someone fleeing could be possible. I told them the fields looked large on both sides of us, and if they saw someone fleeing, or running they were to tell me, and I would be the deciding factor on weather or not we fired. They all said they understood they were to notify me of anyone running or fleeing. I then briefed them on the ROE that our Platoon leader, Cpt. [REDACTED] briefs us on. I covered IED's on the way there, and our ROE on contact with the enemy. I said we fire no warning shots, and we shoot only when our lives or equipment are in danger, with the exception of what Cpt. [REDACTED], and my guidance was on fleeing males. I asked them if they understood or had any questions. They said they understood the mission and ROE, and had no questions. When we got to our position the next morning, I set up the TCP. I placed Pfc [REDACTED] on left side security, Pfc Richmond on right side security, Pfc [REDACTED] on the M249, mounted on a gunmount in the back of the HMMWV, overwatching both sides. [REDACTED] and Spc [REDACTED] were the soldiers searching vehicles. I was going to be monitoring the radio, and supervising what was going on. At about 0730 I heard over the net that we where to detain all males in the village. I called Black 6, the one who made the call to detain over the net, and explained to him my situation. My situation was that I was at a TCP with cars lining up, and I had what seemed to be just a few farmers in my area. I was told by Black 6 that I was to detain all males in my area. I told Cpl [REDACTED] to take charge of detaining all males that approached in cars. I looked around and saw a male standing in the field that Pfc Richmond was pulling security on, about 200 meters away. I told Pfc Richmond that we were going to go detain him. Spc [REDACTED] asked to go, and I said no. Pfc. Richmond had flex cuffs in his hand when we started to head towards the male. I then told Pfc Richmond that I would be detaining him, and he would pull security. He said OK and handed me the cuffs. At this time I had my weapon slung at my side, and Pfc richmond had his weapon at the walking, low ready. As we approached the male his back was facing away from us. As we got about 50 to 30 meters away the male noticed we were coming, and turned towards us. He started to speak in arabic to us, he seemed to be angry that we were coming towards him, I think he knew he was going to be detained, and was mad. As we were walking to him I put both my hands in the air to signal him to do the same, he did so but only for a few seconds. He then put his hands down. I signaled again, and he put his arms up halfway, and out to the sides. when we got over to him I told Richmond to pull security and pointed where I wanted him to stand, It was about 3 feet away from the male, on the males leftside. At this time Richmonds weapon was still at the low ready. I quickly ran my hands over the males arms and upper torso checking for large weapons. The male still seemed very upset with us. I then signaled for him to turn around, he did so. I then grabed his left arm and pulled down, signaling him to put his hands behind his back. He then started to struggle lightly with me not giving me his hand. He still seemed upset and angry, and was begining to resist being detained. I told Richmond to put his weapon up. Richmond put his weapon at the high ready, about centermass of the male. The male then stopped resisting and gave me his hands. When I tried to put the cuffs on him he started to resist again. He would not let me put his hands in the cuffs. After a brief struggle I got his hands in the cuffs. He then relaxed. I patted him on the right shoulder to try and assure him he was ok, I turned to Richmond and said "he's good, let's go" I saw Richmond begin to bring down his weapon to start walking. I grabbed the male by the left arm and we turned to the left and started walking. Richmond was behind us. The male and I took about 2 steps, and I heard a vey loud gunshot, I duct down and looked back at Richmond. My first thought was that we were being shot at. I said " what the hell was that?" I saw Richmond still facing me, he said something on the lines of "he jumped at you". I saw the male had been shot in the head. I said to Richmond that he was ok, and I was going to call it in on the radio. I waved over to the TCP for someone to come over and stay with Richmond and pull security. I ran over to to TCP and called Gunslinger 6 (Cpt [REDACTED]) on the radio, and told him I had a civilian KIA at my location.

1. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF 3 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" TAKEN AT DATED

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

016767

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF SGT [REDACTED] TAKEN AT SJA, 2nd BCT DATED 2004/03/01

9. STATEMENT (Continued)

Q: SA [REDACTED]

A: SGT [REDACTED]

Q: Did you indicate to RICHMOND that the iraqi man had been flexi-cuffed?

A: Yes, After I cuffed him, I told RICHMOND that he was good and let's go.

Q: Did he acknowledge to you that he heard this?

A: As I was saying this, I was looking at him and he began to lower his weapon.

Q: When you looked at him, was he looking in his scope?

A: He was looking over the top of it, and looking at the iraqi man.

Q: From his angle, do think he would have seen that the iraqi man was cuffed?

A: I would think he should have.

Q: While you were attempting to cuff the iraqi man, did you tell RICHMOND to point his weapon at the man's head and shoot him if he moves?

A: I told RICHMOND to get his weapon up at the man as a show of force in order to prevent him to further resist me.

Q: When RICHMOND raised his weapon, where on the man was the weapon pointed at?

A: It was pointed at the man's shoulder/chest area.

Q: Was he looking through the scope at this time?

A: Not when I was looking at him. He may have looked through the scope when I was busy cuffing the man.

Q: When you stated that the iraqi man was ready to be taken back and you pulled him with you, did the iraqi man show any signs of resistance or try to lunge towards you?

A: No, the only movement he made was when he took his first step and slightly lost his balance and leaned into me.

Q: Was it a sudden move, that could have been mistaken to be that he was lunging at you?

A: From my point of view, no. I did not perceive that movement as threatening.

Q: Was RICHMOND looking through his scope when he fired?

A: I don't know, just before I turned with the iraqi man, I remember seeing RICHMOND beginning to lower their weapon. As we turned, I could no longer see RICHMOND, as he was behind me. After the shot, and I looked at him, he had the weapon almost

ed to the ground and had a look of shock.

Do you have anything to add to this statement?

no.///END OF STATEMENT/// [REDACTED]

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

PAGE 2 OF 3 PAGES

016768

STATEMENT OF SGT [REDACTED] TAKEN AT SJA, 2BCT DATED 2004/03/01

STATEMENT (Continued)

b(6)-4
b(7)(c)-4

NOT USED

Same

AFFIDAVIT

I, [REDACTED] (Same), HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL [REDACTED] WELL [REDACTED]

(Same)

[REDACTED] of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 1 day of Mar, 2004 at SJA, 2BCT, Kirkuk, Iraq

ORGANIZATION OR ADDRESS

(Signature of Person Administering Oath)

SA [REDACTED]
(Typed Name of Person Administering Oath)

Art 136, UCMJ

(Authority To Administer Oaths)

ORGANIZATION OR ADDRESS

b(6)-4; b(7)(c)-4

INITIALS OF PERSON MAKING STATEMENT

PAGE 3 OF 3 PAGES

016769

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is JDCSOPS

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
PRINCIPAL: To provide commanders and law enforcement officials with means by which information may be accurately identified.
TIME USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
LOSURE: Disclosure of your social security number is voluntary.

1. LOCATION <i>FOB McHenry</i>	2. DATE (YYYYMMDD) <i>20040228</i>	3. TIME <i>16:03</i>	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN [REDACTED]	7. GRADE/STATUS <i>SGT</i>	
8. ORGANIZATION OR ADDRESS <i>HAC 1/27 MILES</i>			

9. I, *SGT [REDACTED]*, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q: what was your MISSIONS

A: Set up TCP, ~~stop~~ vehicles attempting to go in and out of the town. Responsible for open fields as well.

Q: what was your responsibility in reference to people leaving the town on foot?

A: If it was an adult male fleeing or running, we were to put him down.... shoot him.

Q: where did you get this guidance from?

A: CPT [REDACTED] - during OPORD brief.

Q: The individual that you were attempting to detain, what was he doing.

A: Standing in the field; he was a farmer. there were a few and we weren't really concerned about them.

Q: What triggered you to detain him?

A: Heard over the net from Black 6 to detain all males in area. I called on the net and asked

10. EXHIBIT	11. SIGNATURE OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF <i>5</i> PAGES
-------------	--	--------------------------

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT _____ TAKEN AT _____ DATED _____"

BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER NOT BE INDICATED.

DA FORM 2823, DEC 1998

DA FORM 2823, JUL 72, IS OBSOLETE

USAPA V1.00

For Official Use Only

016770

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF SGT [REDACTED] TAKEN AT 16:03 DATED 200402b(6)-4; b(7)(C)-4 (all)

9. STATEMENT (Continued)

about the farmers, was I supposed to detain them. Black 6 said yes.

Q: who is Black 6

A: Don't know his name. One of the LT.

Q: Did you perceive a threat from the farmers

A: NO.

Q: Did you see any weapons on them

A: No

Q: The individual you tried to detain, did he try to resist you? And if so how?

A: Yes he resisted. He would give me his hands.

Q: what guidance did you give PFC Richmond?

A: When approaching, had Richmond keep his weapons at the low ready. When we came up, the individual was angry that he was being detained. The individual allowed me to search him, but when I had him turn around to flexcuff him, he resisted. That's when I had PFC Richmond go at the high ready.

Q: How far away was Richmond? [This was meant as a show of force to get the indiv. to cooperate.]

A: 3-4 feet

Q: when you finally cuffed him, did you tell Richmond,

A: After I had the zip strip on the detainee, I patted him on the shoulder to calm him [detainee down]. I looked over my shoulder and told PFC Richmond 'Let's Go'. I saw

INITIALS OF PERSON MAKING STATEMENT [REDACTED]

PAGE 2 OF 5 PAGES

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
PRINCIPAL: To provide commanders and law enforcement officials with means by which information may be accurately identified.
LINE USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
CLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION <i>FOB McHenry</i>	2. DATE (YYYYMMDD) <i>120840228</i>	3. TIME <i>16:03</i>	4. FILE NUMBER
5. LAST [REDACTED]	6. SSN [REDACTED]	7. GRADE/STATUS <i>SGT</i>	
8. ORGANIZATION OR ADDRESS <i>HHC 1/27 MTR</i>			

9. I, _____, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

PFC Richmond ^{start to} go to the low ready as we all turn to go. [Lowered it to walk]

Q: Do you believe PFC Richmond knew the individual was flexcuffed? / Did you see him take the scope away from his eye?

A: Yes LI saw him lower his scope.

Q: Did the individual lung into you

A: No sir

Q: Did you have an interpreter in your section for the mission

A: No

Q: Did you receive adjusted ROE guidance after the incident

A: Received it from the BC and PL. Return fire is Armed. Only engage an enemy that's posing a threat to you. A threat is anyone demonstrating intent to injure myself or my soldiers

Q: Did you perceive any threat toward your blocking position

A: No (Same)

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE <i>3</i> OF <i>4</i> PAGES
-------------	---	---------------------------------

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT _____ TAKEN AT _____ DATED _____"

OTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE BE INDICATED.

DA FORM 2823, DEC 1998

DA FORM 2823, JUL 72, IS OBSOLETE

USAPA V1.00

For Official Use Only

016772

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

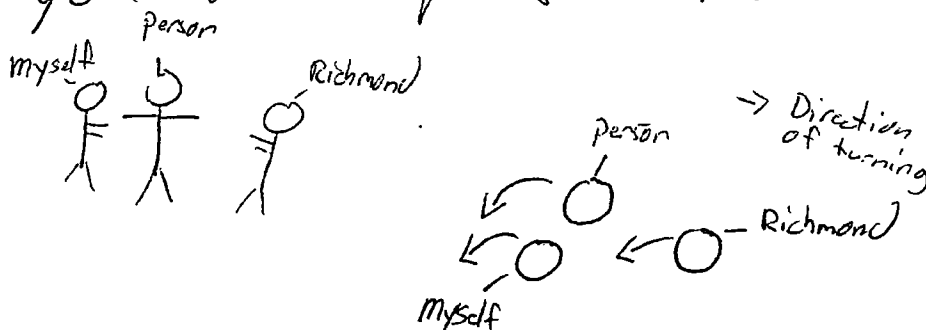
STATEMENT OF SGT [REDACTED] TAKEN AT 16:03 DATED 2004027b(6)-4; b(7)(C)-4

9. STATEMENT (Continued)

Q: How far had you gone when the detainee was shot? [After being flexcuffed]

A: About 2 steps. We were turning to our left.

Q: Can you draw a position sketch



Q: Do you know of any reason why PFC Richmond shot the detainee.

A: NO

— Nothing Follows —

(Same)

INITIALS OF PERSON MAKING STATEMENT

PAGE 4 OF 5 PAGES

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016773

STATEMENT OF

SGT [REDACTED]

TAKEN AT

16.03

DATED

20040228

9. STATEMENT (Continued)

b(6)-4; b(7)(c)-4

Same
AFFIDAVIT

I, SGT [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

b(6)-2; b(7)(c)-2

Same
[REDACTED] Making Statement)

WITNESS

MAJ [REDACTED]

SGT [REDACTED]

Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of _____ at _____

ORGANIZATION OR ADDRESS

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

PAGE 5 OF 5 PAGES

016774

WARNING PROCEDURE/WAIVER CERTIFICATE
For use of this form, see AR 190-30; the proponent agency is ODC

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION AO WEST	2. DATE 28 FEB 04	3. TIME 1442	4. FILE NO.
5. NAME (Last, First MI) [REDACTED]	8. ORGANIZATION OR ADDRESS HHC, 1-27 INF		
6. SSN [REDACTED]	7. GRADE/STATUS E-5 ACTIVE		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army **HHC, 1-27 INF** and wanted to question me about the following offense(s) of which I am suspected/accused: **shooting of an unconfirmed enemy combatant by a soldier under his charge**. Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

- I do not have to answer any question or say anything.
- Anything I say or do can be used as evidence against me in a criminal trial.
- (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

- If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or to talk privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		INTERVIEWEE b(6)-1; b(7)(C)-4
1a. NAME (Type or Print)	[REDACTED]	
b. ORGANIZATION OR ADDRESS AND PHONE	[REDACTED]	
2a. NAME (Type or Print)	5. TYPED NAME OF INVESTIGATOR b(6)-2 b(7)(C)-2	
b. ORGANIZATION OR ADDRESS AND PHONE	6. ORGANIZATION OF INVESTIGATOR HHC, 1-27 INF	

Section C. Non-waiver

1. I do not want to give up my rights
☐ I want a lawyer ☐ I do not want to be questioned or say anything

2. SIGNATURE OF INTERVIEWEE

ATTENTION: THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

PART II - RIGHTS WARNING PROCEDURE

THE WARNING

1. WARNING - Inform the suspect/accused of:

- a. Your official position.
- b. Nature of offense(s).

The fact that he/she is a suspect/accused.

HTS - Advise the suspect/accused of his/her rights as follows:
 "Before I ask you any questions, you must understand your rights."

- a. "You do not have to answer my questions or say anything."
- b. "Anything you say or do can be used as evidence against you in a criminal trial."
- c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer

can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."

- or -

(For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."

- d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

THE WAIVER

"Do you understand your rights?"

(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"Have you ever requested a lawyer after being read your rights?"

(If the suspect/accused says "yes," find out when and where. If the request was recent (i.e., fewer than 30 days ago), obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"

(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?"
 (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)

SPECIAL INSTRUCTIONS

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.

2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

COMMENTS (Continued)

REVERSE OF DA FORM 3881

USAPA V2.01

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016776

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

PRIVACY ACT STATEMENT

IMPORTANCE: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).
CRITICAL: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION A0 West / F.O.B. McHenry	2. DATE (YYYYMMDD) 20040228	3. TIME 1450	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN [REDACTED]	7. GRADE/STATUS ES	
8. ORGANIZATION OR ADDRESS HHC 1st Inf. b(6)-4; b(7)(c)-4 (all)			

9. [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Who attended the opord brief from the mortar platoon?
 I did, no one from the mortar plt. attended but me.

What guidance did you receive from A Co. regarding the ROE?
 Be specific in terms of words and who delivered them.
 Cpt [REDACTED] gave the guidance that if something was found in a car, ex. weapons
 we were to detain them, and if any adult male was seen running or fleeing
 the village we were to put him down (kill him).

What guidance did you give your section regarding ROE,
 and did your soldiers raise any questions to you?
 My guidance to the soldiers was the same as I was told by Cpt [REDACTED]. I
 added that the mission seemed very serious, but I would be the final say if possible
 if someone was going to be detained or if one of them would start engaging
 a fleeing adult male. I explained the entire mission briefly, and told them we were
 going to go to this village to detain adult males on our list. so the chance one
 of them would run was possible. They understood they were to engage fleeing
 adult males with my guidance only.

Describe your specific guidance to PFC Richmond as you
 approached the person in the field. I told PFC Richmond
 to pull security while I flex cuffed and patted down the person.

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF 3 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT" TAKEN AT _____ DATED _____

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF _____ TAKEN AT _____ DATED _____

9. STATEMENT (Continued)

Please relate as much detail of the shooting as possible. I heard over the net to detain all males, I called Black 6 and explained my situation on the road. I said "we have traffic and fields with farmers, am I to detain all males in my area?" He said, "yes, detain all males". PFC Richmond was pulling security on the side of the field where the person was, so I took him with me to detain the person. On the way to the person I took the Flex cuff from Richmond and told him "I would detain him, you pull security". Richmond said, "ok" and gave me the cuff. As we approached, the person turned around and saw us. We were both carrying our weapons at the low ready. The person started to speak in arabic. It seemed that he was upset we were coming over to him. As we slowly approached him I signaled him to raise his hands, by raising my arm up. The person did so, but briefly. He then put them back down. I signaled to him again to raise them and he halfheartedly did. I walked up directly in front of him and Richmond was off to my right with his weapon at the low ready. The person had his arm out, he seemed to know he was going to be detained and was talking in arabic with anger in his voice. I had one hand on my weapon, at the low ready, and I patted his arms and upper torso, quickly. I signaled him to turn around, he did so with his hands still out to the side. I ~~grabbed~~ stepped off on an angle to my left to grab his left hand first. He would not give it to me at first, we lightly struggled for a moment and then he gave me his hands. ~~then I~~ ^{did} started + During this time I told Richmond to pick his weapon up to the high ready in case this person tried to fight me. My intent was to protect myself and to show him we were serious and to stop struggling. I still struggled with him because he wouldn't stop pulling his hands around so I could tighten the cuffs. I got his hands in the Flex cuff and tightened it fast, he then stopped struggling. I patted him on the right shoulder and looked at Richmond and said "He's good, let's go". I grabbed the person's left upper arm and pulled him to signal to come with me, he did so. We walked about 2 steps and I heard a very loud and painful gunshot. I thought at first we were taking fire so I ducked down and turned to my right towards the person, I saw he was hit in the head

b(6)-4; b(7)(c)-4

INITIALS OF PERSON MAKING STATEMENT _____

PAGE 016778

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is ODCSOPS

PRIVACY ACT STATEMENT

AUTHORITY:

Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 (SSN).

PRINCIPAL:

To provide commanders and law enforcement officials with means by which information may be accurately identified.

ROUTINE USES:

Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.

DISCLOSURE:

Disclosure of your social security number is voluntary.

1. LOCATION <i>AO West / FOB McHenry</i>	2. DATE (YYYYMMDD) <i>20040228</i>	3. TIME <i>214:50</i>	4. FILE NUMBER
5. LAST NAME FIRST NAME MIDDLE NAME [REDACTED]	6. SSN [REDACTED]	7. GRADE/STATUS <i>E5</i>	
8. ORGANIZATION OR ADDRESS <i>HHC 127 Inf</i>			
9. <i>b(6)-y, b(7)(C)-y</i>			

I, _____, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

and collapsing to his knees. I looked back at Richmond who was about 2 meters behind me and said "what the Hell was that". Richmond said something on the lines of, he came at you. I then knew Richmond shot him. I told him to stay calm. I waved another soldier over to us and I ran to the Humvee and called Gunzinger 6 and told him what happened.

Nothing Follows

(Same)

10. BIT	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE <i>3</i> OF <i>3</i> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT _____ TAKEN AT _____ DATED _____"

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

b(6)-4; b(7)(C)-4

RIGHT READ @ 281030 FEB 02

Q: AT WHAT TIME DID YOU NOTICE
MALE WALKING AWAY FROM ULL

A: 0730 SAW SUBJECT WALKING BY
CATTLE.

Q: WHAT WAS HE DOING TO DRAW ATT.

A: I WAS TOLD TO DETAIN ALL MALE
HE WAS JUST STANDING AND WATCHING
US.

Q: WHAT HAPPEN WHEN YOU WALKED
OVER TO HIM.

A: HE ~~BE~~ BEGAN SPEAKING TO YOU
BUT WAS NOT A THREAT.

A: WHILE WALKING OVER TO MALE YOU
TOLD RICHMOND YOU WOULD FLEX
HIM WHILE ~~HE~~ PULL SECURITY.

Q: HOW DID YOU MOVE AROUND MALE TO
FLEX CUFF HIM.

A: ~~HE~~ TOLD HIM TO TURN AROUND
AND TRIED TO ZIP STRIP HIM. SUBJECT
WAS STRUGGLING WHILE ZIP TIEING HI

016780

[REDACTED] Sgt. b(6)-4; b(7)(c)-4

I was told over the radio that all male were to be detained. I called back over and said, "I am at the TCP do you want me to detain males leaving in vehicles and males in fields" It came back, "yes". This was at about 0800; or I took SPC Richmond into the field to detain a male about 200 meters away. When we approached the male, he started talking to us. We were at the low ready. I signaled to put his hands up. Richmond was on my right side about 5 meters away. The male put his hands up briefly, and then back down. I signaled again to raise his hands and he halfway raised them. As I approached him I signaled for him to turn around. He did so I tried to grab his hands to flex cuffs but he was lightly fighting (wouldn't give me his hands). Richmond was still on our right side at the ready. I told Richmond to put his weapon at the ready in case he started to fight me.

016781

I briefly struggled to put the Alox on when he was cutted I turned with him to our left putting richmond in behind us. I said to richmond were good ~~but~~ let's go. As we started to walk richmonds rifle discharge I saw that the male was shot in the head. I said to richmond "what the hell" he said "he jumped at you". The male made no sudden moves as we started to walk away. I called another soldier over to stay with richmond and I ran to the radio and called buslingor 6 and told him what happened.

016782

~~Nothing Follows~~

28 Feb 84 1020

(b)(7)(C) (b)(7)(D) (b)(7)(F)

withheld by

(b)(7)(C) (b)(7)(D) (b)(7)(F)

(b)(7)(C) (b)(7)(D) (b)(7)(F)

SWORN STATEMENT

For use of this form

AR 190-45; the proponent agency is Office of The Deputy Chief of Staff for Personnel.

LOCATION SJA, 2 BCT, 25th INF Kinkuk IC29	DATE 1 MAR 04	TIME 1255	FILE NUMBER 0040-04-1-0469-79638
LAST NAME, FIRST NAME, MIDDLE NAME	SOCIAL SECURITY NUMBER		GRADE/STATUS
ORGANIZATION OR ADDRESS HHC 1-27 Mortar			SPC/E-4

6(6)-4; 5(7)(c)-4 (all)

WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

That morning we went on a mission to secure the outskirts of a little town while A.C.O. did a raid. We were to set up a check point on a road leading into the city with the Avengers. After the company we had our area of responsibility and stopped with the Avengers and pulled security. We turned the incoming women and outgoing women back and made sure none of the males entered the city. After about first light we received a call over the net saying to detain all males cause they were looking for two people. Well a former was out in the field, it was the same one from earlier that it's richmond just about shooting, so richmond and I went to detain him, at that moment 3 women on a tractor tried to get through our checkpoint myself and Cpl [redacted] went to turn them around a few minutes later we heard a shot fired from our right rear. We turned and looked at our guys and saw two figures standing and one laying down. I tried to [redacted] and hope richmond didn't shoot that guy. At that time Sgt [redacted] waved someone to el ran over to him he said pull security till I get back. I said roger. I walked over to richmond and asked what happened he said Sgt [redacted] was putting the flex cuffs on and the guy turned his head and then jumped at Sgt [redacted] so I shot him in the back of the head. I laid down not bad. I went looked at the body and noticed that the mans hands were behind his back I looked at richmond and asked if he was flexed cuffed and he replied I don't know I was watching his head. I told him he was flexed cuffed and that now he was fucked. He went over to the body and started to touch it I told him not to and to smoke a cigarette till Sgt [redacted] returned. I then saw Cpt [redacted], 1SG [redacted] and Sgt [redacted] come over and replace Cpt [redacted] asked who shot him, richmond said I did. he then asked me if I was

EXHIBIT	INITIALS OF PERSON MAKING STATEMENT [redacted]	PAGE 1 OF 3 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [redacted] TAKEN AT [redacted] DATED [redacted] CONTINUED

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EA

016783

b(6)-4
b(7)(c)-4 (011)

FILE NUMBER: 0046-04-CE0469-79638

STATEMENT OF SPC [REDACTED] TAKEN AT STA, 2 BCT, 25 INF DATED 1 MARCH CONTINUED

"me, I said no, he then said go take his weapons and go away, I took his knife Sgt [REDACTED] took his Cap and I SC took his M4 and I went back to the truck and pulled security."

Q: SA [REDACTED]

A: SPC [REDACTED]

Q: Was your team provided a Brief on Use of Force prior to the mission?

A: Yes, on an earlier mission the Sgt [REDACTED] and Ltc [REDACTED] briefed about only when you are shot at, the ROE of this mission was if you see a male fleeing the city armed or not take him down, don't shoot at women or children.

Q: Did any members on your team have to fire their weapon at fleeing Iraqi men?

A: No

Q: Prior to or during this mission, did Richmond indicate that he was wanting to "Engage the enemy" or have the opportunity to shoot at [REDACTED] fire his weapon?

Since the orders came down he has stated that he wanted to shoot some Iraqis and then that morning he saw the man watching his arms and asked Sgt [REDACTED] if he could shoot him even tho he is not fleeing the city.

Q: Did he appear to be serious when he made this remark about shooting the Iraqi man?

A: In my opinion yes he had a serious look on his face and was not laughing.

Q: What was Richmond's demeanor after the incident?

A: After the shot and I came over I tried to calm him down and asked him what happened he said I shot the guy cause he turned and jumped at Sgt [REDACTED]. I said good then I noticed the guy was flex cuffed and asked if he was flex cuffed he said I don't know I was watching his head. I told him with the guy being cuffed you are fucked. He stepped closer to look at the body and I told him to not touch it and smoke a cigarette. The way two were standing

[REDACTED] For Official Use Only

Page 2 of 3 EX

016784

STATEMENT OF SPC [REDACTED]

TAKEN AT SJA, 2 BCT, 25 INF

FILE NUMBER: 0040-04-02414-79678

DATED: 1 MAR 04 CONTINUED

STATEMENT (Continued)

When I first looked after the blood and when the body was still
 didn't seem right to me cause Sgt [REDACTED] was all out of it and
 seemed to not even really care, he just was worried
 more about what would happen to him.

Q: Do you have any thing to add to this statement?

A: No /// END OF STATEMENT ///

b(6)-4; b(7)(C)-4

(Same)

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT
 WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME.
 THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE
 STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT,
 AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

[REDACTED] (Same)

Person Making Statement)

Subscribed and sworn to before me, a person authorized by law
 to administer oaths, this 1 day of MAR, 2004
 at SJA, 2 BCT, 25 INF, KIRKUK IRAC

SA [REDACTED]

(Typed Name of Person Administering Oath)

Art 136, UCMJ

(Authority To Administer Oaths)

b(6)-4; b(7)(C)-4

b(6)-1; b(7)(C)-1

FBI OFFICIAL WLD Antu

Page 3 of 3

EX

016785

AUTHORITY:

Title 10, United States Code Section 3012 (g)

DATA REQUIRED BY PRIVACY ACT

ROUTINE USES: Your social security number and other personal information are used as an additional/alternate means of identification to facilitate and retrieval.

PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.

DISCLOSURE: Disclosure of your social security # is voluntary

1. Rec Code:	2. Action Code:	3. Date:	4. Rel to Case:	5. Control:	6. Sequence #	7. Year:	8. Office	9. ROI #	Offense:	
					0040-04-CT0469-79638					
10. Last Name:			11. First Name:			12. Middle Name:			13. Grade/Rank:	
									SAC/E-4	
14. Social Security Number:		15. Other ID Number:		16. Date of Birth:		17. POB City:		18. POB St:	19. POB Zip:	
				28 Sep 81		Ft Huachuca		AZ		
20. Sex:	21. Race:	22. Ethnic:	23. Height:	24. Weight:	25. Hair:	26. Eye Color:	27. Citizen:	28. Educ:	29. Prior Record:	
M	C	22	72	187	BRN	HAZ	US	12	N	
31. MOS:		32. Job Description/Location:		33. MC:	34. Security Clr:		35. Physical Marks/ Tattoos:		36. Spouse Military:	
11C		81mm mortar							Yes: <input type="checkbox"/> No: <input type="checkbox"/>	
37. Alias/Nicknames:				38. Alias/Nicknames:				39. Alias/Nicknames:		
40. Unit/ Organization:					41. Unit Phone Number:		Home:		Cell/Pager:	
HHC 1-27 MORTAR										
42. Military Service:		43. Sub Unit:		44. Fort/City:		45. State:		46. Country:		
				FOB McHenry				47. Zip Code/APO:		
48. Home Address:			49. City:			50. State:		51. Country:		
								52. Zip Code/APO:		
53. JOV:	54. Family Rel:		55. Last Name:		56. First Name:		57. Middle Name:			
58. Social Security:			59. Grade/Rank:		60. MC:		61. Unit:			
62. City:		63. State:		64. ZIP/APO:		65. Phone:		Wk:	Hm:	
66. Offense Code:		67. UFC:		68. Offense Code:		69. UFC:		70. Offense Code:		
								71. UFC:		
								72. Offense Code:		
								73. Offense Code:		
ADMINISTRATIVE DATA										
Telephone:		ETS:		PCS/DEROS:		Date / Time Interview START:				
		20 Jun 05				Date: Time:				
Place of Interview:						Date / Time Interview END:				
						Date: Time:				
Disposition:										
74. Category:		75. Type:		76. Recovered:		77. Value:		78. Insurer:		
				Yes: <input type="checkbox"/> No: <input type="checkbox"/>				Policy:		
								Year: Date:		
				81. Model:		82. Vehicle Style:		83. # of Doors:		
						SUV		2		
								84. Color:		
								Blue		
								85. Size:		
								Mid size		
86. V.I.N:				87. License Plate:		88. State:		89. DOD Decal Number:		

NOTES:

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016786

SWORN STATEMENT

LOCATION: Kirkuk, Iraq

FILE NUMBER: 0040-04-CID469-79638

DATE: 29 Mar 04

TIME: 1419 ER

NAME: RICHMOND, EDWARD L.

SSAN: [REDACTED]

GRADE/RANK: PFC

ORGANIZATION OR ADDRESS: HHC, 1/27th Infantry Battalion, FOB McHenry, Kirkuk, Iraq,
APO, AE 09347

b(6)-5; b(7)(c)-5

b(6)-4; b(7)(c)-4 (211)

At Edward L. RICHMOND, want to make the following statement under oath:

I provided a sworn statement on 1 Mar 04 concerning the incident in which I shot and killed an Iraqi farmer during a raid. Looking back on the entire situation, I would like to make some corrections to that statement at this time. Prior to the raid, the rules of engagement were put out that if anyone tried to flee the villiage, we were to shoot them. After arriving to the villiage and setting up, I could hear some shotgun blasts going off in the villiage where the raid was taking place. I then noticed an Iraqi male walking his cattle away from the villiage. Since the rules of engagement were put out that we were to shoot anyone fleeing the villiage, I asked if I should shoot the farmer because he was leaving the villiage. I was told by SGT [REDACTED] to not shoot him. About an hour later, someone, maybe CPT [REDACTED] put out over the radio to apprehend all males leaving the villiage. At that time, we decided to apprehend the farmer. Myself and [REDACTED] each had a set of flexicuffs and began walking into the field where the farmer was still with his cattle. My adrenaline was already pumping because of the raid and then even more so as we approached the farmer to apprehend him. Myself and [REDACTED] decided that [REDACTED] would place the flexicuffs on the farmer, while I stood guard. The farmer seemed to be directing our attention to something else as we approached him, and then as SGT [REDACTED] began placing the flexicuffs on him, he started resisting. Already at that point I had a lot of adrenaline going through my system and [REDACTED] shouted at me to point my rifle at the Iraqi's head. I then pointed my rifle at his head and he stopped resisting. In my previous statement I put in that I did not realize the Iraqi was wearing flexicuffs when I shot him. Looking back now, I think it would be more accurate to say that I did not register in my mind that he was wearing flexicuffs. The adrenaline was affecting my perception of the situation. I remember seeing [REDACTED] putting flexicuffs on him and I saw him with his arms behind his back as I pointed my rifle at his head. I had to know he had on flexicuffs before I shot him, but it just did not register in my mind at the time. Also in my previous statement, I said that the Iraqi lunged at [REDACTED]. Again, looking back on it now, I don't think the Iraqi actually lunged. What happened is [REDACTED] turned him to walk away; however, because of the adrenaline, when [REDACTED] moved the Iraqi out of my sight picture, I just reacted by shooting him. I would have never shot that man had I been thinking clearly. I would never shoot someone who was wearing flexicuffs if I registered in my mind that they were wearing them. It is everything combined between the pressure of the raid, the new rules of engagement, the Iraq resisting his detention, and the whole situation in general that caused me to not be react like I normally would. ER

INITIALS OF PERSON MAKING STATEMENT

ER

PAGE 1 OF 2 PAGES

ER

DA Form 2823-E

FOR OFFICIAL USE ONLY

016787

ERQ. SA [REDACTED]
A. PFC RICHMOND

Q. Did you hear [REDACTED] tell you "he's good, let's go"?

A. No. He might have said it, but if he did, I did not hear it because of the adrenaline and the situation. It just did not register.

Q. How do you feel you were treated today?

A. Good.

Q. Were you given the opportunity to drink, eat, and use the restroom today?

A. Roger.

Q. Is there anything else you would like to add to this statement?

A. No///End of Statement/// ER

b(6)-4; b(7)(c)-4

AFFIDAVIT

I, Edward L. RICHMOND, have read or have had read to me this statement which begins on page 1 and ends on page 2. I fully understand the contents of the entire statement made by me. The statement is true. I have initialed all corrections and have initialed the bottom of each page containing the statement. I have made this statement freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence or unlawful inducement. ER

Witness #1:

b(6)-4; b(7)(c)-4

Edward Richmond
(Signature of Person Making Statement)

Subscribed and sworn before me, a person authorized by law to administer oaths, this 29th day of March 2004, at Kirkuk, Iraq

Witness #2:

[REDACTED]
(Signature of Person Administering Oath)

SA [REDACTED]
(Typed name of Person Administering Oath)

Article 136 (b) (4) UCMJ
(Authority to Administer Oath)

b(6)-1
b(7)(c)-1

INITIALS OF PERSON MAKING STATEMENT ER

PAGE 2 OF 2 PAGES

DA Form 2823-E

FOR OFFICIAL USE ONLY

016788

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

APPROVED: _____
 PREPARED BY: _____
 ROUTING SLIP: _____
 DISPOSITION: _____
 LOCATION: _____ DATE: 29 Mar 11 TIME: 1005
 FILE NUMBER: 1040-046-145-7038
 NAME (Last, First, MI): RICHMOND, EDWARD L. SSAN: _____ GRADE/STATUS: PFC
 ORGANIZATION OR ADDRESS: HHC 1727th Infantry Battalion, FOB McHenry, APO AE 09477

RIGHTS WAIVER/NON-WAIVER CERTIFICATE

The investigator, whose name appears below, told me that he/she is with the United States Army Criminal Investigation Command as a Special Agent and wanted to question me about the following offense(s) of which I am suspected: Murder, False Official Statements, False Swearing. Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with, or without a lawyer present, I have the right to stop answering questions at any time or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS:

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

Witness#

Signature

Witness# 2

Signature of Witness

Signature of Interviewee

Signature of Investigator/Special Agent

SA
 22nd MP BN (CID)
 APO, AE 09342

NON-WAIVER CERTIFICATE

I do not want to give up my rights: I want a lawyer: ☐ I do not want to be questioned or say anything: ☐

Signature of Interviewee: _____

DA Form 3881-E

FOR OFFICIAL USE ONLY

016789

b(6)-4: b(7)(c)-4

[REDACTED] - J.T.
RIGHT READ @ 281030 FEB 02

Q: AT WHAT TIME DID YOU NOTICE
MALE WALKING AWAY FROM ULL

A: 0730 SAW SUBJECT WALKING AWAY
CATTLE.

Q: WHAT WAS HE DOING TO DRAW ATT

A: I WAS TOLD TO DETAIN ALL MALE
HE WAS JUST STANDING AND WATCHING
US.

Q: WHAT HAPPENED WHEN YOU WALKED
OVER TO HIM.

A: HE ~~BE~~ BEGAN SPEAKING TO YOU
BUT WAS NOT A THREAT.

A: WHILE WALKING OVER TO MALE YOU
TOLD RICHMOND YOU WOULD FLEX
HIM WHILE ~~HE~~ POL SECURITY.

Q: HOW DID YOU MOVE AROUND MALE TO
FLEX CUFF HIM.

A: ~~THE~~ TOLD HIM TO TURN AROUND
AND TRIED TO ZIP STRIP HIM. SUBJECT
WAS STRUGGLING WHILE ZIP TIEING HI

016790

Q: DID YOU MAKE STATEMENT TO RICHMOND THAT SUBJECT WAS CUFFED AND SECURED.

A: HE GOOD LET'S GO.

Q: DID RICHMOND SEE OR UNDERSTAND THAT SUBJECT WAS FLEX CUFFED.

A: YES, SIR; HE WATCHED ME PUT THEM ON. WHEN I TURNED MALE I GRABBED MALE LEFT ARM AND BEGAN WALKING BACK TO VEHICLE.

Q: HOW MANY STEPS DID YOU TAKE WHEN RICHMOND FIRED.

A: MAYBE TWO STEPS.

Q: WHAT MAKE YOU THINK RICHMOND UNDERSTOOD SUBJECT WAS DETAINED.

A: I THINK HE GOOD LET'S GO.

CPT [REDACTED]

ACC, 127 IN (L) COMMANDING

b(6)-4, b(7)(C)-4

016791

[REDACTED] Sgt. b(6)-4
[REDACTED] b(7)(c)-4

I was told over the radio that all males were to be detained. I called back over and said, "I am at the TCP do you want me to detain males leaving in vehicles and males in fields" It came back, "yes". This was at about 0800; or I took spc Richmond into the field to detain a male about 200 meters away. When we approached the male, he started talking to us. We were at the low ready. I signaled to put his hands up. Richmond was on my right side about 5 meters away. The male put his hands up briefly, and then back down. I signaled again to raise his hands and he halfway raised them. As I approached him I signaled for him to turn around. He did so I tried to grab his hands to flex cuffs but he was lightly fighting (wouldn't give me his hands). Richmond was still on our right side at the ready. I told Richmond to put his weapon at the ready in case he started to fight me.

016792

I briefly struggled to put the box on when he was cuffed. I turned with him to our left putting richmond in behind us. I said to richmond were good ~~but~~ let's go. As we started to walk richmond's rifle discharge I saw that the male was shot in the head. I said to richmond "what the hell" he said "he jumped at you". The male made no sudden moves as we started to walk away. I called another soldier over to stay with richmond and I ran to the radio and called bursinger 6 and told him what happened.

Follows

withheld by

156



26 February 1020

b(6)-2
b(7)(c)-2



b(6)-4; b(7)(c)-4

016793

11 June 2004

MEMORANDUM FOR Record

SUBJECT: United States v. Richmond

b(6)-2; b(7)(C)-2 (all)

1. I recall briefly speaking with a CID special agent about the Richmond case. The special agent asked if MAJ [REDACTED] the 11D Chief of Military Justice, was around. He was not, so I asked if there was anything I could do to be of assistance. I was asked if I knew if the Richmond case was going to be a court-martial, or if it would be handled at a different level, such as an Article 15. I indicated it was going to be a court-martial. I believe MAJ [REDACTED] had indicated that it was his intention for this case to go to an Article 32(b) investigation. As the Chief of Administrative Law, I would be responsible for advising the investigating officer. Accordingly, MAJ [REDACTED] informed me of the planned Article 32(b) investigation. I don't believe that the investigating officer had been appointed at that time.

2. I spoke with the Article 32(b) investigating officer on the telephone after he was appointed. It was a brief discussion on the procedures for an Article 32(b) investigation. I do not recall discussing the facts of the case nor the appropriate level of disposition with the investigating officer.

3. POC is the undersigned at DNV 553-3362.

[REDACTED]
CPT, JA
Chief, Administrative Law

016794

FY04-14E-1.2

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008					
1. Submit To Appropriate Federal Agency:		2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and Zip Code) b(6)-3, b(7)(c)-3 [REDACTED]							
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT 28 Feb 04		7. TIME (A.M. OR P.M.)				
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.) ON 28 Feb 04, [REDACTED] WAS KILLED DURING COMBAT OPERATIONS WHEN HE WAS DETAINED BY COALITION FORCES OUTSIDE OF HIS VILLAGE. b(6)-4 b(7)(c)-4									
9. PROPERTY DAMAGE NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code) BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTEND OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.) DEATH OF [REDACTED] (Same)									
10. PERSONAL INJURY/WRONGFUL DEATH STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. [REDACTED] WAS KILLED WHILE DETAINED BY COALITION FORCES. (Same)									
11. WITNESSES <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:40%;">NAME</th> <th>ADDRESS (Number, street, city, State, and Zip Code)</th> </tr> <tr> <td style="height: 50px;"></td> <td></td> </tr> </table>						NAME	ADDRESS (Number, street, city, State, and Zip Code)		
NAME	ADDRESS (Number, street, city, State, and Zip Code)								
12. (See instructions on reverse) AMOUNT OF CLAIM (in dollars) <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%;">12a. PROPERTY DAMAGE</td> <td style="width:25%;">12b. PERSONAL INJURY</td> <td style="width:25%;">12c. WRONGFUL DEATH \$2,500 \$1,000</td> <td style="width:25%;">12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$2,500 \$1,000</td> </tr> </table>						12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH \$2,500 \$1,000	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$2,500 \$1,000
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH \$2,500 \$1,000	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$2,500 \$1,000						
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM									
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) b(6)-3; b(7)(c)-3 [REDACTED]			13b. Phone number of signatory		14. DATE OF CLAIM 10 MAR 04				
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant shall forfeit and pay to the United States the sum of \$2,000, plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)						

Previous editions not usable.

STANDARD FORM 95 (Rev. 7-85)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2
USAPPC V1.00

016795

DEPARTMENT OF THE ARMY
Headquarters, 1st Infantry Division
Office of the Staff Judge Advocate
APO AE 09392

AETV-BGJA

JUN 15 2004

MEMORANDUM FOR Commanding General, 1st Infantry Division, APO AE 09392

SUBJECT: Pretrial Advice on Disposition of Court-Martial Charges, PFC Edward L. Richmond, Jr.,
[REDACTED], Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, Kirkuk, Iraq, APO
AE 09347-9998 b(6)-5

1. I have reviewed the charge sheet and evidence indicated in the report of investigation in the subject case. The following constitutes my advice in accordance with the provisions of Article 34, Uniform Code of Military Justice, and Rule for Courts-Martial 406, Manual for Courts-Martial, United States, 2002.
2. Legal Conclusions. After a thorough review of the charge sheet and report of investigation, I have reached the following legal conclusions:
 - a. The specification alleges an offense under the Uniform Code of Military Justice.
 - b. The allegation of the offense is warranted by the evidence indicated in the report of investigation conducted in accordance with the provisions of Article 32, Uniform Code of Military Justice, and Rule for Courts-Martial 405, Manual for Courts-Martial, United States, 2002.
 - c. In addition, the defense made two objections to the Article 32 investigation. The first objection is that the investigating officer, MAJ [REDACTED] applied the wrong legal standard in making his recommendation by shifting the "burden of proof" to the defense to show that the shooting of the Iraqi detainee was justified. The second objection is that the legal advisor, CPT [REDACTED] was not and could not have been an impartial legal advisor because he had knowledge prior to the Article 32 investigation that the Staff Judge Advocate wanted the case to be sent to a general court martial. I have reviewed these legal objections and the memoranda submitted in response and find the objections to be without merit.
 - d. There is court-martial jurisdiction over the accused and the charged offense.

b(6)-2

016796

AETV-BGJA

SUBJECT: Pretrial Advice on Disposition of Court-Martial Charges, PFC Edward L. Richmond, Jr.,
[REDACTED] Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, Kirkuk, Iraq, APO
AE 09392

3. Recommendation. I recommend that the charge and its specification be referred to the general court-martial convened by Court-Martial Convening Order Number 3, this headquarters, dated 10 May 2004. I further recommend that this case be referred as noncapital.

b(6)-5

[REDACTED]

b(6)-2

LTC, JA
Staff Judge Advocate

The recommendations of the Staff Judge Advocate are (approved) (disapproved).

[REDACTED]
John R. S. Batiste

JOHN R. S. BATISTE
Major General, USA
Commanding

JUN 15 2004

016797



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
Headquarters, 2nd Brigade Combat Team
25th Infantry Division (Light)
Kirkuk, Iraq APO AE 09347-9998

APR 26 2004

APVG-UZO-CO

MEMORANDUM FOR Commander, 1st Infantry Division, Unit 26222, APO AE 09036

SUBJECT: Transmittal of Courts-Martial Charges

1. I have reviewed the courts-martial charges preferred against Private First Class Edward L. Richmond Jr., [REDACTED] U.S. Army, Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk, Iraq APO AE 09347-9998, and all other included evidence. *b(6)-5;*

2. I recommend that the charges be referred to:

- a. ☐ a Summary Court-Martial;
- b. ☐ a Special Court-Martial;
- c. ☐ a Special Court-Martial empowered to adjudge a Bad Conduct Discharge;
- d. ☒ a General Court-Martial;
- e. ☐ Other Disposition.

3 Encls
nc

b(6)-2;
[REDACTED]
COL, IN
Commanding

016798



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
Headquarters, 1st Battalion, 27th Infantry
2nd Brigade Combat Team, 25th Infantry Division (Light)
Kirkuk, Iraq APO AE 09347-9998

APR 5 2004

APVG-UZC-CO

MEMORANDUM FOR Commander, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk,
Iraq APO AE 09347-9998

SUBJECT: Transmittal of Courts-Martial Charges

1. I have reviewed the courts-martial charges preferred against Private First Class Edward L. Richmond Jr., [REDACTED] U.S. Army, Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk, Iraq APO AE 09347-9998.

2. I recommend that the charges be referred to:

- a. ☐ a Summary Court-Martial;
- b. ☐ a Special Court-Martial;
- c. ☐ a Special Court-Martial empowered to adjudge a Bad Conduct Discharge;
- d. ☒ a General Court-Martial;
- e. ☐ Other Disposition.

3 Encls
nc

[REDACTED]
LTC, IN
Commanding

b(6)-2;

016799



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

Headquarters and Headquarters Company, 1st Battalion, 27th Infantry
2nd Brigade Combat Team, 25th Infantry Division (Light)
Kirkuk, Iraq APO AE 09347-9998

APR 2004

APVG-UZC- HC (27-10)

MEMORANDUM FOR Commander, Headquarters, 1st Battalion, 27th Infantry, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk, Iraq APO AE 09347-9998

SUBJECT: Transmittal of Courts-Martial Charges

1. I am forwarding original courts-martial charges preferred against Private First Class Edward L. Richmond Jr., [REDACTED] U.S. Army, Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, 2nd Brigade Combat Team, 25th Infantry Division (Light), Kirkuk, Iraq APO AE 09347-9998, IAW R.C.M. 401, Manual for Courts-Martial, United States, 2002.

2. The summary of expected testimony upon which the charges are based, is enclosed.

3. All necessary witnesses are expected to be available at the time of trial.

4. The accused was not offered nonjudicial punishment for the charged offenses.

5. There is no evidence that the accused has a previous conviction.

6. Previous UCMJ punishment: None known at this time.

7. I recommend that the charges be referred to:

- a. ☐ a Summary Court-Martial;
- b. ☐ a Special Court-Martial;
- c. ☐ a Special Court-Martial empowered to adjudge a Bad Conduct Discharge;
- d. ☒ a General Court-Martial;
- e. ☐ Other Disposition.

8. The undersigned POC can be contacted through 2nd BCT Legal Center at DNVN 523-8558.

3 Encls

- 1. DD Form 458
- 2. ERB
- 3. Supporting Documents

[REDACTED] b(6)-2
CPT, IN
Commanding

016800

DEPARTMENT OF THE ARMY
Headquarters, 1st Infantry Division
Office of the Commanding General
APO AE 09036

AETV-BGCG

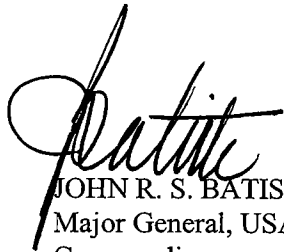
b(6)-5;

MEMORANDUM FOR PFC Edward L. Richmond, Jr., [REDACTED] Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, Kirkuk, Iraq, APO AE 09347-9998

b(6)-5;

SUBJECT: Referral of Court-Martial Charges, PFC Edward L. Richmond, Jr., [REDACTED] Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, Kirkuk, Iraq, APO AE 09347-9998

The charge and its specification, preferred on 5 April 2004, is referred to the general court-martial convened by Court-Martial Convening Order Number 3, this headquarters, dated 10 May 2004. This case is referred as noncapital.



JOHN R. S. BATISTE
Major General, USA
Commanding

016801

DEPARTMENT OF THE ARMY
Headquarters and Headquarters Company,
1st Battalion, 27th Infantry, 25th Infantry Division (Light)
Kirkuk, Iraq, APO AE 09347-9998

APVG-UZC-HC


3 July 2004

MEMORANDUM FOR RECORD

SUBJECT: RECEIPT OF REFERRED CHARGE SHEET

I, Edward L. Richmond Jr., [REDACTED] HHC, 1-27th IN Bn, 2nd BCT, do hereby
acknowledge receipt of the charge and specification referred against me.

b(6)-5


EDWARD L. RICHMOND Jr.
PFC, USA

016802

DEPARTMENT OF THE ARMY REPORT OF RESULT OF TRIAL

For use of this form, see AR 27-10; the proponent agency is OTJAG

TO: Commander, 1st Infantry Division, APO AE 09393

1. Notification under R.C.M. 1101 and AR 27-10, paragraph 5-30 is hereby given in the case of the United States v. Private First Class Edward L. Richmond, [REDACTED] Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, 25th Infantry Division (Light), APO AE 09347-9998.

b(6)-5

2. Trial by General court-martial on 3 August, 2004 at Tikrit, Iraq, convened by CMCO Number 3 HQ, 1st Infantry Division, APO AE 09392.

3. Summary of offenses, pleas, and findings:

b(6)-4

CH	ART UCMJ	SPEC	BRIEF DESCRIPTION OF OFFENSE(S)	PLEA	FINDING
I	118	THE	On or about 28 Feb 04, murdered [REDACTED] by means of shooting him in the head with a rifle.	NG	NG*

*Not guilty, but guilty of voluntary manslaughter in violation of Article 119, UCMJ.

4. SENTENCE: To be reduced to Private E1, to forfeit all pay and allowances, to be confined for 3 years, and to be discharged with a Dishonorable Discharge.

5. Date sentence adjudged and effective date of any forfeiture or reduction in grade (YYYYMMDD): 20040805
(See UCMJ Articles 57-58b and R.C.M. 1101.)

6. Contents of pretrial agreement concerning sentence, if any: None.

7. Number of days of presentence confinement, if any: None.

8. Number of days of judge-ordered administrative credit for presentence confinement or restriction found tantamount to confinement, if any: 47 days.

9. Total presentence confinement credit toward post-trial confinement: 47 days.

10. Name(s) and SSN(s) of companion accused or co-accused, if any: None

11. DNA processing IAW 10 U.S.C. 1565 is not required.

12. Conviction(s) does not require sex offender registration IAW 42 U.S. C. 14071.

CF:
CDR, 2d BDE
CDR, 1/27th IN BN
CDR, 106 FIN BN D Det
Crim Law, OSJA, 1st ID
Trial Counsel
Defense Counsel

b(6)-2

TYPED NAME

b(6)-2

RANK

MAJ/Trial Counsel

BRANCH OF SERVICE

US ARMY

016803

CONFINEMENT ORDER

1. PERSON TO BE CONFINED		2. DATE (YYYYMMDD)	
a. LAST NAME - FIRST NAME - MIDDLE INITIAL		b. SSN	
RICHMOND, EDWARD L. JR		[REDACTED] 6/6-5	
20040805			
c. BRANCH OF SERVICE	d. GRADE	e. MILITARY UNIT	
U.S. ARMY	E3	Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, 25th Infantry Division (Light), Kirkuk, Iraq 09347-9998	
TYPE OF CONFINEMENT			
a. PRE-TRIAL <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES		b. RESULT OF NJP <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	
c. RESULT OF COURT-MARTIAL <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES			
TYPE: <input type="checkbox"/> SCM <input type="checkbox"/> SPCM <input checked="" type="checkbox"/> GCM <input type="checkbox"/> VACATED SUSPENSION			
4. OFFENSE(S)/CHARGES OF UCMJ ARTICLE(S) VIOLATED:			
119-Voluntary Manslaughter			
5. SENTENCE ADJUDGED: To be reduced to Private E1, to forfeit all pay and allowances, to be confined for 3 years, and to be discharged with a Dishonorable Discharge.			ADJUDGED DATE (YYYYMMDD)
			20040805
6. IF THE SENTENCE IS DEFERRED, THE DATE THE DEFERRMENT IS TERMINATED:			
7. PERSON DIRECTING CONFINEMENT 6/6-2			
a. TYPED NAME, GRADE AND TITLE OF OFFICER	b. SIGNATURE	c. DATE	d. TIME
MAJ [REDACTED] Trial Counsel	[REDACTED]	5 AUG 04	1700
8.a. NAME, GRADE, TITLE OF LEGAL REVIEW AND APPROVAL	b. SIGNATURE	c. DATE	
CPT [REDACTED] Chief, Criminal Law Division	[REDACTED]	5 Aug 04	
MEETINGS CERTIFICATE			
9a. The above named inmate was examined by me at _____ on _____ and found to be <input type="checkbox"/> FIT <input type="checkbox"/> UNFIT (Time) (YYYYMMDD)			
for confinement. I hereby certify that from this examination the execution of the foregoing sentence to confinement <input type="checkbox"/> will <input type="checkbox"/> will not produce serious injury to the inmate's health.			
b. The following irregularities were noted during the examination (if none, so state):			
c. HIV Test administered on (YYYYMMDD): _____			
d. Pregnancy test administered on (YYYYMMDD): _____ <input type="checkbox"/> N/A			
10. EXAMINER			
a. TYPED NAME, GRADE, AND TITLE:	b. SIGNATURE	c. DATE	d. TIME
RECEIPT FOR INMATE			
11. a. THE INMATE NAMED ABOVE HAS BEEN RECEIVED FOR CONFINEMENT AT: _____ (Facility Name and Location)			
ON _____ AND TIME _____ (YYYYMMDD) (Time)			
b. PERSON RECEIPTING FOR INMATE TYPED NAME, GRADE, AND TITLE:	c. SIGNATURE	d. DATE	e. TIME

DD FORM 2707, NOV 1999

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VICTIM/WITNESS CERTIFICATION AND ELECTION CONCERNING INMATE STATUS

(This form is exempt from Freedom of Information Act release.)

PRIVACY ACT STATEMENT

AUTHORITY: 42 U.S.C. 10606 et sec., Victim's Rights and Restitution Act of 1990; 18 U.S.C. 1501 et sec., Victim and Witness Protection Act of 1982.

PRINCIPAL PURPOSES: To inform victims and witnesses of their post-trial rights; to determine whether the victim or witness of a crime elects to be notified of changes in the confinement status of a convicted criminal offender; and to record the election by the victim or witness of their desire to be notified about subsequent changes in inmate status.

ROUTINE USES: None.

DISCLOSURE: Voluntary; however, failure to provide identifying information will prevent the corrections facility from notifying victim or witness of changes in a criminal offender's status.

SECTION I - ADMINISTRATIVE INFORMATION

Installation FOB WARRIOR City KIRKUK State IRAQ ZIP Code 09347
Incident Number N/A Organizational Identifier (ORI) 2d BCT, 25th ID

SECTION II - CERTIFICATION OF NO VICTIM OR WITNESS

(Complete this section only if there are no victims or witnesses who are entitled to notification under the Victim's Rights and Restitution Act of 1990, and DoD Instruction 1030.2.)

As representative for the Government in the court-martial case of United States v. _____,
(Name of accused) (Last, first, middle initial)

_____, convened by _____,
(Social Security Number) (Court-martial convening order number, date, and issuing command)

I certify that this case does not involve a victim or witness entitled to receive information about the confinement status of the defendant as required by the Victim's Rights and Restitution Act of 1990 (Public Law 101-647; 104 Stat. 4820).

(Signature of person certifying)

(Typed name (Last, first))

(Date) (YYYYMMDD)

(Grade and title)

SECTION III - CERTIFICATION OF ADVICE TO VICTIM(S) AND WITNESS(ES)

(Complete this section when there are victims or witnesses entitled to notification.)

b(6)-5

I certify that on this date I personally notified the victim(s) and witness(es) in the court-martial case of United States v.

Private First Class Edward L. Richmond Jr
(Name of accused) (Last, first, middle initial)

(Social Security Number)

convened by CMCO #3, dtd 10 May 2004, HQ, 1st Infantry Division
(Court-martial convening order number, date, and issuing command)

whose sentence included confinement, of their right under the Victim's Rights and Restitution Act of 1990 (Public Law 101-647, 104 Stat. 4820), to receive information about the status of the inmate, to include length of sentence, anticipated earliest release date, likely place of confinement, the possibility of transfer, and the right to receive notification of a new place of confinement. I advised of the possibility of parole or clemency with an explanation of these terms. Additionally, I advised of the right to prior notification of the inmate's parole hearings, release from confinement, escape and death. I advised that to receive notification of the inmate's transfer, parole hearings, and release from confinement, the victim or witness must provide the information required in Section IV of this form. I advised all victims and witnesses that if they elect to terminate or reinstate notifications, or if they change their address listed above, they must contact the Military Service Central Repository listed in Section V.

(Signature of person providing notification)

(Typed name (Last, first))

20040805

MAJ/JA

(Date) (YYYYMMDD)

(Grade and title)

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SECTION IV - ELECTION TO BE NOTIFIED

The victim(s) and witness(es) listed below have elected the right to receive information about changes in the status of the inmate by initialing the "Yes" block. If the inmate is transferred, they understand that they will be notified of the address of the new confinement facility. They also understand that if they move or their telephone number changes, they must notify the confinement facility of the new address or telephone numbers in order to be notified.

LIST ALL VICTIMS AND WITNESSES INVOLVED IN THE CASE. (Indicate whether a victim or witness be entering "V" or "W" in the appropriate column. Those who elect to be notified of inmate status changes should initial in the "Yes" column; otherwise initial the "No" column.)

NAME (Last, First, Middle Initial)	ADDRESS (Street, Apartment No., City, State, ZIP Code)	TELEPHONE NUMBER (Include Area Code)	V OR W	NOTIFY	
				YES	NO
SA [REDACTED]	286 th MP Det (CID) APO AE 09392		W		[REDACTED]
SA [REDACTED]	286 th MP Det (CID) APO AE 09392	b(6)-4 (all)	W		[REDACTED]
SPC [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998		W		[REDACTED]
CPT [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998		W		[REDACTED]
1LT [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998		W		[REDACTED]
SFC [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998		W		[REDACTED]
SSG [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998		W		[REDACTED]
SSG [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998		W		[REDACTED]

SECTION V DISTRIBUTION

(Address: include 9-digit ZIP Code and telephone number.)

MILITARY SERVICE CENTRAL REPOSITORY DEPARTMENT OF THE ARMY U.S. AND MP Support Agency 4401 Ford Ave., Suite 225 Alexandria, VA 22302-1432	LOCAL CONFINEMENT FACILITY
LAW ENFORCEMENT/SPECIAL INVESTIGATION	VICTIM/WITNESS (Individual will receive a copy with all other victim/witness addresses blacked out.)

DD FORM 2704, MAR 1999 (BACK)

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CONTINUATION SHEET 1, DD FORM 2704, UNITED STATES v. PRIVATE FIRST CLASS
EDWARD L. RICHMOND, JR

Section IV (Cont'd):

NAME (Last, First, Middle Initial)	ADDRESS (Street, Apartment No., City, State, ZIP Code)	TELEPHONE NUMBER (Include Area Code)	V OR W	NOTIFY	
				YES	NO
SPC [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998		W	[REDACTED]	
CPT [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998		W	[REDACTED]	
SGT [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998		W		[REDACTED]
SPC [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998	6(6)-4 (all)	W		[REDACTED]
CPL [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998		W		[REDACTED]
SGT [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998		W		[REDACTED]
PFC [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998		W	[REDACTED]	
SSG [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998		W	[REDACTED]	
SA [REDACTED]	286 th MP Det (CID) APO AE 09392		W		[REDACTED]
SSG [REDACTED]	HHC, 1-27 th IN Bn APO AE 09347-9998		W	[REDACTED]	

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UNITED STATES

v.

Edward L. RICHMOND, Jr.
PFC, US Army
HHC, 1st Battalion, 27th Infantry
25th Infantry Division (Light)
APO AE 09347-9998

SECTION III NOTICE

31 July 2004

Pursuant to Section III of the MRE, Government informs the Defense of statements made by the accused. Government may use any and all statements at trial.

Date	In Presence of:	Statement/Synopsis
17 Apr 04	Article 32	Article 32 testimony
29 Mar 04	SA [REDACTED] SA [REDACTED]	DA Form 2823-B
1 Mar 04	SA [REDACTED] SA [REDACTED]	DA Form 2823
28 Feb 04	CPT [REDACTED] MAJ [REDACTED]	DA Form 2823 (1704 hours)
28 Feb 04	MAJ [REDACTED]	DA Form 2823 (1405 hours)
28 Feb 04	CPT [REDACTED]	DA Form 2823 (0940 hours)
28 Feb 04	1SG [REDACTED]	DA Form 2823 (0930 hours)
28 Feb 04	SPC [REDACTED] and others	"Can I shoot him?" "I shot him" "SGT [REDACTED] was putting the flexcuffs on and the guy turned his head and then jumped at SGT [REDACTED] so I shot him in the back of the head." "I'm gonna shoot me an Iraqi" "This is my day" "I'm gonna get one today" Joking/bragging about what he would do in combat situations. "I want to get a bayonet kill." "I'm going to shoot/kill an Iraqi." "There's a kid walking by, he's got sheep, can I shoot him?" "He came/jumped at you."
Divers	SPC [REDACTED]	
Divers	PFC [REDACTED]	
Divers	SPC [REDACTED]	
28 Feb 04	SPC [REDACTED]	
28 Feb 04	SGT [REDACTED]	

b(6)-4 (all)

I certify that on 31 JUL 04 this Government Section II Notice was delivered by e-mail to Defense Counsel, CPT [REDACTED]

b(6)-2

[REDACTED]
MAJ, JA
2-25 BCT TF JA

b(6)-2

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UNITED STATES

v.

Edward L. RICHMOND, Jr.
PFC, US Army
HHC, 1st Battalion, 27th Infantry
25th Infantry Division (Light)
APO AE 09347-9998

GOVERNMENT DISCOVERY
RESPONSE II

27 July 2004

1. Government responds to Defense Supplemental Request for Discovery dated 20 July 2004. The responses correspond to the bolded requests according to the numbered paragraphs in the Defense request.

d. Noted. If the M4 previously assigned to the Accused is not available, Government will endeavor to obtain a similar M4 with scope.

e. Government provided available documents. Government will inquire again.

f. Government may call all of the listed witnesses during the merits and sentencing, except that the Government does not plan to call the following at sentencing: CPT [REDACTED] SPC [REDACTED] SA [REDACTED], and SA [REDACTED]. Government may also call CPT [REDACTED] HHC, 1-27 IN, on sentencing. b(6)-2
b(6)-1

Note. Government may not call all above listed witnesses due to operational requirements and difficulty in travel to and through the combat theater. If Defense requests any of these witnesses, it should make a specific by-name request IAW RCM 703.

i. See 1.f. above.

j. Provided, if known and applicable. b(6)-4

(1) NCIC checks of CPT [REDACTED], SGT [REDACTED], SPC [REDACTED], SPC [REDACTED], SPC [REDACTED], and SPC [REDACTED] revealed no derogatory information. A check of PFC [REDACTED] revealed a guilty disposition to a charge of driving with a suspended license in 1998-99.

(2) Provided, if known. The Accused's Company Commander indicates that his company does not maintain a Counseling Packet on SGT [REDACTED] at DREAR.

(3) See 1.e. above.

(5) The polygraph examination was inconclusive, and has no evidentiary or investigative value. Defense has not demonstrated a need for the polygraph records maintained in Virginia. Defense may interview the polygrapher to evaluate a legal need for the documents, then if necessary file a motion to obtain a judicial order for production of said documents.

(6) Access to the witnesses and requested documents is granted.

n. Requested document is available in the TJAGLCS Operational Law Handbook.

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2. Noted.

3. Government requests reciprocal discovery IAW RCM 701.

[REDACTED]

b(6)-2

MAJ, JA
2-25 BCT TF JA

I certify that on 27 JUL 04 this Government Discovery Response and Request for Reciprocal Discovery was delivered by e-mail to Defense Counsel, CPT [REDACTED]

[REDACTED]

b(6)-2

MAJ, JA
2-25 BCT TF JA

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UNITED STATES

v.

PFC Edward L. Richmond, Jr.
U.S. Army
Headquarters and Headquarters Co.,
1st Battalion, 27th Infantry Regiment
25th Infantry Division (Light)
APO AE 09347

)
)
) NOTICE OF WITNESSES AND
) REQUEST FOR PRODUCTION OF
) WITNESSES
)
)
)
)
)
)

21 July 2004

The defense requests production of the following witnesses for the merits phase of the proceedings, pursuant to Rule for Court-Martial (R.C.M.) 701(b)(1)(A), 703(a), 703(b)(1) and 703(c)(2):

- b(6)-4
(511)
- a. CPT [REDACTED] Headquarters and Headquarters Company, 1-27th Infantry, FOB McHenry, Kirkuk, Iraq. CPT Flores will testify on the merits as a "good soldier" witness. He has been PFC Richmond's Platoon Leader since 1 February 2003. He will testify that PFC Richmond was a very good soldier who was the best gunner in the platoon.
 - b. SFC [REDACTED] Headquarters and Headquarters Company, 1-27th Infantry, FOB McHenry, Kirkuk, Iraq. SFC [REDACTED] will testify on the merits as a "good soldier" witness. He has been PFC Richmond's Platoon Sergeant since PFC Richmond joined the unit in Hawaii. He will testify that PFC Richmond was a very good soldier who was the best gunner in the platoon. He will further testify to PFC Richmond's as a good soldier and leader among his peers.
 - c. SSG [REDACTED] Headquarters and Headquarters Company, 1-27th Infantry, FOB McHenry, Kirkuk, Iraq. SSG [REDACTED] will testify on the merits as a "good soldier" witness. He has known PFC Richmond for over a year and can testify as to the soldier's duty performance. SSG [REDACTED] will testify as to the ROE that was briefed prior to the mission on 28 February 2004.
 - d. SSG [REDACTED], Headquarters and Headquarters Company, 1-27th Infantry, FOB McHenry, Kirkuk, Iraq. SSG [REDACTED] will testify on the merits as a "good soldier" witness. He has known PFC Richmond during the soldier's entire time in the unit. He can testify as to the soldier's duty performance and will testify that PFC Richmond is a hard worker and was working toward becoming a non-commissioned officer.
 - e. SPC [REDACTED] Headquarters and Headquarters Company, 1-27th Infantry, FOB McHenry, Kirkuk, Iraq. SPC [REDACTED] will testify on the merits as a "good soldier" witness. SPC [REDACTED] and PFC Richmond have been members of the same squad for over 18 months. During part of this period, PFC Richmond was the soldier's team leader. In addition to

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good soldier testimony, SPC [REDACTED] will testify as to the frequency and type of ROE training that was given to the Mortars Platoon.

f. PFC [REDACTED], Headquarters and Headquarters Company, 1-27th Infantry, FOB McHenry, Kirkuk, Iraq. PFC [REDACTED] will testify on the merits as a "good soldier" witness. SPC [REDACTED] and PFC Richmond have been members of the same squad for over 12 months. PFC Richmond was PFC Richmond's gunner and they worked together on a daily basis. In addition to good soldier testimony, PFC [REDACTED] will testify at the presentencing phase as to PFC Richmond's rehabilitative potential. b(6)-4 (c)(1)

g. PFC [REDACTED], Headquarters and Headquarters Company, 1-27th Infantry, FOB McHenry, Kirkuk, Iraq. PFC [REDACTED] will testify on the merits as a "good soldier" witness. PFC [REDACTED] and PFC Richmond have had daily interaction from the time PFC Richmond joined the unit through the end of February. They convoyed north from Kuwait into Iraq and PFC Richmond was PFC Richmond's gunner and they worked together on a daily basis. In addition to good soldier testimony, PFC [REDACTED] will testify at the presentencing phase as to PFC Richmond's rehabilitative potential.

The above-listed witnesses will also be called as presentencing witnesses. The accused, by and through his detailed defense counsel, hereby requests government production of the following additional witnesses for the presentencing phase of the proceedings, pursuant to R.C.M. 701(b)(1)(B)(i), 703(a), 703(b)(2) and 703(c)(2) and 1001(e):

SSG [REDACTED], Headquarters and Headquarters Company, 1-27th Infantry, FOB Warrior, Kirkuk, Iraq. SSG [REDACTED] will testify that PFC Richmond has worked for him periodically at FOB Warrior since the time PFC Richmond was moved to the FOB at the end of March. He will testify about their daily interactions and work relationship. He believes PFC Richmond is a good soldier and he would allow PFC Richmond to work for him again. He will provide an opinion as to PFC Richmond's rehabilitative potential.

SSG [REDACTED], Headquarters and Headquarters Company, 1-27th Infantry, FOB Warrior, Kirkuk, Iraq. SSG [REDACTED] will testify that PFC Richmond has worked for him periodically at FOB Warrior since the time PFC Richmond was moved to the FOB at the end of March. He will testify about their daily interactions and work relationship. He believes PFC Richmond is a good soldier and he would allow PFC Richmond to work for him again. He will provide an opinion as to PFC Richmond's rehabilitative potential.

RESPECTFULLY SUBMITTED:

[REDACTED]
CPT, JA
Trial Defense Counsel b(6)-2

CERTIFICATE OF SERVICE

I certify that on 21 July 2004 this defense Notice of Witnesses and Request for Production of Witnesses was served on the government via e-mail to [REDACTED]@us.army.mil.

b(6)-2

[REDACTED]
CPT, JA
Trial Defense Counsel

From [REDACTED]@us.army.mil
Sent Wednesday, July 21, 2004 4:16 pm
To [REDACTED]@us.army.mil
Cc
Bcc

b(6)-2
(21)

Subject Req for Prod of Iraq Witnesses

Attachments Notice of Witnesses & Req for Prod.pdf

162K

Sir,
Please see attached.

To date, I don't have any reciprocal discovery or disclosures. I will continue to comply accordingly if anything new comes up.

V/R,

[REDACTED]
[REDACTED]
CPT, JA
Trial Defense Counsel
Tikrit Branch Office (FOB Danger)
Region IX
DNVT: 553-9383 or 553-3362
E-mail: [REDACTED]@us.army.mil

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016815

UNITED STATES

v.

Edward L. RICHMOND, JR.
PFC, U.S. Army
HHC, 1st Battalion, 27th Infantry Regiment
25th Infantry Division (Light)
APO AE 09347-9998

SUPPLEMENTAL
REQUEST FOR DISCOVERY

20 July 2004

1. In accordance with the Rules for Courts-Martial (R.C.M.) and the Military Rules of Evidence (M.R.E.), Manual for Courts-Martial, United States, 2002 edition, the defense submits this Supplemental Request for Discovery and requests that the government produce and permit the defense to inspect, copy, or photograph each of the following items which are known, or should through the exercise of due diligence be known, to the United States or its agents. The defense requests the government to notify the defense in writing which specific items of requested information or evidence will not be provided and the reason for denial of discovery. **This request mirrors the defense Request for Discovery dated 14 May 2004. New information is listed in bold-face type.**

a. R.C.M. 701(a)(1)(A). All papers which accompanied the charges when they were referred to court-martial, including, but not limited to, the charge sheet, transmittals of charges from the commanders, law enforcement reports, laboratory reports, statements by the accused and witnesses, and the Staff Judge Advocate's pre-trial advice.

b. R.C.M. 701(a)(1)(B). The convening order and all amending orders.

c. R.C.M. 701(a)(1)(C). All statements about the offense which are in the possession of the government. The term "statements" includes statements of any person, not just the accused and potential government witnesses, taken by or given to any person or agency, to include all civilian or military law enforcement agencies, inspector general investigations, AR 15-6 investigations, all commander's inquiries or investigations, and any press releases or documents produced or maintained by the Public Affairs Office of the 25th Infantry Division and 1st Infantry Division.

d. R.C.M. 701(a)(2)(A). Any books, papers, documents, photographs, tangible objects, buildings, or places, or copies of portions thereof, which are within the possession, custody, or control of military authorities, and which were obtained from or belong to the accused or are intended for use by trial counsel as evidence in the prosecution case-in-chief or are material to the preparation of the defense. **The defense may utilize PFC Richmond's M4 rifle as evidence at trial. The defense requests government production of the weapon for use at trial.**

e. R.C.M. 701(a)(2)(B). Any results or reports of physical or mental examinations, to include those of government witnesses, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of military authorities, the existence of which is known to the trial counsel or should be known by the exercise of due diligence, and which are intended for use by the trial counsel as evidence in the prosecution case-in-chief or which are

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material to the preparation of the defense. The defense received from the government two DA Form 3822-R, Reports of Mental Status Evaluation for SGT [REDACTED]. These reports are dated 18 May 04 and 20 Jun 04. The defense request production of any and all mental evaluation records for SGT [REDACTED] from 17 Feb 04 through the present day. The defense believes additional DA Forms 3822-R exist for this patient in addition to any notes or records maintained by mental health professional and the soldier's local Combat Stress Team. b(6)-4 (11)

f. R.C.M. 701(a)(3)(A). The names, addresses, and telephone numbers of all witnesses the government intends to call in its case-in-chief. **Please distinguish which witnesses are to be called during the government's case-in-chief.**

g. R.C.M. 701(a)(4). Notice and copies of the records of prior civilian or military convictions of the accused which may be offered by the government during trial on the merits, impeachment, or presentencing proceedings.

h. R.C.M. 701(a)(5)(A). Copies of all written material to be presented by the government at the presentencing proceedings, to include the accused's personnel records.

i. R.C.M. 701(a)(5)(B). The names, addresses, and telephone numbers of all witnesses the government intends to call at the presentencing proceedings. **Please distinguish which witnesses are to be called at the presentencing phase of the government's case.**

j. R.C.M. 701(a)(6). All evidence which may negate the guilt of the accused, reduce the degree of guilt of the accused, or reduce the punishment. See Brady v. Maryland, 373 U.S. 83 (1963); United States v. Agars, 427 U.S. 97 (1976). This request includes the disclosure of any and all evidence affecting the credibility of government witnesses, pursuant to United States v. Webster, 1 M.J. 216 (C.M.A. 1975). The following provides a non-exclusive list of matters subject to this request:

(1) Prior civilian or court-martial convictions or arrests of all government witnesses; request a check with the National Crime Information Center (NCIC), Criminal Records Center (CRC), and all local military criminal investigatory organizations; see United States v. Jenkins, 18 M.J. 583 (A.C.M.R. 1984).

(2) Records of pending and/or completed nonjudicial punishment; adverse administrative actions, including but not limited to, discharge prior to expiration of term of service for any reason, relief for cause actions, letters of reprimand, and letters of admonition; and all documents or counseling statements which refer to or relate to any adverse or disciplinary actions against government witnesses, to include but not limited to, the counseling packet and 201 file of SGT [REDACTED] see United States v. Green, 37 M.J. 88 (C.M.A. 1993). **Request production of SGT [REDACTED] entire counseling packet, to include any documents maintained by the D-Rear in Hawaii.**

(3) Any evidence, including medical records, of psychiatric treatment, mental disease or defect, combat stress treatment, head injury, alcoholism, or drug addiction of the accused and government witnesses; see United States v. Eshalomi, 23 M.J. 12 (C.M.A. 1986);

United States v. Brickey, 8 M.J. 757 (A.C.M.R. 1980), aff'd, 16 M.J. 258 (C.M.A. 1983); United States v. Brakefield, 43 C.M.R. 828 (A.C.M.R. 1971). The defense request production of any and all mental evaluation records for SGT [REDACTED] from 17 Feb 04 through the present day. The defense believes additional DA Forms 3822-R exist for this patient in addition to any notes or records maintained by mental health professional and the soldier's local Combat Stress Team. b(6)-y

(4) Evidence of character, conduct, or bias bearing on the credibility of government witnesses; see Giglio v. United States, 405 U.S. 150 (1972); United States v. Brickey, 8 M.J. 757 (A.C.M.R. 1980), aff'd, 16 M.J. 258 (C.M.A. 1983). This request includes, but is not limited to, information relating to any and all consideration or promises of consideration given to or made on behalf of government witnesses. By consideration, the defense refers to anything of value and use, including but not limited to, plea agreements, immunity grants, witness fees, special witness fees, transportation assistance to members of a witness' family or associates, and any civil or favorable treatment with respect to any pending civil, criminal, or administrative dispute between the government and that witness, and anything else which could arguably create an interest or bias in the witness in favor of the government or against the defense or act as an inducement to testify or to color or shape testimony.

(5) The questions, answers, and results of any polygraph examination of the accused and government witnesses, including the Polygraph Examination Report (DA Form 2802-E) and related polygraph records, the Polygraph Examination Authorization, and the Polygraph Examination Quality Control Review; see United States v. Mouguel, 6 M.J. 589 (A.F.C.M.R. 1978); United States v. Simmons, 38 M.J. 376 (C.M.A. 1993). This request includes those records maintained at the U.S. Army Crime Records Center, USACIDC, 6010 6th Street, Fort Belvoir, Virginia, 22060-5585. The defense renews its request for the documents maintained by the U.S. Army Crime Records Center. USACIDC will not release these documents to defense counsel.

(6) 201 files, unit files, and Military Personnel Records Jacket (MPRJ) of all government witnesses; request a hard copy of the Official Military Personnel File (OMPF) for each government witness; copies of the DA Form 2A, 2-1, and Enlisted Record Brief (ERB) for all enlisted government witnesses and ORBs for all officer government witnesses. The defense narrows this request to apply to the following listed government witnesses: PFC [REDACTED] CPT [REDACTED] SPC [REDACTED] SPC [REDACTED] SPC [REDACTED] SGT [REDACTED] and SPC [REDACTED]. Without copies of these records the defense can not adequately prepare a case in defense, extenuation or mitigation. The defense specifically requests the counseling packets of these witnesses. The ERBs for junior enlisted witnesses will show if the witnesses have been reduced in rank and include personnel data, such as training received, that may assist the defense in cross-examination. Logistical difficulties in Iraq prohibit defense access to these documents without government assistance. ORBs for government officer witnesses will enable the defense to better direct its voir dire for the panel. b(6)-y (c11)

(7) Counseling/performance files of the investigators who have or are presently participating in the investigation of the allegations contained in the charges and specifications

preferred against the accused, to include the records of SA [REDACTED] and SA [REDACTED] b(6)-1

k. R.C.M. 912(a)(1). The defense requests that the government submit to each panel member the written questions listed at R.C.M. 912 (a)(1) and provide copies of the signed responses of each member to the defense; request copies of the ORBs of officer panel members and DA Form 2A, 2-1, and ERB of enlisted panel members.

l. R.C.M. 912(a)(2). All written matters provided to the convening authority concerning the selection of members detailed to this court-martial or more broadly, selection of the members stated in the applicable Court-Martial Convening Order.

m. R.C.M. 914 (a)(2), 18 U.S.C. Section 3500, et. seq. The defense intends to move at trial for the production by the government of all statements by government witnesses which relate to the subject matter of their testimony, to include specifically statements made by SGT [REDACTED] b(6)-4
[REDACTED] the government is requested to voluntarily disclose all such statements before trial.

n. M.R.E. 201. Any matters the prosecution seeks to have judicially noticed. **Please provide to defense counsel a hard-copy or scanned electronic copy of CJCSI 3121.01A, dated 15 January 2000.**

o. M.R.E. 301(c)(2). Any immunity or leniency granted or promised to any government witness in exchange for testimony.

p. M.R.E. 304(d)(1). The contents of all statements, oral or written, made by the accused that are relevant to the case, known to the trial counsel, and within the control of the armed forces, regardless of whether the government intends to use the statements at trial. See United States v. Dancy, 38 M.J. 1 (C.M.A. 1993).

q. M.R.E. 304(d)(2)(B). Notice of government intent to offer against the accused a statement, oral or written, made by the accused that was not disclosed prior to arraignment.

r. M.R.E. 311(d)(1). Notice of all evidence seized from the person or property of the accused or believed to be owned by the accused which is intended to be offered at trial.

s. M.R.E. 311(d)(2)(B). Notice of government intent to offer evidence seized from the person or property of the accused that was not disclosed prior to arraignment.

t. M.R.E. 321(c)(1). All evidence of the identification of the accused at a line-up, photo line-up, show-up, voice identification, or other identification process which the government intends to offer at trial; request disclosure of any unsuccessful efforts at identification by any witness.

u. M.R.E. 321(c)(2)(B). Notice of government intent to offer identification evidence that was not disclosed prior to arraignment.

v. M.R.E. 404(b). Notice of whether the government intends to offer other crimes, wrongs, or acts of the accused; the defense requests copies of investigations, witness statements, and names and phone numbers of witnesses pertaining to such alleged crimes, wrongs, or acts.

w. M.R.E. 507. Disclosure of the identity, including name, address, and phone number, of all informants and notice of any government exercise of privilege.

x. M.R.E. 609(b). Notice of whether the government intends to impeach a witness with a conviction older than ten years.

y. M.R.E. 612. All writings or documents used by a witness to prepare for trial; the defense intends to move at trial for the production of any writings or documents used by any witness to refresh memory for the purpose of testifying, either while testifying or before testifying.

z. M.R.E. 807. Notice of any hearsay statements, oral or written, intended to be offered at trial under M.R.E. 807, the particulars of the statements, and the names, addresses, and the phone numbers of the declarants.

aa. Notification of testing upon any evidence which may consume the only available samples of the evidence and an opportunity to be present at such testing; an opportunity to examine all evidence, whether or not it is apparently exculpatory, prior to its release from the control of any government agency or agents. See United States v. Garries, 22 M.J. 288 (C.M.A. 1986), cert. denied, 479 U.S. 985 (1986); United States v. Mobley, 31 M.J. 273 (C.M.A. 1990).

bb. All evidence in rebuttal which is exculpatory in nature or material to punishment. See United States v. Trimper, 26 M.J. 534 (A.F.C.M.R. 1988), aff'd, 28 M.J. 460 (C.M.A.), cert. denied, 493 U.S. 965 (1989). The government is reminded that trial by "ambush" is improper. See United States v. Dancy, 38 M.J. 1 (C.M.A. 1993).

cc. All chain of custody documents generated by any law enforcement or military agency in conjunction with the taking of evidence during the investigation of the alleged offense.

dd. All case notes of the agents involved in this case, investigation report entries, photographs, slides, diagrams, sketches, drawings, electronic recordings, handwritten notes, interview worksheets, or any other similar documentation made by such law enforcement personnel pertaining to this case.

ee. A list of, and the opportunity to view prior to trial, all physical, demonstrative, or other evidence and proposed exhibits the government intends to introduce at trial.

ff. Names, addresses, and telephone numbers of any expert witnesses whom the government intends to call at trial; copies of all reports and statements of expert witnesses who spoke with witnesses or otherwise participated in the investigation of this case, regardless of whether such reports or statements are included in any formal report.

gg. Any statements, oral or written, made by the summary, special, or general court-martial

convening authorities in this case or by any officer superior to the general courts-martial convening authority, whether oral or written, which:

(1) in any manner, withholds from a subordinate commander the authority to dispose of the accused's case under the UCMJ, to impose nonjudicial punishment upon the accused, to order the accused's separation or release from active duty or active duty for training, or to order the accused into pretrial confinement.

(2) provides guidance to any subordinate commander concerning the appropriate level of disposition of the charged offenses and/or punishment for the charged offense, either made before or after the offense at issue in this case.

hh. United States v. Nix, 40 M.J. 6 (C.M.A. 1994). Disclosure of any information known to government agents which in any manner indicates that a person who forwarded the charges with recommendations displayed bias or prejudice or had an other-than-official interest in the case.

ii. Notice to the defense of the nature of any past or present relationships, associations, or ties between any potential member of the court-martial panel and the trial counsel, assistant trial counsel, chief of military justice, or the Staff Judge Advocate; this request specifically includes, but is not limited to, any religious, social, business, professional, or recreational associations.

2. This discovery request is continuing and shall apply to any additional charges or specifications that may be preferred after this request for discovery is served upon the government. **The bolded information is not intended to limit the responsibility of the government to provide discovery as appropriate; it is intended only to highlight new information incorporated in the defense request.** Immediate notification of new evidence and/or material is requested. A negative response is requested on all items the government is unwilling or unable to produce. The government is reminded of its obligation to provide full discovery in a timely manner. Gamesmanship and trial by ambush are not appropriate. See United States v. Adens, 56 M.J. 724 (A.C.C.A. 2002).


CPT, JA

Trial Defense Counsel

b(6)-2

CERTIFICATE OF SERVICE

I certify that on 20 July 2004 this defense Supplemental Request for Discovery was served on the government via e-mail to [REDACTED]@us.army.mil.

[REDACTED]

b(6)-2

CPT, JA
Trial Defense Counsel

UNITED STATES

v.

PFC Edward L. Richmond, Jr.
U.S. Army
Headquarters and Headquarters Co.,
1st Battalion, 27th Infantry Regiment
25th Infantry Division (Light)
APO AE 09347

DEFENSE RESPONSE TO
GOVERNMENT MOTION
IN LIMINE II

19 July 2004

COMES NOW the accused, PFC Edward L. Richmond, Jr., by and through counsel, to respond to the Government's Motion in Limine to preclude the defense from referencing an alleged order by CPT [REDACTED] to "shoot all males fleeing the village."

b(6)-4 (all)

A. RELIEF SOUGHT

The defense respectfully requests that the government's Motion in Limine be denied. The evidence at issue meets the requirement of Military Rule of Evidence (M.R.E.) 401. The government fails to establish why introduction of such evidence is improper under M.R.E. 403.

B. BURDEN OF PROOF & STANDARD OF PROOF

As the proponent of the motion, the government bears the burden of proof by a preponderance of the evidence. Rule for Courts-Martial (R.C.M.) 905(c). On appeal, the standard of review is for an abuse of discretion. See United States v. Jenkins, 27 M.J. 209, 211 (C.M.A. 1988).

C. FACTS

On 27 February 2004, Headquarters and Headquarters Company, 1-27 Infantry, tasked SGT [REDACTED], Mortars Platoon, to join a mission lead by A Company, 1-27 Infantry. Late in the evening of 27 February 2004, SGT [REDACTED] attended a pre-mission briefing. At the briefing, the A Company Commander, CPT [REDACTED] told the soldiers words to the effect of, "if there are any males fleeing the village, shoot them," or "put them down."

After the briefing, SGT [REDACTED] returned to his platoon area to brief the 4 or 5 soldiers that would be joining him on the mission. These soldiers did not attend the briefing by CPT Carpenter. SGT [REDACTED] briefed these soldiers that CPT [REDACTED] had announced that if anyone was fleeing the village or running across the field that the soldiers were to shoot that person. PFC [REDACTED] attending this briefing and heard SGT [REDACTED] instructions. Other soldiers, including SPC [REDACTED] also attended the briefing and heard SGT [REDACTED] instructions.

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D. LAW

The defense relies on the following authorities in support of this responsive motion:

R.C.M. 905

M.R.E. 401

M.R.E. 402

M.R.E. 403

United States v. Lanier, 50 M.J. 772 (A.C.C.A. 1999)

United States v. Schap, 49 M.J. 317 (C.A.A.F. 1998)

United States v. Simmons, 48 M.J. 193 (C.A.A.F. 1998)

United States v. Staley, 36 M.J. 896 (A.F.C.M.R. 1993)

United States v. Cole, 29 M.J. 873, 876 (A.F.C.M.R. 1989), aff'd, 31 M.J. 270 (C.M.A. 1990)

United States v. Jenkins, 27 M.J. 209 (C.M.A. 1988)

Department of the Army Pamphlet 27-9, para. 5-3-1, dated 1 April 2001

E. WITNESSES & EVIDENCE

The defense requests the opportunity to cross-examine any government witnesses called in support of this motion.

F. ARGUMENT

The government asserts that the statements by CPT [REDACTED] are not relevant. Alternatively, if relevant, the government states that the probative value would be substantially outweighed by the danger of unfair prejudice and confusion of the issues. The government believes that presentation of such evidence would mislead the members and would be a waste of time. The government fails to offer any specific argument as to why the statements should be excluded under M.R.E. 401 – 403. b(6)-4

For evidence to be admitted, it must be both logically and legally relevant at trial. See United States v. Simmons, 48 M.J. 193, 196 (C.A.A.F. 1998). Relevance is evaluated as any “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” M.R.E. 401. Generally, all relevant evidence is admissible. M.R.E. 402.

Once the threshold determination of relevancy is met, evidence may be evaluated for admissibility under M.R.E. 403. Evidence may be excluded if its prejudicial effect is “substantially outweighed” by the probative value of the evidence. The military judge is the gatekeeper for such evidence and should apply a balancing test to determine the admissibility of evidence under M.R.E. 403. See United States v. Staley, 36 M.J. 896 (A.F.C.M.R. 1993); United States v. Cole, 29 M.J. 873, 876 (A.F.C.M.R. 1989), aff'd, 31 M.J. 270 (C.M.A. 1990).

In the present case, the statements made by CPT [REDACTED] are relevant as required by M.R.E. 401 because they are logically related to the charged offenses. Evidence that CPT [REDACTED] briefed soldiers to "shoot all males fleeing the village," and to "put them down" is relevant to the charge of murder. A recognized defense to the charge of homicide is that the accused acted in defense of another or in self-defense. When evaluating such a defense, a military judge may instruct the panel: "To determine the accused's actual belief as to the amount of force necessary, you must view the situation through the eyes of the accused." Department of the Army Pamphlet 27-9, para. 5-3-1, dated 1 April 2001 [hereinafter "DA Pam."]; see also United States v. Lanier, 50 M.J. 772, 776 (A.C.C.A. 1999) (noting the military judge gave the proper defense of another instruction that "correctly oriented the members to view the situation through appellant's eyes"). In viewing the situation through the eyes of the accused, the trier-of-fact may consider any unlimited number of factors, to include: age, intelligence and emotional control. DA Pam. 27-9, para. 5-3-1. In the present case, the accused's knowledge of the mission objective and Rules of Engagement (ROE) for the mission are all relevant to evaluating the situation from the eyes of the accused. b(6)-4

Additionally, CPT [REDACTED] statements are legally relevant as required by M.R.E. 403, as their probative value greatly outweighs any prejudicial effect. The government fails to state the prejudicial effect of the admissibility of the statement and fails to name who would be prejudiced by their admissibility. Further, the government has failed to allege how the members would be misled or confused by the presentation of testimony regarding CPT [REDACTED] statement. Ultimately, any such minor confusion can be clarified, delimited or expounded upon by the military judge at the instructions phase of the cases. See United States v. Schap, 49 M.J. 317, 324 (C.A.A.F. 1998) (upholding the military judge's explanation in instructions to the panel). b(6)-4

G. CONCLUSION

The government has failed to meet its burden to show why CPT [REDACTED] statements are inadmissible. The statements are both relevant under M.R.E. 401 and admissible under M.R.E. 402 and 403. The defense respectfully request that the government Motion in Limine be denied. b(6)-4

RESPECTFULLY SUBMITTED:

[REDACTED]

CPT, JA
Trial Defense Counsel

CERTIFICATE OF SERVICE

I certify this I served this Defense Response to Government Motion in Limine II
on the government trial counsel via e-mail at [REDACTED]@us.army.mil and on the military
judge via e-mail on 19 July 2004.

b(6)-2

[REDACTED]

CPT, JA
Trial Defense Counsel

UNITED STATES

v.

PFC Edward L. Richmond, Jr.
U.S. Army
Headquarters and Headquarters Co.,
1st Battalion, 27th Infantry Regiment
25th Infantry Division (Light)
APO AE 09347

MOTION TO COMPEL
PRODUCTION OF OVERSEAS
WITNESS

17 July 2004

COMES NOW the accused, PFC Edward L. Richmond, Jr., by and through counsel, to move for the production of Mr. [REDACTED] pursuant to Rule for Courts-Martial (R.C.M.) 703, R.C.M. 906(b)(7), and R.C.M. 1001(e).

b(6)-4

A. RELIEF SOUGHT

The defense respectfully requests that the defense Motion to Compel Production of Overseas Witness be granted and that [REDACTED] be permitted to come to Iraq to testify at his [REDACTED] General Court-Martial.

b(6)-4

B. BURDEN OF PROOF & STANDARD OF PROOF

As the proponent of the motion, the defense bears the burden of proof by a preponderance of the evidence. R.C.M. 905(c). The standard of appellate review for denials of requests for the production of witnesses is abuse of discretion. *See United States v. Reveles*, 41 M.J. 388, 393-94 (C.A.A.F. 1995).

C. FACTS

On or about 15 June 2004, the government, the defense, and a representative of the trial judiciary informally agreed upon 1-3 August 2004 as the trial dates for the above-captioned case.

On 17 June 2004, the defense submitted to government counsel a request for the production of PFC Richmond's [REDACTED], to testify at his [REDACTED] General Court-Martial.

b(6)-4

On 2 July 2004, fifteen days after the submission of the defense request, government counsel indicated that the government would not produce [REDACTED]. On that same day, the defense submitted a request for production to the Commanding General of the 1st Infantry Division, the General Court-Martial Convening Authority [hereinafter 'convening authority'].

(same)

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On 4 July 2004, government counsel notified the defense of the witnesses it intends to call at trial. Two of the listed witnesses are active duty service members stationed at Ft. Hood, Texas. The government will produce those witnesses for trial.

On 16 July 2004, two weeks after the submission of the 2 July defense request, the convening authority denied the defense request for production of [REDACTED]

Mr. [REDACTED] is willing to come to Iraq for his [REDACTED] court-martial. He is willing to do so at his own expense. He will reimburse the government, if necessary, for any transportation, meals and/or lodging arranged at government expense. He is willing to sign a government-drafted "hold harmless" agreement in order to travel to Iraq. b(6)-4

The defense requests judicial notice of the fact that the government does not have federal subpoena power to compel production of witnesses at a General Court-Martial in Iraq.

Mr. [REDACTED] is the only overseas witness of whom PFC Richmond requested government production. (same)

If PFC Richmond is convicted of the charge for which he stands trial, he is facing a maximum confinement of life in prison.

D. LAW

The defense relies on the following authorities in support of its motion:

R.C.M. 703

R.C.M. 905

R.C.M. 906

R.C.M. 1001

Weiss v. United States, 510 U.S. 163 (1994)

United States v. Breeding, 44 M.J. 345 (C.A.A.F. 1996)

United States v. Reveles, 41 M.J. 388 (C.A.A.F. 1995)

United States v. Harmon, 40 M.J. 107 (C.M.A. 1994)

United States v. Credit, 8 M.J. 190 (C.M.A. 1980)

United States v. Williams, 3 M.J. 239 (C.M.A. 1977)

E. EVIDENCE

The defense requests consideration of the following documentary evidence, attached to this motion:

1. Memorandum for Commander, 1st Infantry Division, from CPT [REDACTED] dated 2 Jul 04 (with Enclosures A & B) b(6)-2

- b(6)-2
2. Memorandum for Commanding General, 1st Infantry Division, from LTC [REDACTED] dated 15 Jul 04
 3. Memorandum for CPT [REDACTED] Trial Defense Services, from MG John R.S. Batiste, dated 16 Jul 04
 4. E-mail for CPT [REDACTED] from Mrs. [REDACTED] dated 6 Jul 04
- b(6)-2
- b(6)-3

If the Court requires additional information, the defense respectfully requests the opportunity to file a Supplemental Brief to present additional evidence or affidavits to the Court.

F. ARGUMENT

At trial, a criminal accused is entitled to present witness testimony in defense, extenuation or mitigation. *See United States v. Harmon*, 40 M.J. 107, 108 (C.M.A. 1994) (recognizing the constitutional right of the defense to call witnesses and to determine which witnesses they want to call). Further established is a criminal accused's right to due process of law as guaranteed by the Fifth Amendment. *See Weiss v. United States*, 510 U.S. 163 (1994). A criminal accused is entitled to the production of witnesses at trial to the same extent as the government. R.C.M. 703(a); *see also United States v. Breeding*, 44 M.J. 345, 353 (C.A.A.F. 1996)(Sullivan, J., concurring)(finding that "[a] servicemember has the right to 'compulsory process for obtaining witnesses in his favor' under the Sixth Amendment").

Production is required when a witness' testimony is "relevant and necessary." R.C.M. 703(b)(1). The moving party must set forth "a synopsis of the testimony" and "reasons why the witness' personal appearance will be necessary." R.C.M. 703(c)(2)(B)(ii). The testimony of Mr. [REDACTED] is relevant as it is "necessary when it is not cumulative and when it would contribute to a party's presentation of the case in some positive way on a matter in issue." *See, e.g., United States v. Credit*, 8 M.J. 190, 193 (C.M.A. 1980); *United States v. Williams*, 3 M.J. 239 (C.M.A. 1977). Further, the testimony of Mr. [REDACTED] "is necessary for consideration of a matter of substantial significance to a determination of an appropriate sentence." R.C.M. 1001(e)(2)(A). For presentencing proceedings, a request for witness production is evaluated by additional factors outlined in the Manual for Courts-Martial. R.C.M. 1001(e). Ultimately, a balancing of the factors of R.C.M. 1001(e)(2)(E) shows that the significance of personal appearance by Mr. [REDACTED] outweighs any practical difficulties of producing Mr. [REDACTED]

b(6)-4

1. Costs of producing the witness. In his 16 July 2004 denial of the defense request for production, the convening authority does not allege cost as a prohibitive factor in the production of Mr. [REDACTED]. The government has conceded in verbal discussions that the cost of producing Mr. [REDACTED] is not a factor. Indeed, if necessary, Mr. [REDACTED] will pay for all costs associated with travel, food and lodging in Iraq.

2. Timing of the request for production of the witness. The defense submitted its initial request for the production of Mr. [REDACTED] over six weeks prior to the scheduled start of the court-martial. All significant delays are attributable to the government and should not be held

against PFC Richmond. Further, Mr. [REDACTED] already has a reserved seat on a flight into Kuwait with ample time to then travel to Iraq.

3. Potential delay in the presentencing proceeding that may be caused by the production of the witness. The defense asserts that timely action on the pending request will cause no delay in the presentencing proceedings.

4. Likelihood of significant interference with military operational deployment, mission accomplishment or essential training. The defense asserts that the production of Mr. [REDACTED] causes little interference with such unspecified missions.

The logistics cited by the convening authority as a reason to deny production do not outweigh the presence of Mr. [REDACTED] at trial. Logistical coordination is minimal. Mr. [REDACTED] already holds a reserved seat on a flight from Louisiana to Kuwait City. Once in Kuwait City, Mr. [REDACTED] will be met by a paralegal from Camp Doha who will escort him onto the military base and make arrangements for him to take a military C-130 flight into Balad or Baghdad. If Mr. [REDACTED] flies into Balad, he will be met by the assistant defense counsel who will arrange for them to fly together by military Black Hawk to Tikrit. If Mr. [REDACTED] flies into Baghdad, he will be met by a paralegal from the Camp Victory Trial Defense Services Office who will arrange for him to fly to Tikrit with the regional defense counsel. In Tikrit, Mr. [REDACTED] will be met by defense counsel and PFC Richmond in an uparmored military vehicle. Upon his initial arrival in Iraq, Mr. [REDACTED] will borrow an extra Kevlar and OTV with SAPI plates that will be returned to the government upon Mr. [REDACTED] departure from the Central Command (CENTCOM) area of operations (AO).

Worth noting is that the "logistics," which are of such concern to prohibit Mr. Richmond's attendance at trial, will not prevent the government from bringing two of their own witnesses into the 1st Infantry Division AO to testify against PFC Richmond.

If the venue for this case was the continental United States or PFC Richmond's regular duty location at Schofield Barracks, Hawaii, Mr. [REDACTED] could travel to the site of the trial and testify without the permission of the government. Mr. [REDACTED] could travel at his own expense and stay in a hotel of his choosing. He could arrange for his own meals and other amenities.

The venue of this case is Tikrit, Iraq. The government selected this venue. By trying this case in Iraq, the government has not simply limited the voluntary participation by civilian overseas witnesses, but rather has strictly prohibited it. Mr. [REDACTED] wants to testify for his [REDACTED] but as a U.S. citizen he can not simply book a commercial flight into Iraq, lease a rental car, drive to Tikrit, and check into a local hotel. In order to enter into the CENTCOM AO, he must have the permission of the U.S. government. It is this permission that the government refuses to give. The government need only issue Invitational Travel Orders (ITO) for Mr. [REDACTED] to testify at trial at his own expense.

Military personnel and civilian dignitaries enter the 1st Infantry Division (1ID) AO on a regular basis for, arguably, far less important missions. Civilian musicians and rock bands, with no connection to the military, are invited by the convening authority into the AO for the morale of the troops. Civilian representatives of the former Coalition Provisional Authority have flown into the 1ID AO for simple 'meet-and-greet' sessions with soldiers at the dining facility. These invitations are at the discretion of the convening authority. Yet, the government is choosing to prevent Mr. [REDACTED] from testifying in person at his [REDACTED] trial, in which PFC Richmond is facing life in prison, if convicted. b(6)-4

R.C.M. 1001(e)(2)(C) acknowledges that alternate forms of testimony may be appropriate in certain cases. However, the Rule also recognizes that there may exist "an extraordinary case when such a stipulation of fact would be an insufficient substitute for the testimony." The pending case is such an extraordinary case. PFC Richmond just turned 21-years-old. He is extremely close to his family. If PFC Richmond is convicted, Mr. [REDACTED] will be the defense's key sentencing witness. Mr. [REDACTED] is the only witness that can and will talk about PFC Richmond's upbringing; his relationship with his family; his grades in high school; his development to becoming a young adult. Mr. [REDACTED] will testify about why his [REDACTED] joined the Army and his progression as a young soldier. Mr. [REDACTED] will testify as to PFC Richmond's significant rehabilitative potential in society. This testimony is all unique to Mr. [REDACTED] when the court considers that the accused is only 21-years-old with limited world experience. The only other defense sentencing witnesses will be military witnesses who have known PFC Richmond for no more than approximately 2 years. b(6)-4

Alternate forms of testimony are not appropriate before the enlisted panel in front of which PFC Richmond has elected to be tried. A stipulation of fact or stipulation of expected testimony can not convey a [REDACTED] excitement in his [REDACTED] joining the military, his pride in his [REDACTED] deployment to Iraq, his confidence that his son can be rehabilitated, and his certainty that his [REDACTED] can recover in society from the stigma of a murder conviction. Neither telephonic nor video-conferencing (VTC) technology provides an adequate substitute. Both audio connections are marginal at best. The audio has a delay in transmission from the speaker to the listener. With the question and answer format of trial examination, this form of testimony will inevitably contain unavoidable talking over one another and repetition of questions and answers. Such testimony begs of judicial inefficiency. Further, the video feed is not guaranteed to match the audio feed, resulting in the audio and video being projected out of sync. The electricity in the courtroom is not reliable to ensure such testimony as an adequate substitute. If the electricity shuts off for even one second, the audio and video feeds will be terminated. A new telephone/VTC call must then be initiated. Understandably, power outages have no set schedule, however, to force PFC Richmond to proceed to trial under such circumstances invites prejudice to the soldier and judicial inefficiency. b(6)-4

G. CONCLUSION

The significance of the personal appearance of the witness to the determination of an appropriate sentence, when balanced against the practical difficulties of producing the witness, favors production of the witness. R.C.M. 1001(e)(2)(E). The defense Motion to Compel Production of Overseas Witness should be granted and the government should authorize Mr. [REDACTED] to travel to Iraq to testify at his [REDACTED] General Court-Martial. b(6)-4

RESPECTFULLY SUBMITTED:

[REDACTED]
CPT, JA
Trial Defense Counsel b(6)-2

I certify this I served this defense Motion to Compel Production of Overseas Witness on the government trial counsel via e-mail at [REDACTED]@us.army.mil and on the military judge via e-mail on 17 July 2004.

[REDACTED]
CPT, JA
Trial Defense Counsel b(6)-2

UNITED STATES

v.

PFC Edward L. Richmond, Jr.
U.S. Army
Headquarters and Headquarters Co.,
1st Battalion, 27th Infantry Regiment
25th Infantry Division (Light)
APO AE 09347

MOTION FOR APPROPRIATE
RELIEF

16 July 2004

COMES NOW the accused, PFC Edward L. Richmond, Jr., by and through counsel, to move for credit for violations of Article 13, Uniform Code of Military Justice (U.C.M.J.), restriction tantamount to confinement, and Rule for Courts-Martial (R.C.M.) 305.

A. RELIEF SOUGHT

The defense respectfully requests that the defense Motion for Appropriate Relief be granted and that PFC Richmond be awarded credit toward any approved sentence of confinement.

B. BURDEN OF PROOF & STANDARD OF PROOF

Unlawful pretrial punishment and circumstances tantamount to confinement are evaluated according to the totality of the circumstances. *See United States v. Herrin*, 32 M.J. 983, 985 (A.C.M.R. 1991). As the proponent of the motion, the defense bears the burden of proof by a preponderance of the evidence. The standard of appellate review is for abuse of discretion. *See United States v. McCarthy*, 47 M.J. 162, 166 (C.A.A.F. 1997).

C. FACTS

On 28 February 2004, Mr. [REDACTED], an Iraqi national, was killed near the village of Taal Al Jal. Since 28 February 2004, PFC Richmond has been the only person suspected of killing Mr. [REDACTED]. He is the only subject of the Criminal Investigative Command investigation.

Upon arriving at the scene of Mr. [REDACTED] death, 1SG [REDACTED] C Company, took all of PFC Richmond's weapons and supervised the transportation of the soldier from Taal Al Jal to Forward Operating Base (FOB) McHenry. PFC Richmond's platoon is stationed at FOB McHenry. Upon arriving at FOB McHenry in mid-morning, CSM [REDACTED] separated PFC Richmond from his unit and permitted him to stay in the tent that housed the chapel. That evening PFC Richmond was allowed to return to his platoon but was told to sleep on the floor of

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his squad leader's room. The squad leader became PFC Richmond's guard until he was transported to FOB Warrior on 29 February 2004. From 29 February 2004 through the present day, PFC Richmond has been physically separated from his platoon and forced to live on a different FOB.

During the month of March, PFC Richmond lived at FOB Warrior. His unit housed him in transient billeting in Building 645. Other soldiers passed through the transient billeting, however, PFC Richmond was one of the only full-time non-transient soldiers that was forced to live in this room. The room had no electricity, no heat, and no door to the room. Other E3s of Headquarters and Headquarters Company were not required to live under these circumstances. PFC Richmond was required to check in with SGT [REDACTED] of Headquarters and Headquarters Company during the duty day. PFC Richmond continually asked his supervisors at FOB Warrior "what was going on" and questioned why he was being held at FOB Warrior instead of working with his platoon at FOB McHenry. He was told words to the effect of "don't worry about it" and "everything will work out."

b(6)-4
(a11)

PFC Richmond is an 11C. He has not performed as an 11C, or performed any duties commiserate with his mos since 28 February 2004. During March and continuing through April, PFC Richmond worked "extra-duty-type" details. He filled sand bags for days in a row and hours on end. He used the filled sandbags to make walkways and parking stalls. He moved the filled sandbags to different designated blocking positions. He often performed these sandbags details on his own. PFC Richmond cut the grass surrounding the company area. When the equipment was broken he was required to cut the grass with his e-tool. When he was joined in these tasks, it was by soldiers who were performing extra duty or soldiers who were pending UCMJ action. PFC Richmond picked up trash and unsightly pieces of concrete and large trees and brush. PFC Richmond filled in holes in the driving areas with bags of gravel.

PFC Richmond's company commander preferred one charge of murder against the soldier on 5 April 2004.

In mid-April 2004, 1LT [REDACTED] the C Company Executive Officer, announced to approximately 15 soldiers that PFC Richmond was a "murderer" and that he "executed" someone. The incident with 1LT [REDACTED] occurred when he and PFC Richmond passed each other as one was exiting the ALOC and one was entering. 1LT [REDACTED] asked PFC Richmond if he was the soldier from mortars. When PFC Richmond responded affirmatively, 1LT [REDACTED] said words to the effect of, "Oh hell no. This is him. You're a fucking murderer." He continued with "I can't believe you just executed that guy! Why would you do something like that?" At least ten NCOs and junior enlisted soldiers were present in the entryway when 1LT [REDACTED] was making these comments in a loud accusatory voice. His comments were directed at PFC Richmond who was standing only a few feet from 1LT [REDACTED] and who was in clear view of the other soldiers.

After seeing PFC Richmond, 1LT [REDACTED] entered the ALOC. Once inside the ALOC, 1LT [REDACTED] began to show soldiers and officers in the ALOC the crime scene photos from the day of Mr. [REDACTED] death. On the day of the killing, 1LT [REDACTED] was the officer on the scene with a

digital camera who photographed Mr. [REDACTED] body. 1LT [REDACTED] retained these graphic photos on his digital camera and passed his camera around to other soldiers for them to view the photos. He made comments to the soldiers that PFC Richmond was guilty of murder. For some arbitrary reason, PFC Richmond has since been banned from the ALOC. The S4, CPT [REDACTED], will not allow PFC Richmond to perform duty in the ALOC despite requests by the company commander to permit him to do so. b6)-4 (all)

Further, the Headquarters and Headquarters Company First Sergeant, 1SG [REDACTED] humiliated PFC Richmond on several different occasions in front of junior enlisted soldiers and NCOs. Specifically, on one occasion, the 1SG called PFC Richmond a criminal while a line of approximately 40 soldiers waited to receive their anthrax shots. All of the 1st Battalion, 27th Infantry soldiers housed on FOB Warrior lined up to receive their anthrax shots. For accountability purposes, the 1SG verbally checked off each of the sections. For example, he would announce, "HCS," "Supply," "S1," "Commo," to ensure that each section was present. When he concluded reviewing the sections, 1SG [REDACTED] looked at PFC Richmond and another soldier pending UCMJ action and said "Criminals?" The soldiers who heard this remark ranged in rank from O3 to E1. The soldiers laughed and the 1SG moved away to carry on with other company business.

By the end of April, the command directed PFC Richmond to live with SGT [REDACTED]. There was no other PFC in the company that was forced to live with an NCO. Other housing was available but the command chose to house PFC Richmond with SGT [REDACTED] so that SGT [REDACTED] could escort PFC Richmond. PFC Richmond was not allowed to go anywhere without SGT [REDACTED]. He could not go to the DFAC alone. He could not go to the PX alone. He could not go to the phone or computer lab alone. He was not allowed to go to the laundry point alone. SGT [REDACTED] regulated PFC Richmond's duty day and his off-duty time.

During approximately the second week in May, PFC Richmond's command allowed him to convoy from FOB Warrior to FOB Speicher in order to meet with a psychiatrist. PFC Richmond, having had his weapon confiscated on 28 February 2004, asked his chain-of-command for his weapon during the convoy. The command denied his request. PFC Richmond was forced to endure a several-hour convoy from Kirkuk to Tikrit with no weapon and no way to protect himself or his comrades if attacked. Further, the command directed PFC Richmond to ride in an unarmored truck with just one unarmed local Iraqi driver.

By the end of May, PFC Richmond's command altered his living situation. No longer required to be under the 24/7 watchful eye of SGT [REDACTED], the command housed PFC Richmond with two other junior enlisted soldiers: PVT [REDACTED] and PFC [REDACTED]. PVT [REDACTED] after several instances of misconduct and an attempted suicide, was being chaptered out of the Army for patterns of misconduct. PFC [REDACTED] returned to his unit after a period of being absent without leave. These soldiers were the only ones required to live three-people to a room; other soldiers lived by themselves with an empty bunk in their room and space for an additional soldier.

D. LAW

The defense relies on the following authorities in support of its motion:

Article 13, U.C.M.J. (10 U.S.C. § 813)
R.C.M. 305
Bell v. Wolfish, 441 U.S. 520 (1979)
United States v. McCarthy, 47 M.J. 162 (C.A.A.F. 1997)
United States v. Stamper, 39 M.J. 1097 (A.C.M.R. 1994)
United States v. Latta, 34 M.J. 596 (A.C.M.R. 1992)
United States v. Herrin, 32 M.J. 983 (A.C.M.R. 1991)
United States v. Sassman, 32 M.J. 687 (A.F.C.M.R. 1991)
United States v. Russell, 30 M.J. 977 (A.C.M.R. 1990)
United States v. Villamil-Perez, 32 M.J. 341 (C.M.A. 1991)
United States v. James, 28 M.J. 214 (C.M.A. 1989)
United States v. Cruz, 25 M.J. 326 (C.M.A. 1987)
United States v. Mason, 19 M.J. 274 (C.M.A. 1985)
United States v. Suzuki, 14 M.J. 491 (C.M.A. 1983)
United States v. Carmel, 4 M.J. 744 (N.C.M.R. 1977)

E. WITNESSES & EVIDENCE

The defense requests argument on this Motion for Appropriate Relief. The defense intends to present the testimony of PFC Edward L. Richmond, Jr., for consideration of the motion only.

F. ARGUMENT

PFC Richmond suffered hostile and degrading treatment from the leadership of his company and is entitled to credit for unlawful pretrial punishment under Article 13, U.C.M.J.

Pretrial punishment is forbidden in accordance with Article 13, U.M.C.J., 10 U.S.C. § 813, which states that:

No person, while being held for trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances required to insure his presence . . .

The Court of Military Appeals in *United States v. James*, 28 M.J. 214 (C.M.A. 1989), adopting the standard in *Bell v. Wolfish*, 441 U.S. 520 (1979), set out a two-prong test to determine if a violation of Article 13 has occurred. The Court should first decide whether the particular conditions were imposed with the intent to punish. *See id.* at 216. If the answer is yes, then the conditions are punishment and the Court should consider a sentence credit. *See id.* If the answer is no, the Court should inquire as to whether the purposes purportedly served by the

conditions are reasonably related to a legitimate governmental objective. *See id.* “[I]f a restriction or condition is not reasonably related to a legitimate goal -- if it is arbitrary or purposeless -- a court permissibly may infer that the purpose of the governmental action is punishment.” *Bell*, 441 U.S. at 539.

Military appeals courts have routinely and “unequivocally” condemned conduct by those in positions of authority which result in needless military degradation, or public denunciation or humiliation of an accused.” *United States v. Latta*, 34 M.J. 596, 597 (A.C.M.R. 1992), *citing United States v. Cruz*, 25 M.J. 326 (C.M.A. 1987). Specifically, “public denunciation by the commander and subsequent military degradation before the troops prior to courts-martial constitute unlawful pretrial punishment prohibited by Article 13.” *Cruz*, 25 M.J. at 330. The court further denounced the unnecessary public identification of an apprehended person as a criminal suspect. *See id.* at 331 n.3.

Accused soldiers may be entitled to credit toward an approved sentence if they are repeatedly subject to disparaging remarks by the command. *See United States v. Stamper*, 39 M.J. 1097, 1100 (A.C.M.R. 1994) (awarding credit based on disparaging remarks by a company commander regarding a larceny the accused allegedly committed). In such instances, “these remarks chipped away at the accused’s presumption of innocence.” *Id.* Further, Article 13 credit can be granted for actions of the command toward the accused soldier when “some of the [restraints] bore no relation to the purposes of his restriction and were unnecessary to his presence.” *United States v. Carmel*, 4 M.J. 744, 748 (N.C.M.R. 1977).

Both 1LT [REDACTED] and 1SG [REDACTED] degraded and humiliated PFC Richmond in front of his fellow soldiers. Their comments clearly eroded the basic presumption of innocent until proven guilty. This “moral restriction” should be given significant weight by the court in a totality of the circumstances analysis. *See United States v. Russell*, 30 M.J. 977, 979 (A.C.M.R. 1990); *United States v. Carmel*, 4 M.J. 744, 748 (N.C.M.R. 1977).

b(6)-4

Furthermore, PFC Richmond was singled out by NCOs and leaders and treated in a derogatory manner in front of other soldiers. The degrading behavior was unwarranted and prejudicial to PFC Richmond. For certain periods, PFC Richmond was under constant NCO supervision. He was not permitted to go anywhere without this NCO escort while other soldiers were free to come and go as they pleased. By placing PFC Richmond in a living and work environment with others undergoing UCMJ action, the command unjustly stigmatized PFC Richmond. *See Carmel*, 4 M.J. at 748 (considering “constant, enforced association with . . . persons undergoing nonjudicial punishment,” as a factor to be considered when assessing unlawful pretrial punishment).

PFC Richmond is entitled to additional credit under Article 13, UCMJ, for unlawful pretrial punishment for the actions by his chain-of-command and for the unnecessary comments made by the unit leadership. *See Latta*, 34 M.J. at 597, *United States v. Villamil-Perez*, 32 M.J. 341, 343 (CMA 1991); *Cruz*, 25 M.J. at 330. The hostile treatment was demeaning to PFC Richmond and chipped away at his presumption of innocence. *See Stamper*, 39 M.J. at 1100.

There is no set formula for calculating credit for pretrial punishment. If the military judge finds that illegal pretrial punishment occurred, he or she determines the sentence credit to which the accused is entitled. The military judge may order more than day-for-day credit for illegal pretrial punishment. See *United States v. Suzuki*, 14 M.J. 491 (C.M.A. 1983).

Additionally, under *United States v. Mason*, 19 M.J. 274 (C.M.A. 1985), the Court should adjudge day-for-day confinement credit for time PFC Richmond was held in conditions tantamount to confinement. Whether conditions are tantamount to confinement depends on the totality of the circumstances. Factors to consider include the limits of the restriction, access to facilities, whether the soldier is singled out by the command, and whether the soldier is permitted to continue his normal assigned duties. See *United States v. Sassman*, 32 M.J. 687, 690 (A.F.C.M.R. 1991); *United States v. Russell*, 30 M.J. 977, 979 (A.C.M.R. 1990).

The actions of the command as early as 29 February 2004 are restriction tantamount to confinement. By moving PFC Richmond to a different FOB, under the circumstances of deployment, the command effectively restricted the soldier. PFC Richmond was singled-out by being forced to move to FOB Warrior. When, in a deployed environment, a soldier is reliant on his battle-buddies and his squad, PFC Richmond was moved from that secure environment. He no longer lived, worked or socialized with his squad or platoon. He had little to no contact with his platoon during the time he was at FOB Warrior. He was moved to an unfamiliar post where he knew no one. This was done as punishment to the soldier.

Several other factors contribute to the reasonable conclusion that PFC Richmond suffered restriction tantamount to confinement. The command took PFC Richmond's weapon from him on 28 February 2004. Despite repeated requests by the soldier, the command never returned any weapon to the soldier. In the Iraq Theater of Operations a weapon is a part of each soldier's assigned uniform. The obvious absence of a weapon signals to others that the particular soldier is different. Assuming arguendo, that PFC Richmond shot Mr. [REDACTED] the shot was a well-placed shot at a specified individual for a specified reason. PFC Richmond was not a threat to those around him. He never threatened to shoot any fellow soldiers or himself. To prohibit PFC Richmond from carrying a weapon on FOB Warrior for force protection was a decision made by the command designed to punish the soldier. b(6)-4

Additionally, since 29 February 2004, PFC Richmond was not permitted to continue his normally assigned duties. Instead, PFC Richmond was singled out and ordered to work extra duty type details. The factor on which the court should focus is not whether the tasks performed by PFC Richmond were those normally assigned to a PFC, but rather that the tasks were assigned to PFC Richmond because he was facing UCMJ action. Absent the pending UCMJ action, PFC Richmond would have performed the duties of an 11C and other combat arms duties. He was denied the opportunity to contribute meaningfully to his platoon and was forced to do menial tasks while pending court-martial.

G. CONCLUSION

Under the totality of the circumstances, PFC Richmond's chain of command unlawfully punished him prior to trial. The defense Motion for Appropriate Relief should be granted and PFC Richmond should be awarded an appropriate amount of credit toward any approved sentence of confinement for violations of Article 13, U.C.M.J. Additionally, PFC Richmond is entitled to 154 days credit for restriction tantamount to confinement and 154 days credit for a violation of R.C.M. 305(i), for the time period of 29 February through 31 July 2004.

RESPECTFULLY SUBMITTED:

[REDACTED]

CPT, JA
Trial Defense Counsel

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I certify this I served this defense Motion for Appropriate Relief on the government trial counsel via e-mail at [REDACTED]@us.army.mil and on the military judge via e-mail on 16 July 2004.

[REDACTED]

CPT, JA
Trial Defense Counsel

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DEPARTMENT OF THE ARMY
Headquarters, 1st Infantry Division
APO AE 09392

JUL 16 2004

AETV-BGCG

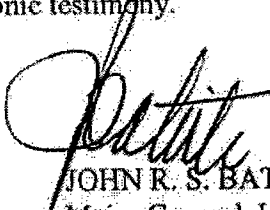
MEMORANDUM FOR Captain [REDACTED] U.S. Army Trial Defense Services, FOB
Danger, Tikrit, Iraq APO AE 09392

b(6)-2

SUBJECT: Request for Production of Overseas Witness

1. I have reviewed your request for the production of Mr. [REDACTED] and your request is denied. In making this determination, I have considered the safety of Mr. [REDACTED] the logistics involved with having Mr. [REDACTED] appear in court, R.C.M. 703, and R.C.M. 1001(e)(2)(E). b(6)-4

2. The government will agree to alternate forms of testimony from this witness such as a written stipulation of expected testimony or telephonic testimony.


JOHN R. S. BATISTE
Major General, USA
Commanding

016840



DEPARTMENT OF THE ARMY
Headquarters, 1st Infantry Division
Office of the Division Commander
APO AE 09036

REPLY TO
ATTENTION OF:

AETV-BGJA

JUL 15 2004

MEMORANDUM FOR Commanding General, 1st Infantry Division, APO AE 09036

SUBJECT: Defense Request for Production of Overseas Witness

1. On 17 June 2004, defense counsel for PFC Edward L. Richmond, Jr. requested that the government produce PFC Richmond's [REDACTED] Mr. [REDACTED], as a sentencing witness at trial. On 2 July 2004, the trial counsel gave defense counsel notice that Mr. [REDACTED] would not be produced and offered to enter into a stipulation of expected testimony or arrange for telephonic testimony. The same day, defense counsel submitted the enclosed request for you to produce Mr. [REDACTED] stating that alternate forms of testimony are not adequate. b(6)-4

2. A military judge may order production of a witness under certain circumstances. In determining whether to produce a witness, the judge will consider the importance of the testimony, the adequacy of alternate forms of testimony and the willingness of the government to agree to alternate forms of testimony. The judge will also balance the significance of the personal appearance of the witness against the practical difficulties of producing the witnesses. Factors to be considered when weighing the difficulties of production of the witness include: likelihood of significant interference with military operational deployment or mission accomplishment, the costs of producing the witness, the timing of the request for production of the witness, and the potential for delay in the proceedings if the witness is produced.

3. Considering the likelihood of significant interference with mission accomplishment, the significant cost of producing the witness, the adequacy of alternate forms of testimony, and the physical safety of Mr. [REDACTED] I recommend that you deny the defense request. b(6)-4

[REDACTED]
LTC, JA
Staff Judge Advocate b(6)-2

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UNITED STATES)

v.)

PFC Edward L. Richmond, Jr.)
U.S. Army)
Headquarters and Headquarters Co.,)
1st Battalion, 27th Infantry Regiment)
25th Infantry Division (Light))
APO AE 09347)

MOTION TO SUPPRESS

9 July 2004

A. RELIEF SOUGHT

COMES NOW the accused, PFC Edward L. Richmond, Jr., by and through counsel, to request suppression of PFC Richmond's statement to the Criminal Investigation Command (CID), dated 29 March 2004.

B. BURDEN OF PROOF & STANDARD OF PROOF

Once raised by the defense, the burden of proof belongs to the government to prove by a preponderance of the evidence that the statement to be suppressed was not obtained in violation of the rights of the accused and is voluntary and admissible. Rule for Courts-Martial (R.C.M.) 905(c); Military Rule of Evidence (Mil. R. Evid.) 304(c).

C. FACTS

On Sunday, 28 March 2004, SSG [REDACTED] of the S1 section, told PFC Richmond "you need to go to legal," or "you know you need to be at legal tomorrow." A second noncommissioned officer, SGT [REDACTED] confirmed that PFC Richmond had to be at legal at 1000. PFC Richmond did not know why he was being ordered to the legal office. b(6)-4

PFC Richmond walked from the ALOC, unescorted, to the legal office as instructed. Upon his arrival at approximately 1000 he was met by two CID Agents whom he had never met before, SA [REDACTED] and SA [REDACTED]. The officers identified themselves as CID Special Agents. They were not wearing any rank, branch insignia or unit patches on their Desert Camouflage Uniforms (DCUs). b(6)-1

The agents spoke with PFC Richmond on the first floor of the building for approximately five minutes. SA [REDACTED] asked PFC Richmond words to the effect of, "Do you know why we're here?" PFC Richmond told them that he did not know. One of the agents then told PFC Richmond that his command ordered a polygraph exam. The agents then escorted PFC Richmond to a back corner office on the second floor of the building. b(6)-1

The back corner office had no overhead lighting. One long fluorescent light was mounted on the far left wall of the room and provided little light in the room. The room walls were dingy with a layer of filth and dust over faded mint green paint. The room measured approximately 12' 5" wide and 14' 2" in depth toward the back wall. The back wall contained a door to a terrace

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that was blocked by a curtain and unable to be opened. The wall had several windows that were positioned about mid-waist height to the ceiling. These windows were not open and were blocked by dark curtains to preclude visibility. The room did not have air conditioning.

Centered in the room was a conference table measuring approximately 4' wide by 6' long. Six metal folding chairs were unfolded, sitting around the table. A worn, battered couch sat against one wall. An arm chair also was placed around the table. The room also housed several floor-to-ceiling metal storage cabinets measuring several feet wide but just a few feet deep. Several large boxes of supplies and miscellaneous "junk" were piled about the room. On 29 March 2004, the room was not being used for any permanent purpose and effectively was a "junk room" for the building's tenants.

When the CID Agents escorted PFC Richmond to the room, the polygraph equipment already was set up. The set-up contained several pieces of equipment including a laptop computer with wires running every which way and a polygraph "box" that had wires running to the arm chair.

SA [REDACTED] advised PFC Richmond of his rights on a DA Form 3881, completed at 1005. On approximately 28 February 2004 or 1 March 2004, PFC Richmond told CID investigators that he would take a polygraph but he was never contacted until his command ordered him to "see legal" on 29 March 2004. b(6)-1

Several CID Forms 28-R, maintained in the original CID case file, relay the following entries:

On 4 Mar 04 at 1015, SA [REDACTED] noted, "I see no need for Poly. Facts of case speak for themselves."

On 4 Mar 04 at 1700, SA [REDACTED] noted, "Poly is a possibility, but really not needed." b(6)-1

On 7 Mar 04, SA [REDACTED] noted, "Agreed poly on Richmond immaterial at this point."

After not hearing anything about the investigation for several weeks, on 29 March 2004, PFC Richmond did not understand why a polygraph was now needed. When he asked the CID agents, they simply told him words to the effect of, "your chain of command needs a polygraph done."

During CID's pre-polygraph explanation of the test, SA [REDACTED] discussed different topics with PFC Richmond. There were certain questions that PFC Richmond did not feel comfortable discussing. For example, CID asked him "Have you ever lied to a person in a position of authority?" and "Have you ever lied?" SA [REDACTED] told PFC Richmond that his answers to these preliminary questions would determine if he fit the profile of a murderer. PFC Richmond expressed his discomfort to SA [REDACTED] and said words to the effect of, "shouldn't I check with a lawyer or something." SA [REDACTED] ignored this concern and simply began questioning PFC Richmond about a different subject matter. As the questioning continued, SA [REDACTED] shifted gears and again began to redirect his questions toward the same subject matter. PFC Richmond stated unequivocally, "I can't talk about that. I want to see a lawyer if you want to talk about that." b(6)-1

SA [REDACTED] conducted the polygraph examination. Upon completion of the question and answer part of the exam, SA [REDACTED] pulled out a chart of graph paper and made some markings and numbers on the paper, presumably the polygraph printout. After a cursory look at the printout, SA [REDACTED] summarily told PFC Richmond that he failed the polygraph.

b(6)-1
(a11)

SA [REDACTED] then told PFC Richmond that the military judge would know that he failed the polygraph and that the fact that he failed the polygraph examination would be used against him at his trial. SA [REDACTED] told PFC Richmond that he should explain why his answers came up negative on the exam. PFC Richmond asked SA [REDACTED] which questions he failed but SA [REDACTED] would not tell him. SA [REDACTED] again told PFC Richmond that the results could be used against him at trial. SA [REDACTED] told PFC Richmond that he had traveled all the way to Kirkuk from Tikrit and that he was there to "help out" PFC Richmond. SA [REDACTED] inferred that once he left Kirkuk, he would not be able to "help out" PFC Richmond anymore. PFC Richmond believed, "I came out of that room thinking [the polygraph result] was admissible in court."

SA [REDACTED] continued to interrogate PFC Richmond during this four-hour time period. SA [REDACTED] badgered PFC Richmond with "hypothetical" scenarios and "what-if" situations. Among the interrogation questions by SA [REDACTED] were "Let's say out there you knew you shot him but it was an accident," and "Or what if you tripped and started to fall and had an accidental discharge?" He continued, "Let's say you knew the Iraqi was cuffed...." and "....didn't you think anyone would see?"

PFC Richmond answered the SA [REDACTED] hypothetical scenarios as just that, hypothetical scenarios. It was his answers to these "what-if" type questions that were typed by SA [REDACTED] onto a DA Form 2823-E, "Sworn Statement." SA [REDACTED] printed the sworn statement. PFC Richmond was given the opportunity to read through the statement, however he barely read it because after 4 hours of questioning, PFC Richmond knew that as soon as he signed the statement he could leave. He signed the statement at 1419.

The Polygraph Examination Report, dated 30 Mar 04, pertaining to the polygraph of PFC Richmond reveals the following in the Examiner's Conclusions:

An analysis of the polygrams collected determined insufficient criteria was present to make a conclusive decision regarding the truthfulness of RICHMOND.

D. LAW

The defense relies on the following authorities in support of its motion:

- a. U.S. Const., amend V
- b. R.C.M. 905(c)
- c. Mil. R. Evid. 304
- d. *Arizona v. Fulminante*, 499 U.S. 279 (1991)
- e. *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973)
- f. *Culombe v. Connecticut*, 367 U.S. 568 (1961)
- g. *Rogers v. Richmond*, 365 U.S. 534 (1961)
- h. *United States v. Bubonics*, 45 M.J. 93 (1996)
- i. *United States v. Martinez*, 38 M.J. 82 (C.M.A. 1993)
- j. *United States v. Hansome*, 45 C.M.R. 104 (C.M.A. 1972)
- k. *United States v. Planter*, 18 U.S.C.M.A. 469 (C.M.A. 1969)
- l. *United States v. Smith*, 32 C.M.R. 105 (1962)

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E. WITNESSES & EVIDENCE

If the government objects to the defense's representation of the notations on the CID Forms 28-R referenced in Section C of this Motion to Suppress, the defense requests government production of such forms. On 28 April 2004, SA [REDACTED] Special Agent-in-Charge of the FOB Danger CID Field Office represented that he would not release copies of those documents without a court-order. The defense seeks to attach copies of those forms in support of this motion. b(6)-1

Further, the defense requests consideration of the following additional documents in support of this motion:

- a. DA Form 3881-E, Rights Waiver Form, dated 29 March 2004 (Tab A)
- b. DA Form 2823-E, Sworn Statement, dated 29 March 2004 (Tab B)
- c. Polygraph Examination Report, dated 30 March 04 (Tab C)

F. ARGUMENT

The Fifth Amendment to the United States Constitution requires that confessions be excluded from evidence in criminal trials unless they were made voluntarily. *See Arizona v. Fulminante*, 499 U.S. 279, 281 (1991). Military Rule of Evidence 304(a) states that:

[A]n involuntary statement or any derivative evidence therefrom may not be received in evidence against an accused who made the statement if the accused makes a timely motion to suppress or an objection to the evidence under this rule.

The Military Rules of Evidence define an involuntary statement as one that is:

- (1) obtained in violation of the self-incrimination privilege or due process clause of the Fifth Amendment to the Constitution of the United States,
- (2) obtained in violation of Article 31 of the Uniform Code of Military Justice, or
- (3) obtained through the use of coercion, unlawful influence, or unlawful inducement.

Mil. R. Evid. 304(c)(3). Once an appropriate motion has been made by the defense to suppress a statement under this rule, the burden is on the government to establish the admissibility of the statement. Mil. R. Evid. 304(e).

To determine whether a confession is voluntary, the United States Supreme Court has held that the necessary inquiry is:

Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process.

See Culombe v. Connecticut, 367 U.S. 568, 602 (1961), citing *Rogers v. Richmond*, 365 U.S. 534 (1961). In determining whether an individual's will was overborne in particular case, the Supreme Court has held that the Court must assess: "the totality of all the surrounding

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circumstances -- both the characteristics of the accused and the details of the interrogation." *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). The Court goes on to note a non-exclusive list of factors that the Court has considered in assessing the totality of the circumstances:

- (1) the accused's age and education,
- (2) whether the accused was properly advised of his rights,
- (3) the length of the detention,
- (4) the repeated and prolonged nature of the questioning, and
- (5) deprivation of food or sleep.

See id. The Court notes, however, that none of these criteria are controlling, they are simply part of the assessing the totality of the circumstances of the interrogation. *See id.*

The Court of Appeals for the Armed Forces applied the standard set forth in *Schneckloth* for assessing the totality of the circumstances of an interrogation. *See United States v. Bubonics*, 45 M.J. 93, 95 (1996). The Court considered an additional factor of the accused's lack of prior involvement with the military justice system. *See id.* at 96.

Under the totality of the circumstances test, assessing both the characteristics of PFC Richmond and the details of the interrogation, the statement by PFC Richmond was involuntary and the product of unlawful inducement, coercion and unlawful influence and should be suppressed.

1. The Characteristics of PFC Richmond at the time of the Interrogation were such as to Render the Statement Involuntary

PFC Richmond joined the United States Army on 22 May 2002. He was 20-years-old at the time CID questioned him. PFC Richmond dropped out of high school and obtained a GED in order to join the Army. Throughout his military career, PFC Richmond has been conditioned to respond with discipline to figures in authority. In early March 2004, PFC Richmond's unit transferred him from forward operating base (FOB) McHenry to FOB Warrior. His entire military support system and chain-of-command remained at FOB McHenry. Despite the premise that a suspected accused is innocent until proven guilty, PFC Richmond's chain-of-command moved him away from his unit and to a different FOB specifically because of the incident for which he now stands trial. No one from his unit accompanied PFC Richmond to his CID Interrogation on 29 March 2004. Two NCOs ordered him to go to the legal office without telling him why. PFC Richmond was alone against the government.

In *Bubonics*, the Court of Appeals for the Armed Forces found the accused's conditioned response to those in a position of authority to be a significant factor in a totality of the circumstances analysis. The accused had only 2 ½ years of military experience and was "conditioned throughout that time to respond with discipline to figures of authority." *Bubonics*, 45 M.J. at 96.

Further, as the United States Court of Military Appeals in *United States v. Planter*, 18 U.S.C.M.A. 469 (C.M.A. 1969) noted, due to the rank structure in the military, coercive tactics employed by investigators are especially overpowering. The Court stated:

Further, military personnel to whom confessions are made are, in many instances, of higher rank than the one confessing, and certainly, if only by reason of their duties, tend to have great influence under the circumstances.

Id. at 473, citing *United States v. Smith*, 32 C.M.R. 105, 120 (1962).

PFC Richmond was a soldier with less than 2 years of military experience at the time of questioning by CID. He was ordered by two noncommissioned officers to report to the legal office. When PFC Richmond arrived at the legal office, he was greeted by two CID agents who were clearly expecting his arrival. They met him at the entrance of the building in order to escort him to the interrogation room. The agents were older than PFC Richmond and were the ones that initiated the questioning. They introduced themselves with the authority of law enforcement personnel and when PFC Richmond asked why he was there, he was told that his command had ordered a polygraph examination. Each of these factors must be considered under a totality of the circumstances test when evaluating the voluntariness of PFC Richmond's post-polygraph statement.

CID questioned PFC Richmond over and over again about the killing of the Iraqi farmer. Any time he would claim that he did not know the Iraqi was flex-cuffed, he would be told that he was lying and that he did know the man was cuffed. For a soldier with no prior involvement in the military justice system, these events were overwhelming and overbore his will.

2. The Characteristics of the Interrogation were such as to Render PFC Richmond's Statement Involuntary

CID subjected PFC Richmond to repeated and prolonged questioning for over four hours which overbore his will. The United States Supreme Court has noted:

In the police station a prisoner is surrounded by known hostile forces. He is disoriented from the world he knows and in which he finds support. He is subject to coercing impingements, undermining even if not obvious pressures of every variety. In such an atmosphere, questioning that is long continued -- even if it is only repeated at intervals, never protracted to the point of physical exhaustion -- inevitably suggests that the questioner has a right to, and expects, an answer.

Colombe v. Connecticut, 367 U.S. 568, 575 (1972).

While the questioning of PFC Richmond did not take place in a police station, the physical surroundings were analogous. The NCOs ordered PFC Richmond to go to the legal office, a location clearly linked to law enforcement activity. He was met at the entrance to the building by two CID agents. The two agents controlled the setting and the dynamics of the situation; they led PFC Richmond to a room they pre-selected for the interrogation in which the polygraph equipment already was set up.

Another factor to be considered is the issue of admonishing a person to tell the truth during the course of an interrogation. The military recognizes that, "Admonishing a person to tell the truth is not coercion, unlawful inducement or improper influence," however, "if an exhortation or adjuration to speak the truth is connected with suggestions of a threat or benefit, the confession is inadmissible." *United States v. Hansome*, 45 C.M.R. 104, 107 (C.M.A. 1972).

Whenever PFC Richmond would deny that he knew the Iraqi was flex-cuffed, SA [REDACTED] would tell him that he was lying or that he was not being honest with him. SA [REDACTED] told PFC Richmond that he was there to help him and that once he left the interrogation he would not be able to help him anymore. SA [REDACTED] questioned PFC Richmond over and over on the same point. Any time that PFC Richmond gave an answer that SA [REDACTED] did not like, he was told that he was not telling the truth. SA [REDACTED] told PFC Richmond that once he left Kirkuk that he

b(6)-1

(c11)

would not be able to "help" him. He led him to believe that at that day and time of questioning, it was PFC Richmond's last opportunity to be "helped" by CID. This repeatedly and prolonged questioning combined with the other factors overbore SGT [REDACTED] will. b(6)-3

3. The 29 March 2004 Statement was the Product of an Overzealous CID Office

An important factor to consider when assessing the totality of the circumstances is the overzealousness of CID that set the stage for the coercive environment. The only reason CID went forward with the polygraph on 29 March 2004 was because they previously had arranged for SA [REDACTED] to travel from Balad, Iraq, to Tikrit to conduct the polygraph. The case file is replete with references that a polygraph was not needed in this case. However, ultimately, rather than reveal to SA [REDACTED] that his trip to Tikrit was for naught, the government continued to transport him to Kirkuk. This position is bolstered by SA [REDACTED] own representations to PFC Richmond that he had traveled all the way to Kirkuk just to see PFC Richmond. CID did not contact PFC Richmond to confirm a date and time for the polygraph. Rather, representing the government, CID office seized upon an opportunity to order PFC Richmond to meet with them and to subject PFC Richmond to over 4-hours of interrogation. b(6)-1

The facts of the present case are analogous to those of *United States v. Martinez*, 38 M.J. 82 (C.M.A. 1993). SFC [REDACTED] consented to a polygraph exam and upon its conclusion, the CID agent told him that the test indicated deception. The CID agent conducted post-polygraph questioning of SFC [REDACTED]. When the agent failed to get the answers that he was looking for he threatened to leave the interrogation unless SFC [REDACTED] told the truth. After several hours of questioning, SFC [REDACTED] made inculpatory statements. *See id.* at 83. b(6)-3

In the present case, SA [REDACTED] told PFC Richmond that he had failed the 29 March 2004 polygraph. SA [REDACTED] did so knowing that the test did not indicate deception but rather, that the test was inconclusive. That SA [REDACTED] lied to PFC Richmond is evidence of the level of coercion that CID was willing to go to get the statement that they wanted to get rather than the statement that PFC Richmond was willing to give. SA [REDACTED] took further steps to achieve his own ends by refusing to tell PFC Richmond what questions indicated deception. PFC Richmond was confused by what SA [REDACTED] was telling him because he wanted to know what questions he had failed. b(6)-1

Though not equaling the threat to leave the interview room, as concluded in *Martinez*, the totality of the circumstances shows that SA [REDACTED] coerced PFC Richmond in continuing to speak to him by telling him that he had traveled from Tikrit to Kirkuk just to meet with PFC Richmond. Important to note is that PFC Richmond knew that military personnel should not travel unnecessarily in combat-heavy Iraq. PFC Richmond knew that the special agents, like all soldiers in Iraq, put themselves in increased danger every time they leave a secured installation. This type of guilt-inducement, under the circumstances contributed to the coercive statement obtained by SA [REDACTED]

Additionally, the suggestive interrogation techniques of CID mirror those considered by the court in *Martinez*. In *Martinez*, "CID told him he had lied and gave him another scenario which it offered as the truth." *Id.* at 85. In the present situation, SA [REDACTED] interrogation was plagued with "what if" scenarios. PFC Richmond indicated that he did not want to answer these hypothetical situations. Ultimately, it was PFC Richmond's hypothetical answers and not the misleading questions that SA [REDACTED] typed onto a sworn statement.

A critical fact to be considered under the totality of the circumstances is that PFC Richmond commented to SA [REDACTED] about checking with a lawyer on two occasions during the

interrogation. Rather than address the soldier's concerns about seeking counsel, SA [REDACTED] would simply change the topic of questioning. PFC Richmond's mentioning of a lawyer, while perhaps not rising to the level of invoking his right to counsel, is a significant contributing factor to determining if PFC Richmond's statement was the product of an overzealous CID agent who, after risking his life by traveling in Iraq, was going to get the statement he wanted regardless of what he was told by the soldier. b(6)-1

G. CONCLUSION

Under the totality of the circumstances, assessing both the characteristics of PFC Richmond and the details of the CID interrogation, the 29 March 2004 statement by PFC Richmond was involuntary and the product of unlawful inducement, influence, and coercion and should be suppressed.

RESPECTFULLY SUBMITTED:

[REDACTED]
CPT, JA
Trial Defense Counsel b(6)-2

I certify this I served this Motion to Suppress on the government trial counsel via e-mail at [REDACTED]@us.army.mil and on the military judge via e-mail on 9 July 2004.

[REDACTED]
CPT, JA
Trial Defense Counsel

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

AUTHORITY: Title 16, United States Code, Section 4012(a)
PRINCIPLE PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternative means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

LOCATION: Kirkuk, Iraq **DATE:** 29 Mar 04 **TIME:** 1005 **ER**
FILE NUMBER: 0040-01 CID469-79638
NAME (Last, First MI): RICHMOND, EDWARD L. **SSAN:** [REDACTED] **GRADE / STATUS:** PFC
ORGANIZATION OR ADDRESS: HHC, 1/27th Infantry Battalion, FOB McHenry, APO AE 09347 **ER**

b(6)-5
b(7)(C)-5

RIGHTS WAIVER/NON-WAIVER CERTIFICATE

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command as a Special Agent and wanted to question me about the following offense(s) of which I am suspected **ER** ~~accused~~ Murder, False Official Statements, False Swearing **ER**
 Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

- ER** 1. I do not have to answer questions or say anything.
- ER** 2. Anything I say or do can be used as evidence against me in a criminal trial.
- ER** 3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

- IR** 4. If I am now willing to discuss the offense(s) under investigation, with, or without a lawyer present, I have the right to stop answering questions at any time or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS

ER I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me **ER**

Witness

Signature of Witness

Witness# 2

Signature of Witness

Signature of Interviewee

Signature of Investigator/Special Agent

SA [REDACTED]
 22nd MP BN (CID)
 APO, AE 09342

NON-WAIVER CERTIFICATE

I do not want to give up my rights. I want a lawyer ☐ I do not want to be questioned or say anything: ☐

Signature of Interviewee

DA Form 3881-E

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016851

SWORN STATEMENT

LOCATION: Kirkuk, Iraq

FILE NUMBER: 0040-04-CID469-79638

DATE: 29 Mar 04

TIME: 1419 ER

NAME: RICHMOND, EDWARD L.

SSAN: [REDACTED]

GRADE/RANK: PFC

ORGANIZATION OR ADDRESS: HHC, 1/27th Infantry Battalion, FOB McHenry, Kirkuk, Iraq,
APO, AE 09347

b(6)-5 b(7)(c)-5

ER, Edward L. RICHMOND, want to make the following statement under oath:

I provided a sworn statement on 1 Mar 04 concerning the incident in which I shot and killed an Iraqi farmer during a raid. Looking back on the entire situation, I would like to make some corrections to that statement at this time. Prior to the raid, the rules of engagement were put out that if anyone tried to flee the villiage, we were to shoot them. After arriving to the villiage and setting up, I could hear some shotgun blasts going off in the villiage where the raid was taking place. I then noticed an Iraqi male walking his cattle away from the villiage. Since the rules of engagement were put out that we were to shoot anyone fleeing the villiage, I asked if I should shoot the farmer because he was leaving the villiage. I was told by SGT [REDACTED] to not shoot him. About an hour later, someone, maybe CPT [REDACTED] put out over the radio to apprehend all males leaving the villiage. At that time, we decided to apprehend the farmer. Myself and [REDACTED] each had a set of flexicuffs and began walking into the field where the farmer was still with his cattle. My adrenaline was already pumping because of the raid and then even more so as we approached the farmer to apprehend him. Myself and [REDACTED] decided that [REDACTED] would place the flexicuffs on the farmer, while I stood guard. The farmer seemed to be directing our attention to something else as we approached him, and then as SGT [REDACTED] began placing the flexicuffs on him, he started resisting. Already at that point I had a lot of adrenaline going through my system and [REDACTED] shouted at me to point my rifle at the Iraqi's head. I then pointed my rifle at his head and he stopped resisting. In my previous statement I put in that I did not realize the Iraqi was wearing flexicuffs when I shot him. Looking back now, I think it would be more accurate to say that I did not register in my mind that he was wearing flexicuffs. The adrenaline was affecting my perception of the situation. I remember seeing [REDACTED] putting flexicuffs on him and I saw him with his arms behind his back as I pointed my rifle at his head. I had to know he had on flexicuffs before I shot him, but it just did not register in my mind at the time. Also in my previous statement, I said that the Iraqi lunged at [REDACTED]. Again, looking back on it now, I don't think the Iraqi actually lunged. What happened is [REDACTED] turned him to walk away; however, because of the adrenaline, when [REDACTED] moved the Iraqi out of my sight picture, I just reacted by shooting him. I would have never shot that man had I been thinking clearly. I would never shoot someone who was wearing flexicuffs if I registered in my mind that they were wearing them. It is everything combined between the pressure of the raid, the new rules of engagement, the Iraq resisting his detention, and the whole situation in general that caused me to not be react like I normally would. ER

b(6)-4
b(7)(c)-4
(all)

INITIALS OF PERSON MAKING STATEMENT ER

PAGE 1 OF 2 PAGES

DA Form 2823-E

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016852

ERQ. SA [REDACTED] b(6)-1 b(7)(c)-1

A. PFC RICHMOND

Q. Did you hear [REDACTED] tell you "he's good, let's go"? b(6)-4 b(7)(c)-4

A. No. He might have said it, but if he did, I did not hear it because of the adrenaline and the situation. It just did not register.

Q. How do you feel you were treated today?

A. Good.

Q. Were you given the opportunity to drink, eat, and use the restroom today?

A. Roger.

Q. Is there anything else you would like to add to this statement?

A. No//End of Statement// ER

AFFIDAVIT

ER I, Edward L. RICHMOND, have read or have had read to me this statement which begins on page 1 and ends on page 2. I fully understand the contents of the entire statement made by me. The statement is true. I have initialed all corrections and have initialed the bottom of each page containing the statement. I have made this statement freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence or unlawful inducement. ER

Witness #1:

[REDACTED] b(6)-4
[REDACTED] b(7)(c)-4
[REDACTED] 5593

Witness #2:

Edward L. Richmond
(Signature of Person Making Statement)

Subscribed and sworn before me, a person authorized by law to administer oaths, this 29th day of March 2004, at Kirkuk, Iraq

[REDACTED] b(6)-1
[REDACTED] b(7)(c)-1
(Signature of Person Administering Oath)
SA [REDACTED]
(Typed name of Person Administering Oath)
Article 136 (b) (4) UCMJ
(Authority to Administer Oath)

INITIALS OF PERSON MAKING STATEMENT ER

PAGE 2 OF 2 PAGES
ER

DA Form 2823-E

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016853

Unit: **DEPARTMENT OF THE ARMY**
United States Army Criminal Investigation and
22nd Military Police Battalion (CIL)
Operation Iraqi Freedom
APO, AE 09342

CICR-PD (195-6)

30 Mar 04

MEMORANDUM FOR

Director, United States Army Crime Records Center, United States Army Criminal Investigation
Command, 6010 6th Street, Fort Belvoir, VA 22060-5585
Special Agent In Charge, 286th Military Police Detachment (CID), Tikrit, Iraq, APO, AE 09392

SUBJECT: Polygraph Examination Report

INVESTIGATIVE CASE REFERENCE: 0040-04-CID469-79638-5H1

AUTHORIZATION NUMBER: 04-0581, 24 Mar 04

DATE(S) OF EXAMINATION: 29 Mar 04

LOCATION OF EXAMINATION(S): Kirkuk, Iraq

b(6)-5 b(7)(c)-5

SUBJECT EXAMINED: RICHMOND, Edward L.; PFC; [REDACTED]; HHC, 1/27th Infantry
Battalion, FOB McHenry, APO, AE 09347; 7 Jul 83; Monroe, LA.

OFFENSE(S): Murder

PURPOSE OF EXAMINATION: Criminal Investigation

b(6)-4 b(7)(c)-4 (all)

INVESTIGATIVE/OPERATIONAL SUMMARY: Investigation disclosed on 28 Feb 04, RICHMOND, along with various other members of his unit, conducted a command directed raid into the village of Taal Al Jal, Iraq. During the raid, a command directive was put out to apprehend all males in the vicinity of the village. After the directive was issued, RICHMOND and SGT [REDACTED] HHC, 1/27th Infantry Battalion entered a field where an Iraqi farmer, Mr. [REDACTED] was walking his cattle, with the intentions of apprehending him in accordance with the command directive. [REDACTED] became angry when [REDACTED] attempted to place flexicuffs on him and began resisting his apprehension. [REDACTED] had RICHMOND point his rifle at [REDACTED] at which time he stopped resisting, and allowed [REDACTED] to place the flexicuffs on him. As [REDACTED] and RICHMOND began escorting [REDACTED] out of the field, RICHMOND shot [REDACTED] in the back of the head killing him.

On 1 Mar 04, RICHMOND was interviewed and stated he was watching the back of [REDACTED] head and shoulders through the scope of his rifle, as they were escorting [REDACTED] from the field, and saw [REDACTED] lunge at [REDACTED] RICHMOND stated that he did not realize [REDACTED] had placed flexicuffs on [REDACTED] and when he saw [REDACTED] lunge, he felt [REDACTED] was being attacked, so he shot him.

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Attached as Exhibit _____ is a Polygraph Examination Report. This exhibit will be destroyed not later than three months after the date of the Report of Investigation (AR 195-6, para 2-6b). The original, to include related polygraph records, is at the US Army Crime Records Center, USACIDC, 6010 6th Street, Fort Belvoir, VA 22060-5585.

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EXHIBIT 17

016854

On 1 Mar 04, [REDACTED] interviewed and stated he had to struggle with [REDACTED] to put the flexicuffs on him; however, [REDACTED] never lunged at him after [REDACTED] was in flexicuffs, and knew of no reason why RICHMOND shot [REDACTED]. [REDACTED] stated RICHMOND watched him place the flexicuffs on [REDACTED] and after he put the flexicuffs on [REDACTED] he told RICHMOND, "he's good, let's go". [REDACTED] stated RICHMOND then brought his gun down, and they started walking with RICHMOND walking behind himself and [REDACTED]. [REDACTED] stated they only took a couple of steps before RICHMOND shot [REDACTED].

On 1 Mar 04, SPC [REDACTED] HHC, 1/27th Infantry Battalion, stated he heard the shot that killed [REDACTED]. [REDACTED] stated they had seen the farmer earlier in the morning and RICHMOND had joked about killing him. [REDACTED] also stated RICHMOND had allegedly asked [REDACTED] if he could kill the farmer. [REDACTED] stated RICHMOND had commented on wanting to kill some Iraqis since the orders for the mission were issued.

On 1 Mar 04, PFC [REDACTED] HHC, 1/27 Infantry Battalion was interviewed and stated RICHMOND had stated on numerous occasions that he wanted to kill an Iraqi. [REDACTED] stated he did not know if RICHMOND was joking or not, but stated "he would always see any Iraqi and ask if he could shoot them".

When interviewed, RICHMOND readily admitted to shooting [REDACTED] but stated he only shot [REDACTED] because he saw him lunge at [REDACTED]. It was suspected that RICHMOND was predisposed to killing an Iraqi the day of the incident. It was further suspected that [REDACTED] never lunged at [REDACTED] and it was also suspected that RICHMOND knew [REDACTED] was in flexicuffs when he shot him. RICHMOND has denied knowing [REDACTED] was in flexicuffs at the time of the shooting and RICHMOND has maintained he saw [REDACTED] lunge at [REDACTED] before he shot him. RICHMOND agreed to undergo a polygraph examination to prove the veracity of his statement.

INSTRUMENTATION: This examination was conducted using an Axciton computerized polygraph instrument, SN: 4375, last calibrated on the date of the examination.

OBSERVATIONS: Unusual physiological/psychological reactions were not observed during this examination.

EXAMINER'S CONCLUSIONS: During the pre-instrument phase, RICHMOND stated he did not actually see [REDACTED] make a sudden lunge at [REDACTED] but saw him turn towards [REDACTED] in a manner that made him think he was lunging. RICHMOND stated he only fired at [REDACTED] because he thought [REDACTED] was in danger. RICHMOND maintained he did not know [REDACTED] was wearing flexicuffs before he shot him, and otherwise made no comments or statements contrary to those previously provided.

An analysis of the polygrams collected determined insufficient criteria was present to make a conclusive decision regarding the truthfulness of RICHMOND.

During the post instrument phase, RICHMOND rendered a sworn statement admitting he saw [REDACTED] putting flexicuffs on [REDACTED] before he shot him. RICHMOND stated he also saw [REDACTED] with his hands behind his back before he shot him. RICHMOND stated it did not register in his mind that [REDACTED] was wearing flexicuffs, because of the adrenaline in his system at the time. RICHMOND also stated [REDACTED] did not lunge at [REDACTED] but when [REDACTED] moved [REDACTED].

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Attached as Exhibit [REDACTED] is a Polygraph Examination Report. This exhibit will be destroyed not later than three months after the date of the Report of Investigation (AR 195-6, para 2-6b). The original, to include related polygraph records, is at the US Army Crime Records Center, USACIDC, 6010 6th Street, Fort Belvoir, VA 22060-5585.

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EXHIBIT 17

out of his rifle's sight picture. [redacted] talk away, he just reacted by shooting. MR. RICHMOND stated he shot [redacted] due to adrenaline in his body affecting his perception of what was going on. RICHMOND terminated the interview stating he had nothing further to say and declined to undergo further polygraph testing.

RELEVANT QUESTIONS USED:

b(6)-4 : b(7)(c)-4

Series I

Q: Did you know that man was wearing flexicuffs before he was shot?

A: No.

Q: Did you know that man was wearing flexicuffs before he was shot, that morning?

A: No.

Q: Are you lying about why that man was shot that morning?

A: No.

WITNESS, MONITOR OR INTERPRETER: SA [redacted], 5593

b(6)-1 b(7)(c)-1

EXAMINEE NATIVE LANGUAGE: English

LANGUAGE(S) USED DURING THE EXAMINATION: English

EXHIBITS: 4 polygrams, the polygraph consent form(s) and allied documents are on file with the original report at the US Army Crime Records Center.

///Original Signed///

[redacted]
Polygraph Examiner, 221

(same)

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Attached as Exhibit _____ is a Polygraph Examination Report. This exhibit will be destroyed not later than three months after the date of the Report of Investigation (AR 195-6, para 2-6b). The original, to include related polygraph records, is at the US Army Crime Records Center, USACIDC, 6010 6th Street, Fort Belvoir, VA 22060-5585. Reproduction of this exhibit or its contents is prohibited.

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EXHIBIT 17

resources to provide a verbatim transcript. The defense does not have the logistical resources or personnel to produce such a transcript.

On 22 April 2004, the Article 32(b) Investigating Officer indicated his intent to include a verbatim transcript with his final report. In block 21 of the DD Form 457, the Investigating Officer indicated, "Record of Verbatim Testimony is attached," however, only a summarized transcript was attached.

On 14 May 2004, the defense requested production of all statements by government witnesses in its Request for Discovery, paragraph 1m.

D. LAW

The defense relies on the following authorities in support of its motion:

- a. R.C.M. 405 (j)(2)(B)
- b. R.C.M. 703(f)
- c. R.C.M. 914
- d. The *Jencks* Act, 18 U.S.C. § 3500, et seq.
- e. *United States v. Scott*, 6 M.J. 547 (A.F.C.M.R. 1978)

E. ARGUMENT

A verbatim transcript of the Article 32 hearing is relevant and necessary to the preparation of the defense in this case. The defense acknowledges that R.C.M. 405 (j)(2)(B) only mandates that the Article 32 report of investigation include the "substance of the testimony taken." However, the defense has requested, and is presently renewing that request, that outside the requirements of R.C.M. 405 a verbatim transcript be prepared to assist the defense in preparation for trial.

A verbatim transcript is necessary for several reasons. First, the defense believes that such a transcript will assist the accused in preparing a defense in his case. Soldiers testified at the Article 32(b) hearing at a date much closer in time than their testimony will be at trial. The defense must be prepared to refresh any witness' recollection with a copy of their verbatim Article 32(b) testimony. Second, during the course of the trial and motions sessions, if necessary, it will not be possible for counsel to go back and review testimony on audiotape without asking for a recess of the court. Third, the defense anticipates that during trial that it may become necessary to impeach government witnesses with their testimony at the Article 32(b) hearing. Trying to do this with tape recordings would be burdensome and potentially cause undue delay in the proceedings.

Pursuant to R.C.M. 914(a)(2) and the *Jencks* Act, 18 U.S.C. § 3500, the defense is entitled to production of all statements made by government witnesses that relate to the subject matter of their testimony. See *United States v. Scott*, 6 M.J. 547, 548 (A.F.C.M.R. 1978) (finding that the military judge erred by not requiring production of verbatim witness testimony to the defense).

Recognizing that such an entitlement does not accrue until after a witness has testified, the defense requests the verbatim transcripts prior to trial in order to preserve judicial economy, to reduce inconvenience to the panel, and to obviate the need for a delay in the trial proceedings.

PFC Richmond does not have the resources to pay for creation of a verbatim transcript that would cost thousands of dollars if done through a private contractor. The government has at its disposal a court reporter in Iraq who would be able to type a verbatim transcript within a matter of days. TDS does not have paralegal specialists to prepare such a transcript. Further, the part-time paralegal specialist in the FOB Danger TDS Branch Office is PCSing.

If the government is unwilling to produce a full verbatim transcript of the entire hearing, or the court does not order such a verbatim transcript, the defense requests a verbatim transcription of the following specific witness testimony: SGT [REDACTED] SPC [REDACTED] and SPC [REDACTED] b(6)-4

F. CONCLUSION

The defense respectfully requests that the court compel the government to provide the defense with a verbatim transcript of the Article 32(b) hearing in this case. Alternatively, the defense requests verbatim transcribed testimony of the witnesses referenced above.

[REDACTED] b(6)-2
CPT, JA
Trial Defense Counsel

I certify this I served this Motion for Production of a Verbatim Article 32(b) Hearing Transcript on the government trial counsel via e-mail at [REDACTED]@us.army.mil and on the military judge via e-mail on 9 July 2004.

[REDACTED] (same)
CPT, JA
Trial Defense Counsel

From [REDACTED] <[REDACTED]@pearceusa.com>
Sent Tuesday, July 6, 2004 7:55 pm
To [REDACTED] (E-mail)" <[REDACTED]@us.army.mil>
Cc "at home (E-mail)" <[REDACTED]@premier.net>
Bcc
Subject Flight arrangements

b(6)-2

[REDACTED] b(6)-2

We made the flight arrangements for my husband today. He will arrive in Kuwait City at 7:30 pm on July 28, 2004. The last connection will be from Frankfurt, Germany, Lufthansa-Deutsche airlines, flight number 636. Please let me know if you need any additional information. I'm sending this from my work e-mail, but I would appreciate it if you could respond, in the future, to both my work and home e-mail addresses so I can respond to you ASAP with any questions, etc. that you may have.

Thanks, [REDACTED]

Home e-mail: [REDACTED]@premier.net
Work e-mail: [REDACTED]@pearceusa.com

Phone: 225-[REDACTED]

Fax: 225-[REDACTED]

[REDACTED]@pearceusa.com

[REDACTED]
Prairieville, LA 70769

b(6)-3

UNITED STATES

v.

Edward L. RICHMOND, Jr.
PFC, US Army
HHC, 1st Battalion, 27th Infantry
25th Infantry Division (Light)
APO AE 09347-9998

GOVERNMENT DISCOVERY
RESPONSE AND REQUEST FOR
RECIPROCAL DISCOVERY

4 July 2004

1. Government responds to Defense Request for Discovery dated 14 May 2004. The responses are formatted according to the corresponding paragraphs in the Defense request.

a. Previously provided, if applicable. Defense is granted access to all discoverable materials in coordination with Trial Counsel or IID Chief of Justice.

b. Previously provided, if applicable.

c. Previously provided, if applicable, except press documents. Defense is granted access to IID Public Affairs Office to view documents relevant to this court-martial. Coordinate with Trial Counsel if you have problems.

d. Provided, if applicable. The Government may intend to use the Accused's M4 rifle as evidence; if so it will be made available to the Defense before or at trial.

e. Provided, if applicable.

f. Government intends to call as witnesses during the merits and/or sentencing the following:

- x. MAJ [REDACTED] HHC, 1-27 IN
- x. PFC [REDACTED] HHC, 1-27 IN
- x. CPT [REDACTED] A Co, 1-27 IN
- x. CPT [REDACTED] or [REDACTED] HHC, 2BCT (SJA Claims Office)
- x. SA [REDACTED] 22d MP Bn (CID), Tikrit, Iraq
- x. SPC [REDACTED] HHC, 1-27 IN
- x. SA [REDACTED] 286 MP Det, 22d MP Bn (CID), Tikrit, Iraq
- x. SA [REDACTED] 43d MP Det, 10th MP Bn (CID), Ft Hood, TX
- x. SPC [REDACTED] HHC, 1-27 IN
- x. SGT [REDACTED] HHC, 1-27 IN
- x. SPC [REDACTED] HHC, 1-27 IN
- x. SA [REDACTED] 43d MP Det, 10th MP Bn (CID), Ft Hood, TX

Note. Government may not call all above listed witnesses due to operational requirements and difficulty in travel to and through the combat theater. If Defense requests any of these witnesses, it should make a specific by-name request IAW RCM 703.

Note2. CID witnesses may be reached through DNV [REDACTED] 1-27 IN witnesses are usually located at FOB McHenry at DNV [REDACTED] but may also be reached through the HHC, 1-27 at FOB Warrior, at DNV [REDACTED]

016861

g. None known.

h. Provided, if applicable.

i. See 1.f. above.

j. Provided, if known and applicable.

(1) None known.

(2) Provided, if applicable.

(3) Provided, if applicable.

(4) Provided, if applicable.

(5) Provided, or access is granted, as applicable. Notify Trial Counsel or Chief of Justice if you access problems.

(6) Denied. Not a specific request. If Defense shows reasonable need for a specific record, resubmit a specific request.

(7) Denied. If Defense shows reasonable need for a specific record, resubmit a specific request.

k. Access granted as to existing records. See Chief of Justice, IID.

l. Access granted. See Chief of Justice, IID.

m. Provided.

n. CJCSI 3121.01A, 15 January 2000.

o. N/A.

p. Provided.

q. See all statements provided by the Accused in the discovered materials. Also, the Accused's Article 32 testimony.

r. M4 with scope and other discovered materials.

s. N/A.

t. N/A.

u. N/A.

v. N/A at this time.

w. N/A.

x. N/A.

y. See discovered materials – any document generated by a witness may be used by that witness for refreshment; investigators may use any investigation document to refresh.

z. N/A at this time.

aa. N/A.

bb. Provided, if applicable.

cc.. Provided, if applicable.

dd. Provided, if applicable.

ee. Provided in discovered materials, or may provide prior to use. Government requests Defense to legally justify this demand.

ff. The Government will notify the Defense if it intends to offer “expert testimony.” A medic witness will testify as to his observations, but this testimony will not require the witness’ qualification as an expert.

gg. (1) and (2) N/A.

hh. N/A.

ii. None know at this time. Defense may inquire through the Military Judge’s voir dire process.

2. Noted.

3. Government requests reciprocal discovery IAW RCM 701.

[REDACTED]

MAJ, JA
2-25 BCT TF JA

b(6)-2

I certify that on 10 JUL 04 this Government Discovery Response and Request for Reciprocal Discovery was delivered by e-mail to Defense Counsel, CPT [REDACTED]

[REDACTED]

MAJ, JA
2-25 BCT TF JA

016863



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
REGION IX, FOB DANGER BRANCH OFFICE
APO AE 09392

REPLY TO
ATTENTION OF:

AETV-BGJA-TDS

2 July 2004

MEMORANDUM THRU Staff Judge Advocate, 1st Infantry Division, FOB Danger, Tikrit, Iraq,
APO AE 09392

FOR Commander, 1st Infantry Division, FOB Danger, Tikrit, Iraq, APO AE 09392

SUBJECT: Request for Production of Overseas Witness – U.S. v. PFC Edward L. Richmond, Jr.

b(6)-4

1. The defense requests government production of Mr. [REDACTED] to testify at his [REDACTED] court-martial beginning on 1 August 2004. PFC Richmond will stand trial for one charge of murder. If convicted, he faces a maximum punishment of life in prison.

2. Defense counsel submitted to the government on 17 June 2004 (enclosure A) a request for the production of Mr. [REDACTED]. The trial counsel denied this request by e-mail on 2 July 2004 (enclosure B).

b(6)-4

3. Mr. [REDACTED] is a relevant and necessary witness for the sentencing phase of this case. He is the only witness that can testify to many aspects and areas of his 20-year-old [REDACTED] life. Mr. [REDACTED] will be the key defense sentencing witness to mitigate a military panel's option to impose the maximum sentence of life in prison. Mr. [REDACTED] is the only overseas witness that the defense is requesting.

4. PFC Richmond will not waive the right to have his father present as a sentencing witness at his General Court-Martial. Neither a written stipulation nor telephonic testimony is an adequate substitute for live testimony when a soldier is facing life in prison.

5. If this request is denied, the defense requests that you reduce to writing your reasons for the denial of the soldier's request.

6. POC is the undersigned at DNVT: 553-9383 or via unsecured e-mail at [REDACTED]@us.army.mil.

b(6)-2

Encl
as

[REDACTED]
CPT, JA
Trial Defense Counsel

016864

V.

18 June 2004

DOD-040122

UNITED STATES

v.

PFC Edward L. Richmond, Jr.
U.S. Army
Headquarters and Headquarters Co.,
1st Battalion, 27th Infantry Regiment
25th Infantry Division (Light)
APO AE 09347

)
)
) REQUEST FOR PRODUCTION OF
) OVERSEAS WITNESS

) 17 June 2004

The accused, by and through his detailed defense counsel, hereby requests government production of the following overseas witness for the presentencing phase of the proceedings, pursuant to R.C.M. 701(b)(1)(B)(i), 703(a), 703(b)(2) and 703(c)(2) and 1001(e):

Mr. [REDACTED] Gonzales, Louisiana, 70737; home
phone: (225) [REDACTED] b(6)-4

PFC Richmond, 20, is the eldest of [REDACTED] of Mr. and Mrs. [REDACTED]. Mr. [REDACTED] will testify at the presentencing phase of the proceedings. He is the one witness that can testify about the accused's upbringing, his family roots, his education, and his employment experiences prior to joining the military. Mr. [REDACTED] testimony is relevant to extenuation and mitigation at any presentencing proceedings. If convicted of the charged offense, his [REDACTED] faces life in prison and Mr. [REDACTED] testimony is highly relevant in enabling the military judge or panel to adjudge an appropriate sentence. Mr. [REDACTED] presence at trial is necessary so he can provide live testimony about his [REDACTED] why his [REDACTED] joined the Army, and the pride PFC Richmond felt at becoming an infantryman and deploying with his unit. Mr. [REDACTED] will provide testimony about the type of support his family can provide to PFC Richmond and about his [REDACTED] future for rehabilitation.

The defense will provide the government with an additional request for government production of witnesses once notified of the names of the witnesses the government intends to call to testify at trial.

Mr. [REDACTED] is the only overseas civilian witness whose presence the accused intends to request.

RESPECTFULLY SUBMITTED:

[REDACTED] b(6)-2
CPT, JA
Trial Defense Counsel

Enclosure A

016866

CERTIFICATE OF SERVICE

I certify that on 17 June 2004 this defense Request for Production of Overseas Witness was served on the government via e-mail to [REDACTED]@us.army.mil.

b(6)-2

[REDACTED]

CPT, JA

Trial Defense Counsel

From [REDACTED]@us.army.mil
Sent Friday, July 2, 2004 4:40 am
To [REDACTED]@us.army.mil
Cc
Bcc
Subject Re: Fwd: Notice of Plea & Forum

b(6)-2 (all)

[REDACTED]
Sorry, but marching orders from Division are to deny the Defense request to produce PFC [REDACTED] father for the trial. I will be happy to enter into a reasonable stipulation; or I will not object to telephonic testimony.

V/R

MAJ [REDACTED]

----- Original Message -----

From: [REDACTED]@us.army.mil
Date: Saturday, June 26, 2004 12:48 pm
Subject: Fwd: Notice of Plea & Forum

> Ma'am,
>
> I am forward the Defense's Notice of Forum & Plea in U.S. v. Richmond.
>
> V/R,
>
> [REDACTED]
> CPT, JA
> Trial Defense Counsel
> Tikrit Branch Office (FOB Danger)
> Region IX
> DNV: [REDACTED]
> E-mail: [REDACTED]@us.army.mil
>
> ATTENTION: This electronic transmission may contain attorney work-
> product or information protected under the attorney-client
> privilege. Portions of this transmission may contain information
> protected from disclosure under the Freedom Of Information Act, 5
> USC 552. Do not release this information without prior
> authorization from the sender. If this has inadvertently reached
> the wrong party, please delete this information immediately and
> notify the sender.
>

Sir,
Please see attached.

Enclosure B

<https://webmail.us.army.mil/frame.html?rtfPossible=true&lang=en>

7/2/2004

016868

V/R,

[REDACTED]
CPT, JA

Trial Defense Counsel

Tikrit Branch Office (FOB Danger)

Region IX

DNVT:

E-mail: [REDACTED]@us.army.mil

b(6)-2(all)

ATTENTION: This electronic transmission may contain attorney work-product or information protected under the attorney-client privilege. Portions of this transmission may contain information protected from disclosure under the Freedom Of Information Act, 5 USC 552. Do not release this information without prior authorization from the sender. If this has inadvertently reached the wrong party, please delete this information immediately and notify the sender.

<https://webmail.us.army.mil/frame.html?rtfPossible=true&lang=en>

7/2/2004

016869

UNITED STATES

v.

Edward L. RICHMOND, JR.

PFC, U.S. Army

HHC, 1st Battalion, 27th Infantry Regiment

25th Infantry Division (Light)

APO AE 09347-9998

REQUEST FOR DISCOVERY

14 May 2004

1. In accordance with the Rules for Courts-Martial (R.C.M.) and the Military Rules of Evidence (M.R.E.), Manual for Courts-Martial, United States, 2002 edition, the defense requests that the government produce and permit the defense to inspect, copy, or photograph each of the following items which are known, or should through the exercise of due diligence be known, to the United States or its agents. The defense requests the government to notify the defense in writing which specific items of requested information or evidence will not be provided and the reason for denial of discovery.

a. R.C.M. 701(a)(1)(A). All papers which accompanied the charges when they were referred to court-martial, including, but not limited to, the charge sheet, transmittals of charges from the commanders, law enforcement reports, laboratory reports, statements by the accused and witnesses, and the Staff Judge Advocate's pre-trial advice.

b. R.C.M. 701(a)(1)(B). The convening order and all amending orders.

c. R.C.M. 701(a)(1)(C). All statements about the offense which are in the possession of the government. The term "statements" includes statements of any person, not just the accused and potential government witnesses, taken by or given to any person or agency, to include all civilian or military law enforcement agencies, inspector general investigations, AR 15-6 investigations, all commander's inquiries or investigations, and any press releases or documents produced or maintained by the Public Affairs Office of the 25th Infantry Division and 1st Infantry Division.

d. R.C.M. 701(a)(2)(A). Any books, papers, documents, photographs, tangible objects, buildings, or places, or copies of portions thereof, which are within the possession, custody, or control of military authorities, and which were obtained from or belong to the accused or are intended for use by trial counsel as evidence in the prosecution case-in-chief or are material to the preparation of the defense.

e. R.C.M. 701(a)(2)(B). Any results or reports of physical or mental examinations, to include those of government witnesses, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of military authorities, the existence of which is known to the trial counsel or should be known by the exercise of due diligence, and which are intended for use by the trial counsel as evidence in the prosecution case-in-chief or which are material to the preparation of the defense.

016870

f. R.C.M. 701(a)(3)(A). The names, addresses, and telephone numbers of all witnesses the government intends to call in its case-in-chief.

g. R.C.M. 701(a)(4). Notice and copies of the records of prior civilian or military convictions of the accused which may be offered by the government during trial on the merits, impeachment, or presentencing proceedings.

h. R.C.M. 701(a)(5)(A). Copies of all written material to be presented by the government at the presentencing proceedings, to include the accused's personnel records.

i. R.C.M. 701(a)(5)(B). The names, addresses, and telephone numbers of all witnesses the government intends to call at the presentencing proceedings.

j. R.C.M. 701(a)(6). All evidence which may negate the guilt of the accused, reduce the degree of guilt of the accused, or reduce the punishment. See Brady v. Maryland, 373 U.S. 83 (1963); United States v. Agars, 427 U.S. 97 (1976). This request includes the disclosure of any and all evidence affecting the credibility of government witnesses, pursuant to United States v. Webster, 1 M.J. 216 (C.M.A. 1975). The following provides a non-exclusive list of matters subject to this request:

(1) Prior civilian or court-martial convictions or arrests of all government witnesses; request a check with the National Crime Information Center (NCIC), Criminal Records Center (CRC), and all local military criminal investigatory organizations; see United States v. Jenkins, 18 M.J. 583 (A.C.M.R. 1984).

(2) Records of pending and/or completed nonjudicial punishment; adverse administrative actions, including but not limited to, discharge prior to expiration of term of service for any reason, relief for cause actions, letters of reprimand, and letters of admonition; and all documents or counseling statements which refer to or relate to any adverse or disciplinary actions against government witnesses, to include but not limited to, the counseling packet and 201 file of SGT [REDACTED] see United States v. Green, 37 M.J. 88 (C.M.A. 1993). 6(6)-4

(3) Any evidence, including medical records, of psychiatric treatment, mental disease or defect, combat stress treatment, head injury, alcoholism, or drug addiction of the accused and government witnesses; see United States v. Eshalomi, 23 M.J. 12 (C.M.A. 1986); United States v. Brickey, 8 M.J. 757 (A.C.M.R. 1980), aff'd, 16 M.J. 258 (C.M.A. 1983); United States v. Brakefield, 43 C.M.R. 828 (A.C.M.R. 1971).

(4) Evidence of character, conduct, or bias bearing on the credibility of government witnesses; see Giglio v. United States, 405 U.S. 150 (1972); United States v. Brickey, 8 M.J. 757 (A.C.M.R. 1980), aff'd, 16 M.J. 258 (C.M.A. 1983). This request includes, but is not limited to, information relating to any and all consideration or promises of consideration given to or made on behalf of government witnesses. By consideration, the defense refers to anything of value and use, including but not limited to, plea agreements, immunity grants, witness fees, special witness fees, transportation assistance to members of a witness' family or associates, and any civil or favorable treatment with respect to any pending civil, criminal, or administrative dispute between the

government and that witness, and anything else which could arguably create an interest or bias in the witness in favor of the government or against the defense or act as an inducement to testify or to color or shape testimony.

(5) The questions, answers, and results of any polygraph examination of the accused and government witnesses, including the Polygraph Examination Report (DA Form 2802-E) and related polygraph records, the Polygraph Examination Authorization, and the Polygraph Examination Quality Control Review; see United States v. Mougenel, 6 M.J. 589 (A.F.C.M.R. 1978); United States v. Simmons, 38 M.J. 376 (C.M.A. 1993). This request includes those records maintained at the U.S. Army Crime Records Center, USACIDC, 6010 6th Street, Fort Belvoir, Virginia, 22060-5585.

(6) 201 files, unit files, and Military Personnel Records Jacket (MPRJ) of all government witnesses; request a hard copy of the Official Military Personnel File (OMPF) for each government witness; copies of the DA Form 2A, 2-1, and Enlisted Record Brief (ERB) for all enlisted government witnesses and ORBs for all officer government witnesses.

(7) Counseling/performance files of the investigators who have or are presently participating in the investigation of the allegations contained in the charges and specifications preferred against the accused, to include the records of SA [REDACTED] and SA [REDACTED]
[REDACTED] b(6)-1

k. R.C.M. 912(a)(1). The defense requests that the government submit to each panel member the written questions listed at R.C.M. 912 (a)(1) and provide copies of the signed responses of each member to the defense; request copies of the ORBs of officer panel members and DA Form 2A, 2-1, and ERB of enlisted panel members.

l. R.C.M. 912(a)(2). All written matters provided to the convening authority concerning the selection of members detailed to this court-martial or more broadly, selection of the members stated in the applicable Court-Martial Convening Order.

m. R.C.M. 914 (a)(2), 18 U.S.C. Section 3500, et. seq. The defense intends to move at trial for the production by the government of all statements by government witnesses which relate to the subject matter of their testimony, to include specifically statements made by SGT [REDACTED] the government is requested to voluntarily disclose all such statements before trial. b(6)-4

n. M.R.E. 201. Any matters the prosecution seeks to have judicially noticed.

o. M.R.E. 301(c)(2). Any immunity or leniency granted or promised to any government witness in exchange for testimony.

p. M.R.E. 304(d)(1). The contents of all statements, oral or written, made by the accused that are relevant to the case, known to the trial counsel, and within the control of the armed forces, regardless of whether the government intends to use the statements at trial. See United States v. Dancy, 38 M.J. 1 (C.M.A. 1993).

q. M.R.E. 304(d)(2)(B). Notice of government intent to offer against the accused a statement, oral or written, made by the accused that was not disclosed prior to arraignment.

r. M.R.E. 311(d)(1). Notice of all evidence seized from the person or property of the accused or believed to be owned by the accused which is intended to be offered at trial.

s. M.R.E. 311(d)(2)(B). Notice of government intent to offer evidence seized from the person or property of the accused that was not disclosed prior to arraignment.

t. M.R.E. 321(c)(1). All evidence of the identification of the accused at a line-up, photo line-up, show-up, voice identification, or other identification process which the government intends to offer at trial; request disclosure of any unsuccessful efforts at identification by any witness.

u. M.R.E. 321(c)(2)(B). Notice of government intent to offer identification evidence that was not disclosed prior to arraignment.

v. M.R.E. 404(b). Notice of whether the government intends to offer other crimes, wrongs, or acts of the accused; the defense requests copies of investigations, witness statements, and names and phone numbers of witnesses pertaining to such alleged crimes, wrongs, or acts.

w. M.R.E. 507. Disclosure of the identity, including name, address, and phone number, of all informants and notice of any government exercise of privilege.

x. M.R.E. 609(b). Notice of whether the government intends to impeach a witness with a conviction older than ten years.

y. M.R.E. 612. All writings or documents used by a witness to prepare for trial; the defense intends to move at trial for the production of any writings or documents used by any witness to refresh memory for the purpose of testifying, either while testifying or before testifying.

z. M.R.E. 807. Notice of any hearsay statements, oral or written, intended to be offered at trial under M.R.E. 807, the particulars of the statements, and the names, addresses, and the phone numbers of the declarants.

aa. Notification of testing upon any evidence which may consume the only available samples of the evidence and an opportunity to be present at such testing; an opportunity to examine all evidence, whether or not it is apparently exculpatory, prior to its release from the control of any government agency or agents. See United States v. Garries, 22 M.J. 288 (C.M.A. 1986), cert. denied, 479 U.S. 985 (1986); United States v. Mobley, 31 M.J. 273 (C.M.A. 1990).

bb. All evidence in rebuttal which is exculpatory in nature or material to punishment. See United States v. Trimper, 26 M.J. 534 (A.F.C.M.R. 1988), aff'd, 28 M.J. 460 (C.M.A.), cert. denied, 493 U.S. 965 (1989). The government is reminded that trial by "ambush" is improper. See United States v. Dancy, 38 M.J. 1 (C.M.A. 1993).

cc. All chain of custody documents generated by any law enforcement or military agency in conjunction with the taking of evidence during the investigation of the alleged offense.

dd. All case notes of the agents involved in this case, investigation report entries, photographs, slides, diagrams, sketches, drawings, electronic recordings, handwritten notes, interview worksheets, or any other similar documentation made by such law enforcement personnel pertaining to this case.

ee. A list of, and the opportunity to view prior to trial, all physical, demonstrative, or other evidence and proposed exhibits the government intends to introduce at trial.

ff. Names, addresses, and telephone numbers of any expert witnesses whom the government intends to call at trial; copies of all reports and statements of expert witnesses who spoke with witnesses or otherwise participated in the investigation of this case, regardless of whether such reports or statements are included in any formal report.

gg. Any statements, oral or written, made by the summary, special, or general court-martial convening authorities in this case or by any officer superior to the general courts-martial convening authority, whether oral or written, which:

(1) in any manner, withholds from a subordinate commander the authority to dispose of the accused's case under the UCMJ, to impose nonjudicial punishment upon the accused, to order the accused's separation or release from active duty or active duty for training, or to order the accused into pretrial confinement.

(2) provides guidance to any subordinate commander concerning the appropriate level of disposition of the charged offenses and/or punishment for the charged offense, either made before or after the offense at issue in this case.

hh. United States v. Nix, 40 M.J. 6 (C.M.A. 1994). Disclosure of any information known to government agents which in any manner indicates that a person who forwarded the charges with recommendations displayed bias or prejudice or had an other-than-official interest in the case.

ii. Notice to the defense of the nature of any past or present relationships, associations, or ties between any potential member of the court-martial panel and the trial counsel, assistant trial counsel, chief of military justice, or the Staff Judge Advocate; this request specifically includes, but is not limited to, any religious, social, business, professional, or recreational associations.

REQUEST FOR DISCOVERY – U.S. v. PFC Edward L. Richmond, Jr.

2. This discovery request is continuing and shall apply to any additional charges or specifications that may be preferred after this request for discovery is served upon the government. Immediate notification of new evidence and/or material is requested. A negative response is requested on all items the government is unwilling or unable to produce. The government is reminded of its obligation to provide full discovery in a timely manner. Gamesmanship and trial by ambush are not appropriate. See United States v. Adens, 56 M.J. 724 (A.C.C.A. 2002).

[REDACTED]
CPT, JA
Trial Defense Counsel

b(6)-2 (all)

CERTIFICATE OF SERVICE

I certify that on 14 May 2004 this defense Request for Discovery was served on the government via e-mail to [REDACTED]@us.army.mil.

[REDACTED]
CPT, JA
Trial Defense Counsel

Infantry Division Mental Health Section
ECO 701st Main Support Battalion
FOB Speicher

AETV-BG-SU-MH

b(6)-2

13 May 2004

MEMORANDUM FOR: MAJ [REDACTED] (Trail counsel)

SUBJECT: Sanity Board for PFC Edward L. Richmond Jr. (SS# [REDACTED])

b(6)-5

REASON FOR REFERRAL: Sanity Board

LIMITS OF CONFIDENTIALITY: PFC Edward L. Richmond Jr., was advised at the outset of this evaluation that the information obtained from the interview, and the opinions of the board, were not confidential. He was advised that a full report of the board's findings would be provided to his defense counsel and a summarized report would be given to the prosecution. He was advised that the findings and opinions of the board could be brought out at trial

PROCEDURES:

- Clinical Interview with [REDACTED] MD on 10, 12, and 13 May 2004
- Medical Evaluation [REDACTED] MD on 13 May 2004
- Laboratory Evaluation 13 May 2004
- Minnesota Multiphasic Personality Inventory – 2

b(6)-4

RECORDS REVIEWED:

Personal History Questionnaire, 1 ID Division Mental Health
1 ID Division Mental Health Triage form
Memorandum For Major [REDACTED] order for a sanity board
Charge sheet DD Form 458: Richmond, Edward 5 April 2004
Sworn Statement: 1 March 04 [REDACTED]
Sworn Statement: 28 February 04 CPT [REDACTED]
Sworn Statement: 1 March 04 [REDACTED]
Sworn Statement: 1 March 04 [REDACTED]
Sworn Statement: 28 February 04 [REDACTED]
Sworn Statement: 28 February 04 [REDACTED]
Sworn Statement: 1 March 04 Edward L. Richmond
Sworn Statement: 28 February 04 Edward L. Richmond
Sworn Statement: 29 March 04 Edward L. Richmond
Sworn Statement: 1 March 04 [REDACTED]
Sworn Statement: 1 March 04 [REDACTED]
Sworn Statement: 1 March 04 [REDACTED]
Sworn Statement: 1 March 04 [REDACTED]
Sworn Statement: 28 February 04 [REDACTED]
Sworn Statement: 1 March 04 [REDACTED]

b(6)-4

b(6)-4 (all)

016876

COLLABORATIVE INTERVIEWS:

Consultation with [REDACTED] Ph.D

b(6)-4

BACKGROUND: The accused is a 20 year old single active duty male e3 MOS 11 C (mortars) with 2 years in service and approximately 1.5 years with his current unit which deployed here around February 2004. He has no prior mental health illness.

On 28 February after apprehending a local national the soldier was told to provide security while his NCO flexicuffed the detainee. Shortly after the local national was flexicuffed the accused shot him(the local national) in the head, killing him. The soldier states that his mind didn't register that the local national was cuffed and that when the local national took a step he perceived a threat and shot him.

COMPETENCE RELATED INFORMATION:

- 2a. At the time of the alleged criminal conduct as set out in the charges the accused did not have a severe mental disease or defect. Selective attention at times of extreme stress is possible and perhaps common even in the absence of mental illness. Therefore it is quite possible the soldier didn't register the placement of flexicuffs as he describes.
- 2b. There is no clinical diagnosis.
- 2c. The accused was able to appreciate the nature and quality or wrongfulness of his conduct.
- 2d. The accused suffers from no mental disease or defect rendering him unable to understand the nature of the proceedings against him or to cooperate intelligently in his defense.
- 3a. The accused does not meet criteria for a personality disorder.
- 3b. The soldier has sufficient mental capacity to understand the nature of the proceedings and to cooperate intelligently with his defense counsel in preparation of his defense.
- 3c. The soldier does not suffer from any mental condition that seriously interferes with his ability to think, respond emotionally, remember, communicate, interpret reality, or behave appropriately.
- 3d. The soldier has no organic brain/nervous system disorder or impairment that would impact on his ability to think, reason, perceive, recall, or in any way control his behavior or his thoughts?

I am the POC and may be reached at [REDACTED]

b(6)-4

[REDACTED]
[REDACTED] Psychia
[REDACTED] Division Psychiatrist

016877

b(6)-5

016878

DEPARTMENT OF THE ARMY
Headquarters, 1st Infantry Division
Office of the Commanding General
APO AE 09392

MAY 1 2004

AETV-BGCG

b(6)-4

MEMORANDUM FOR Major [REDACTED] Division Psychiatrist, FOB Speicher, Iraq, APO AE 09392

SUBJECT: Order for a Sanity Board, U.S. v PFC Edward L. Richmond Jr. [REDACTED]
Headquarters and Headquarters Company, 1st Battalion, 27th Infantry, FOB Warrior, Kirkuk, Iraq,
APO AE 09347

b(6)-5

1. I hereby order a Sanity Board, pursuant to R.C.M. 706(b)(1), in the case of U.S. v PFC Edward L. Richmond Jr.

2. The board will consist of one or more persons who will be a physician or clinical psychologist. The board will report as to the mental capacity and mental responsibility of the accused. The report will include the reason for doubting mental capacity or mental responsibility of the accused. Separate and distinct findings will be listed for the questions listed in R.C.M. 706(c)(2)(A)-(D):

- a. At the time of the alleged criminal conduct as set out in the attached charges, did the accused have a severe mental disease or defect? (The term "severe mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, or minor disorders such as nonpsychotic behavior disorders and personality defects.)
- b. What is the clinical psychiatric diagnosis?
- c. Was the accused, at the time of the alleged criminal conduct and as a result of such severe mental disease or defect, unable to appreciate the nature and quality or wrongfulness of his conduct?
- d. Is the accused presently suffering from a mental disease or defect rendering the accused unable to understand the nature of the proceedings against the accused or to conduct or cooperate intelligently in his defense?

3. In addition, the board will answer the following questions:

- a. What personality type does the accused possess?
- b. Does the soldier have sufficient mental capacity to understand the nature of the

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proceedings and to cooperate intelligently with his defense counsel in the preparation of his defense?

c. Does the soldier suffer from any mental condition that seriously interferes with his ability to think, respond emotionally, remember, communicate, interpret reality, and behave appropriately?

d. Does the soldier have an organic brain / nervous system disorder or impairment that would impact on his ability to think, reason, perceive, recall, or in any way control his behavior or his thoughts?

4. Upon completion of the board's investigation, a statement consisting only of the board's ultimate conclusions as to the questions specified in this order should be prepared in two copies. Copies are to be provided to the trial counsel, MAJ [REDACTED] or OSJA at [REDACTED] and the defense counsel, CPT [REDACTED]. The trial counsel and the defense counsel will be telephonically notified when this report is ready for pick-up. b(6)-2

5. A full report, which may include statements made by accused or any evidence derived from such statements, may be released only to the defense counsel, CPT [REDACTED] or to medical personnel when needed for medical purposes.

6. The period from the date of this order until receipt by the Government of the report of the board's ultimate conclusions will be excludable delay under R.C.M. 707(c).

7. Time is critical and the report should be completed as soon as possible. Any difficulty in meeting this requirement should be brought to the immediate attention of the trial counsel, MAJ Schubert.



JOHN R. S. BATISTE
Major General, USA
Commanding

016880



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
REGION IX, FOB DANGER BRANCH OFFICE
APO AE 09392

REPLY TO
ATTENTION OF:

AETV-BGJA-TDS

24 April 2004

MEMORANDUM FOR Commander, 1st Infantry Division, FOB Danger, Tikrit, Iraq, APO AE 09392

SUBJECT: Request for Sanity Board – PFC Edward L. Richmond, Jr., [REDACTED] ¹⁽⁶⁾⁻⁵
Headquarters and Headquarters Company, 1st Battalion, 27th Infantry Regiment, 25th Infantry Division (Light), FOB Warrior, Kirkuk, Iraq, APO AE 09347-9998

1. Pursuant to R.C.M. 706(b), Manual for Courts-Martial, the accused requests the convening authority appoint a sanity board to determine whether he is competent to stand trial and whether he was mentally responsible for the alleged offense.
2. In support of this request and in compliance with R.C.M. 706(a), the defense proffers the following:
 - a. PFC Richmond has absolutely no history of UCMJ action or any history of acts of violence. The charged offense is completely contradictory to previous acts by PFC Richmond that it is possible the accused was suffering from some mental disease or defect.
 - b. Eyewitness reports and the Criminal Investigative Division's observations that the soldier showed no remorse for the alleged acts calls into question the soldier's mental stability. The potential combat stress from his unit's previous missions may have affected the soldier's mental well-being during the time of the alleged offense.
 - c. The nature of the circumstances surrounding the charged offense of murder calls into question the mental condition of the alleged perpetrator, PFC Richmond.
3. The defense requests that a board of at least three psychiatrists be appointed to examine the accused. Furthermore, the defense requests that these board members be the most experienced and qualified psychiatrists in the Army and that at least one member be board certified in forensic psychiatry.
4. In conjunction with the sanity board, I request that the accused also receive the following examinations:
 - a. A complete physical examination to include body fluid laboratory evaluations and electroencephalogram.
 - b. A complete neurological exam to include a Cat Scan.

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AETV-BGJA-TDS

SUBJECT: Request for Sanity Board – PFC Edward L. Richmond, Jr., [REDACTED] Headquarters and Headquarters Company, 1st Battalion, 27th Infantry Regiment, 25th Infantry Division (Light), FOB Warrior, Kirkuk, Iraq, APO AE 09347-9998

c. A thorough battery of psychological tests, to include, at a minimum, an intelligence indicator (such as the Shipley or Wechsler Adult Intelligence Scale); a personality inventory (such as the Minnesota Multiphasic Personality Inventory); and a series of other tests to indicate bizarre thought processes (such as the Rorschach Ink-Blot Test, Thematic Apperception Test, and Bender Gestalt Test). These tests should be administered and interpreted by a board-certified clinical psychologist. All tests should be documented and retained for defense use.

5. In the report, the sanity board should answer the questions listed in R.C.M. 706(c)(2)(A)-(D).

a. At the time of the alleged criminal conduct, did the accused have a severe mental disease or defect?

b. What is the clinical psychiatric diagnosis?

c. Was the accused, at the time of the alleged criminal conduct and as a result of such severe mental disease or defect, unable to appreciate the nature and quality or wrongfulness of his or her conduct?

d. Is the accused presently suffering from a mental disease or defect rendering the accused unable to understand the nature of the proceedings against the accused or to conduct or cooperate intelligently in the defense?

6. In addition to the questions required by R.C.M. 706(c)(2)(A)-(D), the defense requests, IAW R.C.M. 706(c)(2), that the sanity board answer the following additional questions concerning PFC Richmond's *current* mental condition.

a. Does PFC Richmond currently have a severe mental disease or defect?

If the answer to "a" is yes, please answer the following questions:

(1) What is the clinical psychiatric diagnosis, using the American Psychiatric Association's Diagnostic and Statistical Manual TR (DSM TR)?

(2) Is this severe mental disease or defect service-disqualifying?

(3) What is the accused's prognosis for recovery?

(4) Can this severe mental disease or defect be successfully controlled by treatment with drugs?

b. What is the accused's intelligence level?

AETV-BGJA-TDS

SUBJECT: Request for Sanity Board – PFC Edward L. Richmond, Jr., [REDACTED], Headquarters and Headquarters Company, 1st Battalion, 27th Infantry Regiment, 25th Infantry Division (Light), FOB Warrior, Kirkuk, Iraq, APO AE 09347-9998

If the answer to “a” is yes, please answer the following questions:

- (1) What is the clinical psychiatric diagnosis, using DSM TR?
- (2) Is this condition the result of deterioration, destruction, malfunction, or non-existence of mental faculties rather than moral faculties?
- (3) Is this condition an abnormality manifested only by repeated criminal or otherwise antisocial conduct?
- (4) Is this severe mental disease or defect merely a defect of character or personality caused by inadequate training and development, lack of moral restraint, or a personal, social, or cultural standard of conduct which differs from that of society as a whole?

b. Was PFC Richmond, *at the time of the offense*, as a result of such severe mental disease or defect, unable to appreciate the nature and quality or wrongfulness of his conduct?

- (1) Was this complete impairment?
- (2) Did PFC Richmond possess a “lack of capacity” to appreciate the wrongfulness of his conduct?

c. Was PFC Richmond, *at the time of the alleged offense*, able to formulate a specific intent to commit the alleged offense, or to know the probable consequences of his actions?

If the answer to “c” is no, please answer the following questions:

- (1) What is the clinical psychiatric diagnosis, using DSM TR?
 - (2) What is the prognosis?
8. The defense desires to attend all meetings of the sanity board where PFC Richmond is present. This attendance will be strictly non-participatory and non-intrusive.
9. The defense requests that the sanity board consider all of the following materials in reaching their findings:
- a. Charge sheet and the applicable CID report and accompanying sworn statements.
 - b. PFC Richmond’s mental health records.

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SUBJECT: Request for Sanity Board – PFC Edward L. Richmond, Jr., [REDACTED], Headquarters and Headquarters Company, 1st Battalion, 27th Infantry Regiment, 25th Infantry Division (Light), FOB Warrior, Kirkuk, Iraq, APO AE 09347-9998

- c. PFC Richmond's medical records.
 - d. PFC Richmond's counseling packet.
 - e. Personnel file (to include efficiency reports and letters of appreciation).
10. If the government has any additional information it feels is pertinent, the defense requests that such information be included in the packet which goes to the sanity board and that the defense be provided a copy.
11. The defense requests strict compliance with the disclosure prohibitions of M.R.E. 302.
12. No action by the defense should be construed as a waiver of the privilege contained in R.C.M. 706(c)(5).
13. Request that the confidentiality requirements of R.C.M. 706(c)(3) be scrupulously followed and that a sealed copy of the board's complete report be served on CPT [REDACTED] at the above address.
14. POC is the undersigned at DNV: [REDACTED] or via unsecured e-mail at [REDACTED]@us.army.mil.
- b(6)-2 (all)

[REDACTED]
CPT, JA
Trial Defense Counsel