

# 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.** \_\_\_\_\_

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**ARMY** 20040787

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20040787

JALS-CC FORM 24, 1, OCTOBER 2000

JUN 13 2005

016886

VERBATIM<sup>1</sup>  
RECORD OF TRIAL<sup>2</sup>  
(and accompanying papers)

VOL I of V  
ORIGINAL COPY

III of VII

OF

b(6)-2

RICHMOND, Edward L.,  
Jr.

(NAME: Last, First Middle Initial)

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

(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

20040787

<sup>1</sup> Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

<sup>2</sup> See inside back cover for instructions as to preparation and arrangement.

DD FORM 490, MAY 2000

PREVIOUS EDITIONS ARE OBSOLETE.

20040787

FRONT COVER  
016887

DEPARTMENT OF THE ARMY

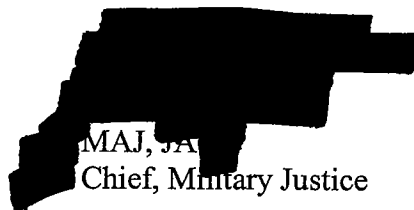
Headquarters, 1<sup>st</sup> Infantry Division  
Office of the Staff Judge Advocate  
UNIT 26222  
APO AE 09036

AETV-BGJA

MEMORANDUM FOR Record

SUBJECT: United States v. PFC Edward L. Edward

I certify that on 13 January 2005 a copy of the record of trial in the case of United States v. PFC Edward L. Richmond was transmitted to the accused at the Fort Sill Regional Confinement Facility. The Record of Trial was received at the confinement facility on 29 January 2005. However, the receipt of the accused has not been received on the date this record was forwarded to the convening authority. The receipt of the accused will be forwarded as soon as it is received.

  
MAJ, JAG  
Chief, Military Justice

b(6)-2

016888



DEPARTMENT OF THE ARMY  
Headquarters, 1st Infantry Division  
Office of the Staff Judge Advocate  
APO Army Europe 09392

AETV-BGJA

27 December 2004

MEMORANDUM FOR Record of Trial

SUBJECT: Receipt for Staff Judge Advocate's Recommendation

1. Enclosed is a copy of the Staff Judge Advocate's Recommendation in the case of Edward L. Richmond Jr., as well as the accused's copy of his record of trial. They are being served upon you in accordance with R.C.M. 1106(f)(1) because it is impracticable to serve the accused due to his transfer outside of the Iraqi Theater of Operations. Please sign and date the acknowledgement below and digitally send it via email.
2. 1105 matters are due to this office 10 calendar days from the date this receipt of service is delivered to you.

Encls  
as

[REDACTED]

b(6)-2

SSG, USA  
NCOIC, Military Justice

I hereby acknowledge receipt of the above documents on: 3 January 2005

[REDACTED]

CPT, JA  
Defense Counsel

b(6)-2

016890

DEPARTMENT OF THE ARMY  
Headquarters, 1st Infantry Division  
Office of the Staff Judge Advocate  
APO Army Europe 09392

AETV-BGJA

27 December 2004

MEMORANDUM FOR Record of Trial

SUBJECT: Receipt for Staff Judge Advocate's Recommendation


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Encls  
as

  
SSG, USA  
NCOIC, Military Justice

b(6)-2

I hereby acknowledge receipt of the above documents on: \_\_\_\_\_

  
CPT, JA  
Defense Counsel

b(6)-2

016891

\*\*\*\*\* **MILITARY JUDGES' ERRATA SHEET** \*\*\*\*\*

UNITED STATES V. PFC Richmond

MILITARY JUDGE: LTC [REDACTED]

PAGE NUMBER	JUDGE'S INITIALS	PAGE NUMBER	JUDGE'S INITIALS	PAGE NUMBER	JUDGE'S INITIALS	PAGE NUMBER	JUDGE'S INITIALS
11	[REDACTED]	804	[REDACTED]				
14	[REDACTED]	819	[REDACTED]				
106	[REDACTED]	820	[REDACTED]				
128	[REDACTED]						
138	[REDACTED]						
139	[REDACTED]						
228	[REDACTED]						
232	[REDACTED]						
256	[REDACTED]	b(6)-2 (all)					
273	[REDACTED]						
308	[REDACTED]						
316	[REDACTED]						
344	[REDACTED]						
363	[REDACTED]						
370	[REDACTED]						
460	[REDACTED]						
475	[REDACTED]						
544	[REDACTED]						
546	[REDACTED]						
551	[REDACTED]						
566	[REDACTED]						
695	[REDACTED]						
689	[REDACTED]						

NOTICE: The above page(s) (has) (have) correction(s). A copy of each corrected page must be inserted into all copies of the record of trial [REDACTED]

Signature of Military Judge: [REDACTED]

Date: 6 Dec 04

FHT Form 27-X22 (SJA) 1 NOV [REDACTED]

016392

# ERRATA SHEET (SFC Fassler)

<b>CASE NAME:</b> U.S. V. RICHMOND, Edward L., Jr.		<b>UNIT:</b> HHC, 1-27 IN, 2-25	<b>TYPE:</b> GCM	<b>DATES:</b> 3-5 Aug 04
<b>TC:</b> MAJ [REDACTED]	<b>DC:</b> CPT [REDACTED]	<b>MJ:</b> LTC [REDACTED]	<b>MJ:</b>	
<b>To TC:</b> 18 Sep 04	<b>To DC:</b> 18 Sep 04	<b>To MJ:</b>	<b>To 2nd MJ:</b>	
<b>Returned:</b> 29 Sep 04	<b>Returned:</b>	<b>Returned:</b>	<b>Authenticated:</b>	

## CORRECTIONS:

Page	Line	Change From:	Change To:	Remarks:
23	18	numograph	pneumograph	
154	19	LNTV	LMTV	Et seq
166	10	attorney's	attorneys	
185	3	Warriror	Warrior	
215	8	[REDACTED]	[REDACTED] b(6)-2	Et seq
215	9	[REDACTED]	[REDACTED]	Et seq
248	8	ilum	illum	
263	11	on on	On	COT
328	15	[REDACTED]	[REDACTED] b(6)-4	
347	6	Advocoate	Advocate	
348	2	[REDACTED]	[REDACTED]	
349	4	[REDACTED]	[REDACTED] b(6)-2	b(6)-2
360	2	[REDACTED]	[REDACTED]	
427	20	[REDACTED]	[REDACTED]	
441	6	real real	real	COT
444	16	20 20	20-20	Et seq
453	3	th	the	
457	5	[REDACTED]	[REDACTED] b(6)-4	
474	17	[REDACTED]	[REDACTED] b(6)-4	
478	21	spreaded	spread	COT
510	5	in in	in	COT
542	10	Ma'ma	Ma'am	
567	18	[REDACTED]	[REDACTED] b(6)-2, -1	
582	5	throudh	through	
611	21	ture	True	
638	2	excercises	exercises	
663	18	Hawii	Hawaii	
688	2	correctg	correct	
709	6	prepatory	preparatory	

[illegible]

# RECORD OF TRIAL

Of

6(6)-2

RICHMOND, Edward L.  
(Name: Last, First, Middle Initial)

[REDACTED]  
(Social Security Number)

Private First Class  
(Rank)

HHC, 1st Bn, 27th IN  
2nd BCT, 25th ID  
(Unit/Command Name)

U.S. Army  
(Branch of Service)

Kirkuk, Iraq  
(Station or Ship)

BY

GENERAL

**COURT-MARTIAL**

Convened by Commanding General

(Title of Convening Authority)

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)

INDEX	RECORD
Article 39(a) Sessions:	
On 3 Aug 04	R- 1
On 4 Aug 04	R- 302,361,430, 546,650,709
On 5 Aug 04	R- 725,802,808,848
Introduction of Counsel	R- 3,5
Challenges	R- 422,426
Arraignment	R- 9
Motions	R- 10,11,12,13,546
Pleas	R- 301
Prosecution evidence	R- 455
Defense evidence	R- 549
Instructions on findings	R- 725
Findings	R- 807
Prosecution evidence	R- 819
Defense evidence	R- 836
Sentence	R- 874
Appellate rights advisement	R- 875
Proceedings in revision	--

DD Form 490, Oct 84, Page 1

016895

TESTIMONY			
Name of Witness (Last, First, Middle Initial)	Direct and Redirect	Cross and Recross	Court
Prosecution			
CW3 [REDACTED]	17,67	40	68
SA [REDACTED]	123	126	-
CPT [REDACTED]	137,181,831	159,183,192,834	187
1LT [REDACTED]	194,455	-	211
SGT [REDACTED]	465,509,681	489,511,696	514,682
SPC [REDACTED]	515	522	-
SPC [REDACTED]	533	537,543	542
SPC [REDACTED]	701	-	-
CW2 [REDACTED]	820	824	-
CPT [REDACTED]	825,831	829	-
Defense			
Accused (Sworn)	75,116,214,252, 549,617	102,120,245, 586,635	121,250, 627
CPT [REDACTED]	637,641,644	639	643
SFC [REDACTED]	646,654	648	-
SSG [REDACTED]	657	662	-
SGT [REDACTED]	663	668	672
SPC [REDACTED]	674	-	-
SGT [REDACTED]	704	706	-
SSG [REDACTED]	836	-	-
SSG [REDACTED]	838	-	-
PFC [REDACTED]	841	-	-
Accused Unsworn	846	-	-
Court			
N/A			

#### EXHIBITS ADMITTED IN EVIDENCE

Number or Letter	Description	Page Where -	
		Offered	Admitted
PE 1 for ID	Accused's DA Form 3881 - 1 Mar 04	-	-
PE 2 for ID	Statement by Accused - 1 Mar 04	-	-
PE 3 for ID	Accused's DA Form 3881 - 29 Mar 04	-	-
PE 4 for ID	Statement by Accused - 29 Mar 04	-	-
PE 5 for ID	Statement by Accused - 28 Feb 04	-	-
PE 6 for ID	Accused's Article 32 testimony	-	-
PE 7	10 Photos	206	206
PE 8	Stipulation of Fact	303	305
PE 9 for ID	Photo of M4	-	-
PE 10 for ID	Photo of M4	-	-
PE 11 for ID	Flexi-cuff	-	-
PE 12 for ID	Handwritten statement by Accused	-	-
PE 13 for ID	Handwritten statement by Accused	-	-
PE 14 for ID	Flexi-cuff	-	-
PE 15	Accused's ERB	808	808
DE A	Good Soldier Book	811	812
DE B	Good Soldier Book	811	812
DE C	Good Soldier Book	811	812
DE D	Good Soldier Book	811	812
DE E	Good Soldier Book	811	812
AE I	Emails for production of Mr. Richmond	10	-
AE II	Defense Motion for Verbatim 32	15	-
AE III	Defense Motion to Suppress	15	-
AE IV	Government response to Motion to Suppress	15	-
AE V	Motion for Appropriate Relief	15	-
AE VI	Government Motion in Limine I	15	-

016896

# EXHIBITS ADMITTED IN EVIDENCE

Number or Letter	Description	Page Where -	
		Offered	Admitted
AE VII	Defense response to Government Motion in Limine I	16	-
AE VIII	Government Motion in Limine II	16	-
AE IX	Defense response to Government Motion in Limine II	16	-
AE X	Court's findings (Motion to Suppress)	302	-
AE XI	Court's findings (Motion for Appropriate Relief)	303	-
AE XII	Court's findings (Motion in Limine I)	303	-
AE XIII	Court's findings (Motion in Limine II)	303	-
AE XIV	Flyer	303	-
AE XV	Defense Voir Dire Questions	308	-
AE XVI	Government Voir Dire Questions	308	-
AE XVII	Proposed instruction on polygraph examination	308	-
AE XVIII	Stars and Stripes Article	399	-
AE XIX	Question by COL [REDACTED]	514	-
AE XX	Question by COL [REDACTED]	542	-
AE XXI	Question by COL [REDACTED] b(6)-2	627	-
AE XXII	Question by COL [REDACTED]	642	-
AE XXIII	Question by COL [REDACTED]	685	-
AE XXIV	Question by COL [REDACTED]	672	-
AE XXV	Question by COL [REDACTED]	685	-
AE XXVI	Question by COL [REDACTED]	685	-
AE XXVII	Findings Worksheet	726	-
AE XXVIII	Findings Instructions	-	-
AE XXIX	Sentence Worksheet	809	-
AE XXX	Sentencing Instructions	-	-
AE XXXI	Post-Trial and Appellate Rights	875	-

## COPIES OF RECORD <sup>1</sup>

\_\_\_\_\_ copy of record furnished the accused or defense counsel as per attached certificate or receipt.

\_\_\_\_\_ copy(ies) of record forwarded herewith.

## RECEIPT FOR COPY OF RECORD <sup>2</sup>

I hereby acknowledge receipt of a copy of the record of trial in the case of Unites States v. PFC Edward L. Richmond,

Delivered to me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

\_\_\_\_\_  
(Signature of accused)

I hereby acknowledge receipt of a copy of the record of trial in the case of Unites States v. PFC Edward L. Richmond,

Delivered to me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

\_\_\_\_\_  
(Signature of accused)

<sup>1</sup> For instructions as to preparation of copies of record, see back cover or appendices 13 and 14, MCM, 2000.

<sup>2</sup> If copy of record prepared for accused contains matters requiring security protection, see RCM 1104(b) (1) (D), MCM 2000

016897

1                                    PROCEEDINGS OF A GENERAL COURT-MARTIAL  
2

3    The military judge called the Article 39(a) session to order at  
4    Forward Operating Base Danger, Tikrit, Iraq, at 0905, 3 August 2004,  
5    pursuant to the following orders:  
6

7    Court-Martial Convening Order Number 3, Headquarters 1st Infantry  
8    Division, Forward Operating Base Danger, Tikrit, Iraq, dated 10 May  
9    2004, amended by Court-Martial Convening Order Number 5, same  
10   Headquarters, dated 30 July 2004.  
11

12                                    [END OF PAGE]  
13

DEPARTMENT OF THE ARMY  
Headquarters, 1st Infantry Division  
APO Army Europe 09392

COURT-MARTIAL CONVENING ORDER  
NUMBER 3

10 May 2004

A general court-martial is convened with the following members:

COL [REDACTED] FA, HHB, DIVARTY  
COL [REDACTED] III, EN, HHD, DIVENG  
LTC [REDACTED] AD, HHB, 4-3 ADA  
LTC [REDACTED] AV, HHC, 1-1 AVN  
LTC [REDACTED] EN, HHC, 264 EN  
MAJ [REDACTED] SC, HHC, 2d BCT  
MAJ [REDACTED] SC, HHC, 121 SIG  
MAJ [REDACTED] AD, HHB, 4-3 ADA  
MAJ [REDACTED] IN, HHC, 2-25th BCT  
CPT [REDACTED] TC, HHC, 1ID  
CPT [REDACTED] AV, HHC, 4th BDE  
CPT [REDACTED] IN, HHC, 1-18 IN

b(6)-2 (all)

If the accused submits a request pursuant to Article 25(c), UCMJ, that enlisted members serve on the court-martial, the above named officer members not named below are excused, and the members will be as follows:

COL [REDACTED] FA, HHB, DIVARTY  
COL [REDACTED] III, EN, HHD, DIVENG  
LTC [REDACTED] AD, HHB, 4-3 ADA  
LTC [REDACTED] AV, HHC, 1-1 AVN  
LTC [REDACTED] EN, HHC, 264 EN  
MAJ [REDACTED] SC, HHC, 121 SIG  
CSM [REDACTED] HHC, 121 SIG  
CSM [REDACTED] HHD, 106 FN  
MSG [REDACTED] HHC, 4th BDE  
SFC [REDACTED] HHC, DISCOM  
SFC [REDACTED] A BTRY, 4-3 ADA  
SFC [REDACTED] HHC, 4th BDE

BY COMMAND OF MAJOR GENERAL BATISTE:

[REDACTED]

DISTRIBUTION:

Each Individual Concerned (1)  
CDR, 1st ID, ATTN: AETV-BGJA-CLD,  
APO AE 09392 (1)  
Record of Trial (1)  
Record Set (1)  
Reference Set (1)

MAJ, JA  
Chief, Military Justice

016899

DEPARTMENT OF THE ARMY  
Headquarters, 1st Infantry Division  
APO Army Europe 09392

COURT-MARTIAL CONVENING ORDER  
NUMBER 5

30 July 2004

The following members are detailed to the general court-martial convened by Court-Martial Convening Order Number 3, same headquarters, dated 10 May 2004:

COL [REDACTED], JR., AV, HHC, 4th Bde  
COL [REDACTED] OD, HHC, DISCOM

b(6)-2 (all)

VICE:

COL [REDACTED] FA, HHB, DIVARTY  
LTC [REDACTED] AV, HHC, 1-1 AVN

For the trial of United States v. PFC Edward L. Richmond, Jr., Headquarters and Headquarters Company, 1st Battalion, 27th Infantry Regiment, 25th Infantry Division (Light), APO AE 09347

BY COMMAND OF MAJOR GENERAL BATISTE:

DISTRIBUTION:

Each Individual Concerned (1)  
Record of Trial (1)  
Record Set (1)  
Reference Set (1)

[REDACTED]  
CPT, JA  
Chief, Military Justice

016900

1 MJ: This Article 39(a) session is called to order.

2 TC: This court-martial is convened by Court-Martial Convening  
3 Order Number 3, Headquarters, 1st Infantry Division, dated 10 May  
4 2004, as amended by Court-Martial Convening Order Number 5, same  
5 Headquarters, dated 30 July 2004, copies of which have been furnished  
6 to the military judge, counsel, and the accused, and which will be  
7 inserted at this point in the record.

8 The charges [sic] have been properly referred to this court  
9 for trial and were served on the accused on 3 July 2004.

10 The prosecution is ready to proceed in the case of The  
11 United States versus Private First Class Edward L. Richmond, Junior.

12 The accused and the following persons detailed to this  
13 court are present:

14 LIEUTENANT COLONEL [REDACTED] MILITARY JUDGE;  
15 MAJOR [REDACTED] TRIAL COUNSEL;  
16 CAPTAIN [REDACTED], DEFENSE COUNSEL; and  
17 CAPTAIN [REDACTED] ASSISTANT DEFENSE COUNSEL.

18 The members are absent.

19 Staff Sergeant [REDACTED] has been detailed reporter  
20 for this court and has previously been sworn.

b(6)-2 (au)

b(6)-2 (c11)

1 TC: I have been detailed to this court-martial by Lieutenant  
2 Colonel [REDACTED] Staff Judge Advocate, 1st Infantry Division. I  
3 am qualified and certified under Article 27(b) and sworn under  
4 Article 42(a), Uniform Code of Military Justice. I have not acted in  
5 any manner, which might tend to disqualify me in this court-martial.

6 MJ: Thank you.

7 Good morning Private First Class Richmond.

8 ACC: Morning, Ma'am.

9 MJ: You are currently represented by Captain [REDACTED] and  
10 Captain [REDACTED]. They are your detailed military defense counsel and  
11 they are provided to represent you free of charge. Now you also have  
12 the right to request an individual military counsel to represent you  
13 and if that person were reasonably available then he or she would  
14 also be detailed to your case to represent you free of charge. If  
15 your request for another military lawyer were granted however, you  
16 would not have the right to keep the services of Captain [REDACTED] and  
17 Captain [REDACTED]. Normally you are entitled to only one military lawyer.  
18 In this case, of course, the trial defense service has seen fit to  
19 detail two lawyers to your case.

20

016902

1           If you wanted to keep them on your case in addition to an  
2 individually requested counsel, you could ask their superiors to let  
3 you keep them on your case but your request would not have to be  
4 granted.

5           Finally, you of course have the right to hire a civilian  
6 attorney. A civilian lawyer would have to be provided by you at no  
7 expense to the government, and if you were represented by a civilian  
8 lawyer, you could keep your military lawyers on the case to assist  
9 your civilian lawyer, or you could excuse them and be represented  
10 solely by a civilian lawyer.

11           Basically those are your rights to counsel. Do you  
12 understand everything I have told you?

13           ACC: Yes, Ma'am. [Standing.]

14           MJ: I appreciate you standing up. Go ahead and have a seat.  
15 [The accused did as directed.]

16           MJ: I absolutely require the lawyers to stand because it is a  
17 time-honored tradition in a court of law, but throughout the  
18 proceedings you and I get to remain seated, all right?

19           ACC: Yes, Ma'am.

20           MJ: All right. Having told you your rights to counsel, by whom  
21 do you wish to be represented?

22

1 ACC: By Captain [REDACTED] and Captain [REDACTED] Ma'am.

2 MJ: By Captain [REDACTED] and Captain [REDACTED] alone then?

3 ACC: Yes, Ma'am.

4 MJ: Very well. Captain [REDACTED] are you the lead counsel

5 then?

6 DC: I am, Your Honor.

7 MJ: Would you please state detailing and qualifications for the

8 defense team?

9 DC: Yes, Your Honor.

10 I have been detailed to this court-martial by Captain [REDACTED]

11 [REDACTED] Senior Defense Counsel. Assistant Defense Counsel, Captain

12 [REDACTED] has been detailed to this court-martial by Lieutenant Colonel

13 [REDACTED], Regional Defense Counsel, United States Army Trial

14 Defense Service, Region IX.

15 All detailed members of the defense are qualified and

16 certified under Article 27(b) and sworn under Article 42(a), Uniform

17 Code of Military Justice. No member of the defense team has acted in

18 any manner, which might tend to disqualify us in this court-martial.

19 MJ: Thank you.

20 DC: Yes, Ma'am.

21

016904

1 MJ: I, too, have been properly certified, sworn, and detailed  
2 to this court-martial.

3 Counsel for both sides appear to have the requisite  
4 qualifications and all personnel required to be sworn have been  
5 sworn.

6 Trial Counsel, please indicated the general nature of the  
7 Charge in this case.

8 TC: The general nature of the Charge in this case is one  
9 specification of unpremeditated murder in violation of Article 118,  
10 Uniform Code of Military Justice. b(6)-2(c)(4)

11 The Charge was preferred by Captain [REDACTED] and  
12 forwarded with recommendations as to disposition by Lieutenant  
13 Colonel [REDACTED] and Colonel [REDACTED] and investigated by  
14 Captain [sic] [REDACTED]

15 Your Honor, are you aware of any matter which might be a  
16 ground for challenge against you?

17 MJ: I am not. Does either side desire either to question me or  
18 challenge me?

19 TC: The government does not.

20 DC: No, Your Honor.

1 MJ: Very well. PFC Richmond, I want to discuss with you now  
2 your choices as to how you can be tried at this court-martial.

3 You have the right to be tried by a court consisting of at  
4 least five officer members. They would be commissioned and or  
5 warrant officers. Also, if you requested, you would be tried by a  
6 court consisting of at least one-third enlisted Soldiers. None of  
7 those enlisted Soldiers would be junior to you and none of them would  
8 come from your company.

9 Do you understand what I have said so far?

10 ACC: Yes, Ma'am.

11 MJ: If you are tried by a court with members, the members will  
12 vote by secret-written ballot and two-thirds of the members must  
13 agree before you can be found guilty of an offense.

14 If you were found guilty of an offense, then two-thirds  
15 must also agree when voting on a sentence, and if your sentence  
16 included confinement for more than 10 years, then three-fourths would  
17 have to agree.

18 Now you also have a right to request a trial by military  
19 judge alone, and, if your request is approved, there will be no court  
20 members and the military judge alone would decide whether you are  
21 guilty or not guilty, and if you are found guilty, the military judge  
22 alone would decide what your sentence would be.

23

1           Do you understand the differences between trial before  
2 members and trial before military judge alone?

3           ACC: Yes, Ma'am.

4           MJ: And, have you discussed these options with your defense  
5 counsel?

6           ACC: Yes, Ma'am.

7           MJ: And, by which type of court-martial do you wish to be  
8 tried?

9           ACC: An enlisted panel, Ma'am.

10          MJ: Very well. And I note that apparently the government has  
11 called an enlisted panel to convene tomorrow morning at nine o'clock,  
12 is that right?

13          TC: Yes, Your Honor.

14          MJ: The accused will now be arraigned.

15          TC: All parties to the trial have been furnished with a copy of  
16 the Charge. Does the accused want it read?

17          DC: The accused waives reading of the Charge, Your Honor.

18          MJ: The reading may be omitted.

19               **[THE CHARGE SHEET FOLLOWS AND IS NOT A NUMBERED PAGE.]**

20                       **[END OF PAGE]**

21

# CHARGE SHEET

## I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) RICHMOND, Edward L. Jr.		2. SSN [REDACTED]	3. GRADE OR RANK PFC	4. PAY GRADE E3
5. UNIT OR ORGANIZATION Headquarters and Headquarters Company, 1st Battalion, 27th Infantry Kirkuk, Iraq APO AE 09347-9998		6. CURRENT SERVICE a. INITIAL DATE 22 May 2002 b. TERM 6 yrs.		
7. PAY PER MONTH a. BASIC 1495.50 \$1407.00		b. PAY/FOREIGN DUTY 2 \$450.00		
c. TOTAL 161745.50 \$1857.00		d. TYPE OF RESTRAINT OF ACCUSED b(6)-2 Restriction Tantamount to Confinement None		
		e. DATE(S) IMPOSED 1-30 Apr 2004 N/A		

## II. CHARGES AND SPECIFICATIONS

10. 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.

b(6)-4

b(6)-2

## III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE Captain	c. ORGANIZATION OF ACCUSER HHC, 1-27 <sup>th</sup> IN Bn, 2 <sup>nd</sup> BCT, 25 <sup>th</sup> ID(L)
d. SIGNATURE OF ACCUSER [REDACTED]	e. DATE 5 April 2004	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 5<sup>th</sup> day of April, 20 04, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

Typed Name of Officer

Major

Signature

HQs, 2<sup>nd</sup> BCT, 25<sup>th</sup> ID(L)

Organization of Officer

Trial Counsel

Official Capacity to Administer Oath  
(See R.C.M. 307(b) - must be a commissioned officer)

12.

On 5 April 2004, 2004, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

[REDACTED]  
Typed Name of Immediate Commander

HHC, 1-27<sup>th</sup> IN Bn, 2<sup>nd</sup> BCT, 25<sup>th</sup> ID(L)  
Organization of Immediate Commander

Captain

[REDACTED]  
Grade

b(6)-2 (c1)

#### IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1030 hours, 5 APRIL, 2004 at HQ, 1-27<sup>th</sup> IN Bn, 2<sup>nd</sup> BCT, 25<sup>th</sup> ID(L)  
Designation of Command or

Kirkuk, Iraq, APO AE 09347-9998

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE <sup>1</sup>

[REDACTED]  
Typed Name of Officer

Commander

Official Capacity of Officer Signing

Lieutenant Colonel

[REDACTED]  
Grade

[REDACTED]  
Signature

#### V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

Headquarters, 1st Infantry Division

b. PLACE

Tikrit, Iraq

c. DATE

15 June 2004

Referred for trial to the general court-martial convened by Court-Martial Convening Order 3,

dated, 10 May, 2004, subject to the following instructions:<sup>2</sup>

To be tried as a noncapital case.

By COMMAND of MAJOR GENERAL BATISTE  
Command or Order

[REDACTED]  
Typed Name of Officer

Chief, Military Justice  
Official Capacity of Officer Signing

CPT

[REDACTED]  
Grade

On 3 July, 2004, I (caused to be) served a copy hereof on (each of) the above named accused.

[REDACTED]  
Typed Name of Trial Counsel

MAJOR  
Grade or Rank of Trial Counsel

[REDACTED]  
Signature

#### FOOTNOTES:

- 1 — When an appropriate commander signs personally, inapplicable words are stricken.  
2 — See R.C.M. 601(e) concerning instructions. If none, so state.

b(6)-2

1 TC: The Charge is signed by Captain [REDACTED] III, a person  
2 subject to the Code as accuser; is properly sworn to before a  
3 commissioned officer of the armed forces authorized to administer  
4 oaths; and is properly referred to this court for trial by Major  
5 General John R. S. Batiste, the Convening Authority.

6 MJ: PFC Richmond, counsel, please rise.

7 [The accused and counsel did as directed.]

8 MJ: Private First Class Edward L. Richmond Junior, how do you  
9 plead? Before receiving your plea, I advise you that any motions to  
10 dismiss or grant any other appropriate relief should be made at this  
11 time. Your defense counsel will speak for you.

12 DC: Your Honor, prior to the entry of pleas, the defense has  
13 several motions to present for the court.

14 MJ: Please be seated.

15 [The accused and counsel did as directed.]

16 MJ: For the record, I did receive several motions from the  
17 defense and government by email over the course of the last couple of  
18 weeks. And, yesterday, I held an 802 with counsel, all three counsel  
19 that are here, and as was I, to discuss some issues that I had with  
20 some of the motions and basically to discuss the march order of this  
21 trial.

22

1 MJ: So let me put the substance of this 802 on the record  
2 first, and then we will go into the motions themselves. The first  
3 thing is, as you all know before trial I've ruled that the accused's  
4 father, Mr. Richmond, had relevant material and necessary evidence to  
5 present and that the government was thereby ordered to permit him to  
6 fly into theater to present testimony at this court-martial.

7 Government, have you complied with that?

8 TC: Yes, Your Honor.

9 MJ: I have had the court reporter mark as Appellate Exhibit I,  
10 22 pages of the pleadings and email traffic between counsel and me  
11 regarding that motion to compel Mr. Richmond's presence.

12 As to the Article 13 motion that the defense has filed, I  
13 asked counsel who the witnesses were going to be. I was told  
14 Lieutenant [REDACTED], Captain [REDACTED] and Sergeant [REDACTED] are present to  
15 testify here today. That the government does not oppose 5 days  
16 credit being granted for the incident regarding First Sergeant  
17 [REDACTED] but that the government opposes either the court granting  
18 credit for restriction tantamount to confinement and or 305 credit or  
19 additional Article 13 credit with regard to First Lieutenant [REDACTED]

20

b(6)-2 (en)

1 As to the Article 32(b) verbatim transcript motion, I was  
2 told by counsel that it has resolved itself, that is, that there is a  
3 verbatim transcript at least as to the witnesses that are critically  
4 important to the defense.

b(6)-2

5 Is that right, Captain [REDACTED]

6 DC: That is correct, Your Honor.

7 MJ: As to the motion to suppress, I was told that I would hear  
8 testimony today from Special Agent [REDACTED] Special Agent [REDACTED]  
9 and Agent [REDACTED] b(6)-1

10 I did indicate to counsel that I did not want mention of  
11 the--yes, I am sorry.

12 TC: Your Honor, the government is replacing Special Agent  
13 [REDACTED] with Special Agent [REDACTED]

14 MJ: Okay. I will hear the testimony of any witnesses called.

15 I mentioned to counsel that I did not want to hear about  
16 the polygraph at this trial. I was then informed that [REDACTED] the b(6)-2  
17 defense position is that if I determine that the March 28 statement  
18 comes into evidence, the defense wants to reraise the voluntariness  
19 in front of the members and therefore would include questioning,  
20 presumably, of Special Agent [REDACTED] before the members regarding  
21 this.

b(6)-1

1           The, "well isn't it true that you told the accused that he  
2 failed a polygraph examination and isn't it true that that's a lie?"

3           I did some research on it last night. I will tell you I am  
4 not entirely comfortable with it, however, I believe that it impacts  
5 upon your right to present a defense and so we will cross that bridge  
6 when we come to it but I did draft an instruction that I would give  
7 to the panel members essentially along the lines of, "You have heard  
8 some evidence that there may have been a polygraph examination in  
9 this case. You are not to consider that for determining the truth or  
10 untruth of the March 28th statement, because, of course, a box or  
11 machine can't make that determination. You are to make that  
12 determination. However, you may consider it to determine whether or  
13 not the March 28 statement was voluntary."

14           Now, if we get to that point, if I allow the statement into  
15 evidence, I will give you a copy of this and allow you to tweak the  
16 language and object as appropriate.

17           I asked the defense if they were primarily going on a  
18 defense of others theory and was told, "yes." I did not at that time  
19 have a defense response to the government motion in limine I. I have  
20 since read that response and I was told the theory of relevance from  
21 the defense.

22





1 MJ: Don't know. We are going to go through that. Yes, in  
2 fact, it has been marked.

3 DC: Thank you.

4 MJ: Let's go through those now. The court reporter did hand me  
5 just before trial the appellate exhibits that have already been  
6 marked.

7 As I said, Appellate Exhibit I is the issue with regards to  
8 Mr. Richmond.

9 Appellate Exhibit II is the motion to produce a verbatim  
10 transcript of the 32. As I said, I have been told that is OBE at  
11 this point.

12 Appellate Exhibit III is a 14-page document dated 9 July  
13 2004, a motion to suppress.

14 Appellate Exhibit IV is the government response to that  
15 motion.

16 Appellate Exhibit V is the motion for appropriate relief  
17 regarding Article 13 credit and or restriction tantamount to  
18 confinement credit.

19 Appellate Exhibit VI is the government motion in limine I,  
20 regarding the 18 February IED incident.

21

016916

1 Appellate Exhibit VII is the defense response to that  
2 motion.

3 Appellate Exhibit VIII is the government motion in limine  
4 II, regarding the order, the alleged order to shoot all males fleeing  
5 the village.

6 Appellate Exhibit IX is the defense response to that  
7 motion.

8 All right counsel, that seems like a fine order to take  
9 them in. Any objections to that?

10 DC: No, Your Honor.

11 TC: Your Honor, I may have my recollection refreshed but I  
12 assume that we are beginning with the motion to suppress?

13 MJ: Right.

14 TC: Yes, Your Honor. The government calls Special Agent

15 [REDACTED]  
16 b(6)-1

[END OF PAGE]

17

b(6)-1 (all)

1 CHIEF WARRANT OFFICER THREE [REDACTED] U.S. Army, was called  
2 as a witness for the prosecution, was sworn, and testified as  
3 follows:

4 DIRECT EXAMINATION

5 Questions by the trial counsel:

6 Q. Agent [REDACTED], please state your name, your rank, and your  
7 unit.

8 A. My name is CW3 [REDACTED]. I am assigned to the  
9 22nd Military Police Battalion, CID.

10 Q. How long have you been a CID agent?

11 A. Sir, I have been a CID agent for about 7 years.

12 Q. And how long have you been in law enforcement?

13 A. Sir, I have been in law enforcement for about 17 years.

14 Q. Would you briefly describe your job as a CID agent?

15 A. My job as a CID agent is that I conduct polygraph  
16 examinations for the Criminal Investigation Division.

17 Q. How long have you been a polygrapher?

18 A. I have been a polygrapher for about 5 years now, Sir.

19 Q. What----

20 A. ----just under 5 years.

21

1 Q. What type--would you describe your training that you have  
2 to undergo in order to become a polygrapher?

3 A. The training I received is from the Defense Polygraph  
4 Institute, Fort Jackson, South Carolina. It is about a 3-month long  
5 school. It teaches psychology, physiology, and the conduct of  
6 polygraph examinations, interrogations, and interview tactics and  
7 techniques.

8 Q. In a typical polygraph do you also attempt to interview the  
9 subject of the polygraph?

10 A. Yes, Sir.

11 Q. Approximately how many polygraphs have you conducted?

12 A. I have conducted approximately 450 polygraphs.

13 Q. And approximately how many interviews of subjects who you  
14 have polygraphed have you conducted?

15 A. Um, approximately the same number, Sir. I interview every  
16 one of them.

17 Q. Would you briefly describe the polygraph process? That is,  
18 from when the subject comes to meet you until when the subject  
19 leaves.

20 A. Okay the polygraph procedure starts off by basically the  
21 introduction of the examinee and myself.

22

1       A.    I--we sit down and go over some paperwork which consists of  
2 the rights warning certificate. We go through a consent form to put  
3 in writing that they are voluntarily taking the polygraph  
4 examination. We go through a biographical medical form which  
5 consists of just some background information for the report later on,  
6 some medical questions to make sure that they are suitable for taking  
7 a polygraph exam.

8           After that we talk about how the polygraph works. I show  
9 them the components that are used in a polygraph. I basically  
10 explain to them how the polygraph works and how it is going to work  
11 on them.

12          After that we talk about the case and go into details about  
13 the incident under investigation. After that we go over a question  
14 list of all the questions that will be used during the polygraph  
15 examination.

16          After that I put the examinee on break for a few minutes  
17 giving them a chance to use the restroom, get a drink of water if  
18 they need to. When they come back in, we do what I call a practice  
19 test and it is basically a numbers test. I use that time to  
20 calibrate the machine to their physiology and basically just show  
21 them how the polygraph is going to work.

22

1           A.    Then after that we go into the actual polygraph  
2 examination, which consists of going through the question list while  
3 they are attached to the components.  Um--I usually go about three  
4 times.

5                   Then after that I score the polygraph charts.  If it is a  
6 passing test, then we go through a very short post-instrument phase  
7 interview.  If it is an inclusive test or a failed test then we go  
8 into a more extensive interview and interrogation.  And that is  
9 pretty much how it works.

10          Q.    Question about the findings of the results, do you--um--  
11 have official findings during that polygraph exam or is that done  
12 later?

13          A.    The actual official findings are released after the  
14 polygraph and the charts and everything goes through our quality  
15 control office at Fort Belvoir, Virginia.

16          Q.    Were you at Kirkuk, Iraq, or otherwise known as FOB  
17 Warrior, on 29 March 2004?

18          A.    Yes, Sir, I was.

19          Q.    What were you there for?

20          A.    I was there to conduct a polygraph examination of PFC  
21 Richmond, Sir.

22

1 Q. Do you see PFC Richmond in the courtroom today?

2 A. Yes, Sir, I do.

3 Q. Would you point to him please?

4 A. He is the [pointing to the accused] gentleman in the middle  
5 of the table there.

6 TC: The witness has identified the accused.

7 Q. Would you describe the circumstances in meeting the  
8 accused?

9 A. The first time that I met him was in the downstairs area of  
10 the building where we conducted the polygraph examination. It seems  
11 like I had already been there for a few minutes when I actually met  
12 him. I think that I had already set up or was getting ready to set  
13 up, but I basically just shook his hand and then introduced myself to  
14 him. Then I left him down there for a little while I finished  
15 setting up the equipment.

16 Q. Would you briefly describe the building?

17 A. It was--I think it was a two-story building. It has been a  
18 little while. That was the only time I was ever at the building. It  
19 was a two-story building. It was kind of a run-down building. It  
20 wasn't in that great of shape. It was just a typical Iraqi type  
21 building.

22

016922

1       A.    It was two stories.  It had different offices on the bottom  
2 floor and then on the next floor there was also some different  
3 offices along the hallway.

4       Q.    Were the offices used or occupied?

5       A.    Some of the offices, in fact most of the offices, appeared  
6 to be occupied.  The particular office that we used for the polygraph  
7 examination looked more like a dayroom kind of thing that really  
8 wasn't--it had this couch and some table and chairs.

9       Q.    Can you to the best of your recollection, how large was  
10 this room?

11      A.    This room was probably I think about maybe a 15 by 20 foot  
12 size room.

13      Q.    Would you describe, you already a mentioned a couch and  
14 some tables, did the room have a door?  Could you describe the room  
15 more further?

16      A.    Right, the entrance of the room had a door.  The door  
17 wasn't really working that well because the door would kind of fall  
18 open.  Straight across from that door on the opposite wall there was  
19 a balcony or a door that led to the outside of the second floor.  I  
20 never went out the door or anything.  I had no reason to go out  
21 there.

22

1           A.    The one entire wall was pretty much windows.  They were  
2 covered with drapes.  The room was dirty.  You know, it wasn't a  
3 clean room.  It looked like it hadn't been swept out in a while and  
4 things.  Large table, the chairs were mostly folding chairs.  Some of  
5 them were the chairs similar to this [indicating the witness chair]  
6 but you know not quite as good of shape.

7           There was a couch and some boxes stacked up in the corner I  
8 think.  There was a fan in there, maybe a wall locker or some sort of  
9 like a metal-looking wall locker thing in the room.

10          Q.    Do you recall what the temperature inside that room was  
11 like?

12          A.    Sir, I don't really recall.  I mean, it was late March.  It  
13 wasn't cold in the room but it wasn't excessively hot either.

14          Q.    And you mentioned that you had to set up your equipment.  
15 How was your equipment set up in the room?

16          A.    Okay the equipment is set up on the table itself.  It  
17 consists of a laptop computer and then different components  
18 consisting of pneumograph tubes, galvanic skin response--basically  
19 galvanograph, it is finger plates, and a cardio cuff, and it attached  
20 into digital axiton box which is connected to the computer.

21

016924

1           A.    The components are set up on a chair that has arms on the  
2 chair basically and then off to the side there is another chair where  
3 I talk to the interviewee. We sit and talk. He is not sitting in  
4 that chair the whole time. That chair is just there for the  
5 polygraph. He sits in another chair.

6           Agent [REDACTED] is in the room sitting off to the side in  
7 another chair inside of the room.           b(6)-1

8           Q.    Who is Agent [REDACTED]

9           A.    Agent [REDACTED] is one of the agents that is from the Tikrit,  
10 CID office here.

11          Q.    This equipment that you described, the components of which,  
12 are--are they necessary to conduct a polygraph examination?

13          A.    Correct, Sir.

14          Q.    Back downstairs, when you first met PFC Richmond, what was  
15 your demeanor like?

16          A.    It was--I feel it was friendly, Sir. I mean, anytime I  
17 introduce myself to people I try to be friendly to them. I try to be  
18 professional.

19          Q.    What was the accused's demeanor?

20          A.    Um--he seemed fine. He seemed calm and you know, he didn't  
21 seem anxious or anything.

22

1 Q. Did he appear to know that he was there to take a polygraph  
2 examination?

3 A. To be honest, Sir, I don't remember. I remember I asked  
4 him something to the effect of, "Do you know why we are here?" I  
5 don't remember if he knew of if I told him, Sir.

6 Q. Once you realized that he knew that he was there for a  
7 polygraph examination did his demeanor change at all?

8 A. Not really, Sir. I told him I would get back with him in a  
9 little bit when we were ready to run the test, and if I remember  
10 right, he kind of waited in a room downstairs just inside the  
11 entrance of the door and off to the left.

12 Q. After your first greeting, what did you do next?

13 A. After that I went back up to the room and I finished  
14 setting up the polygraph equipment. I calibrated the cardio cuff,  
15 which is one of the pieces of equipment that has to be calibrated on  
16 the instrument before I run the polygraph test.

17 Q. And at what point did you bring PFC Richmond upstairs?

18 A. It would have been right after I finished setting up the  
19 equipment. I would have brought him upstairs and then basically  
20 introduced myself again to him, explained to him how we are going to  
21 go over everything today, and then we would start initiating the  
22 paperwork at that time.

23

1 Q. Were you seated or standing when you were beginning your  
2 discussions?

3 A. We would have been seated, Sir. We would have gone and sat  
4 down.

5 Q. And what was the first thing that you did in terms of the  
6 pre-polygraph phase?

7 A. Okay the first thing would have been the rights waiver  
8 certificate.

9 TC: May I approach, Your Honor?

10 MJ: Yes.

11 Q. I am showing you what has been marked Prosecution Exhibit 1  
12 for identification. Do you recognize that?

13 A. That's a rights waiver certificate.

14 TC: I'm sorry I gave him the wrong one.

15 Q. I am retrieving Prosecution Exhibit 1 for identification  
16 and showing Prosecution Exhibit 3 for identification.

17 A. Yes, I recognize that, Sir.

18 Q. How do you recognize that?

19 A. It is the rights waiver certificate that we went over on  
20 the 29th of March.

21

1 Q. Would you----

2 A. It's got--it has my signature on it and it has the  
3 signature of PFC Richmond and where he initialed on the form and also  
4 where Agent [REDACTED] sign the form, which I witnessed him sign the  
5 form. *✓(b)-1*

6 Q. Would you briefly describe what you went over with PFC  
7 Richmond regarding that form?

8 A. Okay, basically what I did is I had him look over the  
9 administrative information on the top of the form to make sure that  
10 was his correct name, social security number, unit of assignment--  
11 went through and basically I read the form off to him.

12 I have another form and I read these off--I read directly  
13 off the form. Then as I read it off I had him initial certain places  
14 on the form. You know, I had him initial where I explained to him  
15 what he is being suspected of, and then I had him initial out in  
16 front of each of the rights as I read them off to him.

17 Q. Did he actually initial himself?

18 A. Yes, Sir.

19 Q. Now did PFC Richmond appear to understand these rights?

20 A. Yes, Sir. I asked him if he understood all his rights and  
21 he said he did, Sir.

22

1 Q. Did he waive his rights?

2 A. Yes, Sir, he did.

3 Q. How do you know that?

4 A. Because I asked him. I said, "Do you want a lawyer at this  
5 time? Are you willing to talk to me." Then this bottom paragraph  
6 down here where it says, "I understand my rights as stated above. I  
7 am now willing to discuss the offense under investigation, make a  
8 statement, without talking to a lawyer first and without having a  
9 lawyer present with me." I had him read that out loud to me and he  
10 initialed at the beginning and at the end of that paragraph.

11 Q. How was he acting when he waived his rights?

12 A. He seemed to be fine, Sir. He was friendly and he was  
13 confident.

14 TC: Okay, I am retrieving Prosecution Exhibit 3 for  
15 identification. b(6)-1

16 Q. What happened next, Agent [REDACTED] b(6)-1

17 A. After that I went through a consent form for taking a  
18 polygraph examination. Went through the form basically the same way  
19 that I go through the rights waiver certificate. I had him initial  
20 through that and sign on that. Then after that we moved on to the  
21 polygraph medical form.

22

1 Q. Did he consent to the polygraph examination?  
2 A. Yes, he did.  
3 Q. Did his demeanor change at all before and after the  
4 consent--he consented?  
5 A. No it did not. Not that I noticed.  
6 Q. And then the next form you discussed was the biographical  
7 form?  
8 A. Right, Sir.  
9 Q. Would you please describe that for a few moments?  
10 A. Okay it is basically a generated form that I basically use  
11 myself. It's got--to make sure that I have his social security  
12 number, his date of birth, the administrative information, and I also  
13 have some background questions on there to learn about him.  
14 Some of this is used in the actual report itself. Some of  
15 this information is also information where I learn more about him in  
16 case he were to not pass the polygraph test I would know some  
17 information about him to target him for an interrogation after the  
18 test.

19 [END OF PAGE]  
20

016930

1 Q. During this phase did PFC Richmond ever talk about or use  
2 the word, "lawyer?"

3 A. I don't specifically recall him talking about a lawyer. He  
4 did at some point during the interview of background nature that he  
5 said that if we would want to talk about that that he would want to  
6 talk to a lawyer about first. This had something to do with a drug  
7 issue and we didn't really dig into that very much because I didn't  
8 want to--you know there was no reason to go into the drug issue for  
9 this particular test.

10 Q. What did you----

11 MJ: I am sorry. You have to speak up louder. I can barely  
12 hear you and I am close, okay?

13 WIT: All right. Sorry, Ma'am.

14 MJ: So what did he say?

15 WIT: Okay he said--we were going through the background and I  
16 asked him if he had ever previously been arrested or charged with  
17 anything in the past and he didn't want to answer that question. I  
18 started pushing him a little to find out what it was that was there  
19 in the past because I didn't want things from the past bleeding over  
20 into his polygraph examination causing him a problem getting through  
21 the test.

22

016931

1           WIT: He indicated that it had something to do with drugs and he  
2   said that if we wanted to talk to him about that particular issue  
3   that he would want to talk to a lawyer first and at that point I just  
4   let it go because I did not want to--you know, because there was no  
5   point to talk to him about drugs in this investigation. It didn't  
6   have anything to do with the case in hand.

7           MJ: Okay.

8           Q. Did he appear to want to continue to discuss the case at  
9   hand?

10          A. Yes, Sir.

11          Q. And what happened next?

12          A. Okay, after that we just continued on with the biographical  
13   sheet. Then we got to the medical questions. I went through the,  
14   you know, basic medical questions making sure he is suitable for  
15   taking a test, seeing what kind of medications he might have taken in  
16   the last 24 hours, making sure he got some sleep the night before,  
17   that he wasn't overly tired, making sure he wasn't in any kind of  
18   pain or discomfort, making sure he didn't have any kind of physical  
19   ailments like respiratory problems, heart problems, or any kind of  
20   illness like that.

21

016932

1 Q. And from there, what happened?

2 A. From there we went into the--I went into the explanation of

3 how the polygraph works. I showed him the different components, you

4 know, on the chair and how they worked and the basic principles

5 behind how a polygraph operates.

6 Q. Did he appear to understand--did he appear to understand

7 what you were explaining?

8 A. Yes, Sir, he did. In fact, at the end of the explanation I

9 asked him if he had any questions, let me know. He didn't have any

10 questions about how it worked.

11 Q. And did you actually conduct a polygraph examination?

12 A. Yes, Sir, I did.

13 Q. And then, did you receive results of that polygraph

14 examination?

15 A. I received tentative results at the time, Sir, and uh--my

16 results were kind of borderline. It was very close. I had him

17 between failing and inconclusive.

18 Q. When you said, "tentative" what did you mean by that?

19 A. Anytime I run a polygraph test, then I score the charts

20 manually there by looking at them, but they are not official results

21 until after I submit charts and the report up to our quality control

22 office at Fort Belvoir, Virginia.

23

1 Q. So in your reading of the charts, it looked somewhere in  
2 between deception indicated and inconclusive?

3 A. And inconclusive, right, Sir. I think if I remember right  
4 I was leaning more towards an inconclusive test.

5 Q. And what did you tell PFC Richmond about the results?

6 A. I told him that he did not pass the test.

7 Q. Did you lie to Richmond about the results?

8 A. No, I didn't lie to him about the results.

9 Q. Is it normal to tell a--is it normal procedure for CID  
10 agents, polygraphers, to tell subjects that they failed a polygraph  
11 test?

12 A. It is normal to tell them they failed a polygraph if they  
13 failed. Most examiners, from my understanding from the ones they  
14 talked to, will tell them they failed even if they are inconclusive.  
15 I tend to tell people that they didn't pass the test if they are  
16 inconclusive. Most people will assume that they failed when I tell  
17 them that.

18 Q. What exactly did you tell Richmond?

19 A. I told him that he did not pass the test.  
20

016934

1 Q. Were you able to tell PFC Richmond which questions he might  
2 have failed?

3 A. I am not able to actually break out which questions in a  
4 polygraph test someone is failing. All I can say is that they are  
5 being deceptive on the relative questions on the test.

6 Q. And how did you transition from the polygraph phase to the  
7 post-poly interview phase?

8 A. Okay, basically what that consists of, once I finish  
9 scoring the charts, you know, I then approach the examinee and they  
10 bring him back in and have him sitting in a chair.

11 I basically direct confrontation. I tell them, "You didn't  
12 pass the polygraph test." Then I wait and see what kind of reaction  
13 I get and then I start moving into interrogation themes.

14 Q. Okay, and do you recall what reaction you got from PFC  
15 Richmond?

16 A. I don't recall absolutely for sure. No, Sir.

17 Q. Do you recall how he was acting at that point?

18 A. He maintained pretty much the same demeanor throughout the  
19 interview, Sir.

20 Q. And did the accused allow himself to be interviewed after  
21 the polygraph?

22 A. Yes, Sir, he did.

23

1 Q. Would you describe the setting of this interview?

2 A. Okay it was still in the same room where we did the

3 polygraph examination. I was sitting directly across from him, kind

4 of on the edge of the table and basically was just interviewing him

5 trying to find out where the problem is on the polygraph test to see

6 why he wasn't passing the polygraph test.

7 I went through numerous "what if" scenarios, what could

8 have happened and things like that to see if he was going to change

9 his story from what he had originally.

10 Q. Is that, using "what if" scenarios, is that a normal

11 technique by polygraphers in post-poly interviews?

12 A. Yes, Sir, it is.

13 Q. Did the accused make a statement?

14 A. Yes, Sir, he did.

15 Q. Would you describe how the interview went?

16 A. Okay, the interview went on for a while. I had him show

17 me--demonstrate in the room what he is talking about. He kind of

18 acted out like he was holding the rifle and I was the farmer. Where

19 he was standing out he kind of described what was happening. As the

20 interview transitioned, he started changing some of the stuff.

21

016936

1           A.    He went from--he stopped saying that the farmer actually  
2 lunged and he was saying that farmer was getting turned off to the  
3 side and basically getting moved out of the sight picture of his  
4 scope.

5                   He described how he was under a lot of stress and  
6 adrenaline from the actual raid itself and how his adrenaline kept  
7 building as they went out to apprehend the farmer and then the farmer  
8 is resisting and he explained how the adrenaline was affecting his  
9 perception of what was going on at the time.

10                  He said that he did remember seeing the farmer with the  
11 flexi-cuffs on with his hands behind his back, but he said it just  
12 didn't perceive in his mind that, at the time, because of the  
13 adrenaline that was going through his body.

14           Q.    Was this statement reduced to writing?

15           A.    Yes, Sir, it was.

16           Q.    I am handing you Prosecution Exhibit 4 for identification.  
17 Do you recognize that?

18           A.    Yes, Sir, I do.

19           Q.    How do you recognize that?

20           A.    This is the statement that we typed in the room that day  
21 and it has my signature on it.

22

016937

b(6)-1

1 A. Also, and once again it's got PFC Richmond's signature and  
2 Agent [REDACTED] signature, and it has the initials of PFC Richmond in  
3 various places on the form, Sir.

4 Q. Is that a sworn statement?

5 A. Yes, Sir, it is.

6 Q. Did you go through the process--the normal process of  
7 swearing the interviewee through the statement?

8 A. Yes, Sir.

9 Q. Okay, were there any initials on the statement?

10 A. Yes, Sir, there are. There's initials at the beginning,  
11 the end, the bottom of the page, um, at the number of the pages of  
12 the statement and also on the second page at the beginning and end of  
13 the statement, at the affidavit that I have him read.

14 Q. And----

15 A. Towards the end of the statement he initialed at the  
16 beginning and the end of that and also at the bottom of the second  
17 page, Sir.

18 Q. And those initials and the signature at the bottom, are  
19 they PFC Richmond's?

20 A. Yes, Sir, they are.

21

016938

1 TC: I am retrieving Prosecution Exhibit 4 for identification.

2 Q. What was his demeanor at the time of making this statement,  
3 the written statement?

4 A. It was still fine. He was still friendly and seemed  
5 confident in what he was saying, Sir.

6 Q. The accused was with you for about 4 hours. What is the  
7 relative breakdown of activity for those 4 hours?

8 A. As far as time wise, Sir?

9 Q. Yes.

10 A. Okay, about the first hour is the pre-instrument phase  
11 where I am going through the paperwork with him, doing the  
12 biographical medical form, explaining how the polygraph works, going  
13 over the case scenario with him as to how his recollection of what  
14 happened, and going over the question list.

15 About the next half hour is collecting charts, having him  
16 actually attach to the components. He will put the components on.  
17 We--I will run him through the question list several times and then  
18 scoring the polygraph charts.

19 Probably the next hour and a half or so was spent in the  
20 interview interrogation phase and probably the last half hour or so  
21 was spent in actually typing up the sworn statement.

22

1 A. He is sitting next to me while we were typing the statement  
2 to make sure it was accurate.

3 Q. During this time period were there any opportunities for  
4 PFC Richmond to take breaks?

5 A. Yes, Sir. After the first hour, during the pretest, I gave  
6 him a break to go use the restroom, get a drink of water. Also  
7 during the interrogation phase, Agent [REDACTED] stepped out of the room  
8 and got him an MRE and got him a bottle of water also for in the  
9 room. <sup>b(6)-1</sup>

10 Q. Did you make any threats, physical or verbal towards PFC  
11 Richmond during this process?

12 A. No, Sir, I did not.

13 Q. Overall, did you make any promises to him?

14 A. No, Sir, I did not.

15 Q. Did you ever touch PFC Richmond besides shaking his hand  
16 and performing the polygraph exam?

17 A. No, Sir, I did not.

18 Q. Was there anything about the entire interview and polygraph  
19 process that indicated to you that PFC Richmond was not voluntarily  
20 undergoing the interview?

21 A. No, Sir, there is not.

22

016940

1 Q. How did the interview end?

2 A. The interview ended with me swearing him to the sworn  
3 statement. Seemed to end on a cordial note. We shook hands and then  
4 he left the room.

5 TC: No further questions.

6 MJ: Defense?

7 **CROSS-EXAMINATION**

8 **Questions by the defense counsel:**

9 Q. Agent [REDACTED] <sup>b(6)-1</sup> now you have 17 years total in law  
10 enforcement?

11 A. Yes, Ma'am, that is correct.

12 Q. Is that plus an additional 7 years of CID?

13 A. No, Ma'am, that is including the 7 years of CID.

14 Q. In addition to the approximately 450 subject interviews  
15 that you have done, as a polygrapher, how many subject interviews  
16 have you done during your time in law enforcement?

17 A. I--I don't know for sure, Ma'am. Probably thousands of  
18 them.

19 Q. During your law enforcement training, you went to school  
20 and learned how to take subject interviews?

21 A. Yes, Ma'am.

22

016941

1 Q. And you were trained in techniques that might enable you,  
2 as an agent, to more freely get a statement from a subject?

3 A. Yes, Ma'am.

4 Q. And you were trained on how to get comfortable with  
5 interviewees before you spoke with them?

6 A. That would be correct, Ma'am.

7 Q. And part of that training was how to get these folks to  
8 trust you?

9 A. Yes, Ma'am.

10 Q. And you used all of those techniques and your years of  
11 experience when you interviewed PFC Richmond?

12 A. That would be correct, Ma'am.

13 Q. Now Agent <sup>b(6)-1</sup> [REDACTED], you only read PFC Richmond his rights  
14 once on the 29th of March, isn't that correct?

15 A. That is correct, Ma'am.

16 Q. And that was at approximately 1005 in the morning?

17 A. I believe that is about right, Ma'am.

18 Q. You never read his rights again after he failed the  
19 polygraph?

20 A. No, I didn't, Ma'am.

21

016942

1 Q. And he didn't in fact sign that sworn statement until some  
2 time after 1400 in the afternoon?

3 A. That is correct, Ma'am.

4 Q. Prior to the actual polygraph exam, you indicated that you  
5 took a biographical sheet from PFC Richmond?

6 A. Yes, Ma'am.

7 Q. And you do that in preparation of a future interrogation of  
8 that person?

9 A. That is correct, Ma'am.

10 Q. So even prior to knowing the polygraph results, you are  
11 preparing for a future interrogation?

12 A. Yes, Ma'am.

13 Q. And in the 450 polygraphs that you have done, you have  
14 conducted approximately 450 subject interviews?

15 A. That is correct, Ma'am.

16 Q. Now with the biographical sheet, you talked to a suspect,  
17 an interviewee, about how they are feeling that day?

18 A. As far as physical wellbeing, Ma'am?

19 Q. Exactly.

20 A. Yes, Ma'am.

21

016943

1 Q. Do you also talk to them a little bit about mentally how  
2 they are feeling that day?

3 A. Not really, Ma'am. I ask them if they have any kind of  
4 mental illnesses that I should be aware of, but that is as far as I  
5 really go as far as mental wellness, Ma'am.

6 Q. And sometime mental wellness would certainly come into play  
7 with results of the polygraph?

8 A. I am not sure I understand the question.

9 Q. Well if somebody was hearing voices in their head, do you  
10 think that would affect the outcome of the polygraph?

11 A. Um, not necessarily, Ma'am.

12 Q. Well at the very least would it be something that you would  
13 want to know?

14 A. Oh, absolutely, Ma'am.

15 Q. And something that you are trained to get that information  
16 from the Soldier?

17 A. Right, Ma'am.

18 Q. Now Private Richmond, you didn't ask him if he had any kind  
19 of physiological issues going on that day, did you?

20 A. Well I asked him if was--by the time I go through whether  
21 he is taking any kind of medication, asking him if he is any kind of  
22 pain or discomfort.

23

016944

1           A.    I feel like that line of questioning that if there was some  
2 issue there, that most people would bring it up by then.

3           Q.    But that is up to the individual to bring that up to your  
4 attention?

5           A.    Yes, Ma'am.

6           Q.    And Private Richmond, as far as you know, didn't have any  
7 issues like that that day?

8           A.    As far as I know, yes, Ma'am.

9           Q.    Because it would have been up to him to bring it to your  
10 attention if he had?

11          A.    Yes, Ma'am.

12          Q.    In the two-story building where the polygraph was  
13 conducted, you had indicated on direct that you would actually set  
14 the equipment up prior to PFC Richmond coming into that room?

15          A.    Yes, Ma'am

16          Q.    Now when you walked into--upon entry into that two-story  
17 building, how far away is that dingy conference room that you took  
18 him to?

19          A.    How far away is the conference room?

20          Q.    From when you enter the building.

21          A.    From when you enter the building?

22

016945

1 Q. Yes.

2 A. It was--it was up some stairs and down a hallway, I'm just  
3 guessing maybe 60 feet, 70 feet.

4 Q. Are there any other rooms in that building as far as you  
5 could tell that were further away from the entrance of the building  
6 than the one that you used?

7 A. There was a latrine at the end of the hallway but other  
8 than that, no, Ma'am.

9 Q. Now the room was fairly dark, wasn't it?

10 A. It was kind of dusky in there, yes, Ma'am.

11 Q. There were--there were some rather heavy curtains on the  
12 windows?

13 A. Yes, Ma'am.

14 Q. And there was no ventilation?

15 A. I didn't check the ventilation.

16 Q. There was no air conditioning in that room.

17 A. I don't remember there being any air conditioning.

18 Q. And there were no windows open?

19 A. I don't--I don't know if the windows were open or not,  
20 Ma'am.

21

1 Q. But there were heavy curtains?

2 A. There were heavy curtains, yes, Ma'am.

3 Q. And that room is also used kind of as a storage junk room

4 for the residents of that building, right?

5 A. There was stuff in there I guess. I didn't really pay that

6 much attention to the stuff. I was there to basically set up the

7 polygraph and move it around to a workspace.

8 Q. Well in addition to the large conference table and chairs,

9 there were also some metal floor to ceiling wall lockers, weren't

10 there?

11 A. It seems I may have remembered seeing one. Maybe there is

12 more, I really don't remember, Ma'am.

13 Q. There were also boxes of office supplies?

14 A. I believe there were some boxes of something. I didn't dig

15 in to them to see what they were.

16 Q. So really that room hadn't been used by anybody for any

17 kind of regular purpose?

18 A. Right, it wasn't an office or living quarters that I could

19 tell, Ma'am.

20 Q. Just a room?

21 A. Just a room, yes, Ma'am.

22

016947

1 Q. And there was a problem with the door on that room swinging  
2 open and closed, wasn't there?

3 A. Yes, Ma'am. b(6)-1

4 Q. Agent [REDACTED] was present the whole time during the  
5 polygraph?

6 A. He wasn't there the whole time, Ma'am. He was there most  
7 of the time. He was there pretty much the whole pre-instrument  
8 phase. During the interrogation part itself he left--he was in and  
9 out of the room a couple of times. One time was to pick up some MREs  
10 and some water for PFC Richmond.

11 Q. So other than approximately maybe a total of 5 minutes of  
12 time, he was present in that room?

13 A. I think he was there more than that. I don't really  
14 remember. I really wasn't timing him coming in and out of the room,  
15 Ma'am.

16 Q. And he is also a CID agent?

17 A. Yes, Ma'am, he is.

18 Q. Agent [REDACTED] on the 29th, your sole purpose for going to  
19 Kirkuk was to polygraph PFC Richmond?

20 A. Yes, Ma'am. b(6)-1

21

1 Q. Did you review the case file before you polygraphed PFC  
2 Richmond?  
3 A. Yes, I did, Ma'am.  
4 Q. So you recall notes in the case file that said that no poly  
5 was needed?  
6 A. I don't actually recall that but it is my understanding  
7 that those are in there, those notes.  
8 Q. So you don't recall notes saying, "I see no need for a  
9 poly. Facts of case speak for themselves."  
10 A. I don't recall seeing that. When I review a case file, I  
11 am looking for the facts of the case itself.  
12 Q. Do you recall a note that a poly is a possibility but  
13 really not needed?  
14 A. I don't recall that. I am not disputing that it is  
15 probably in there.  
16 Q. Or a third statement that agreed, "Poly on Richmond  
17 immaterial at this point."  
18 A. Once again, it is possible that it is in there. I don't  
19 recall it though.  
20

1 Q. Your trip to Kirkuk had actually been planned for quite  
2 amount of time--for quite the time prior to the trip, hadn't it?

3 A. Um, I am trying to remember if I came here for that or if I  
4 was already here and they wanted me to take a look at the case file.  
5 I think that it may be that I had some other exams that I was doing  
6 here and that was one of them they wanted me to look at when I got  
7 here.

8 Q. But that was certainly the sole reason that you went to  
9 Kirkuk?

10 A. Yes, Ma'am.

11 Q. And you told Private Richmond that during your  
12 interrogation, didn't you?

13 A. Yes, I did.

14 Q. That was the only reason that you were there?

15 A. Yes, Ma'am. b(6)-1

16 Q. Now Agent [REDACTED] I don't want to characterize it at unsafe  
17 or dangerous, so how to characterize, generally, travel in Iraq?

18 A. It is unsafe and dangerous, Ma'am.

19 Q. Was it unsafe and dangerous on the 29th of March?

20 A. Well nothing happen on the way up there but it is not any  
21 less dangerous on any particular day over here that I can think of,  
22 Ma'am.

1 Q. And, do you try to limit outside travel from a FOB, if  
2 possible?

3 A. If possible, yes, Ma'am.

4 Q. And, you were friendly with Private Richmond when you met  
5 him?

6 A. Yes, Ma'am.

7 Q. And that is something that you are also trained at in your  
8 17 years of law enforcement experience?

9 A. Right, plus it is just good to be nice to people. There is  
10 no reason to not be nice to people.

11 Q. And generally if you are nice to people they might be nicer  
12 to you?

13 A. Yes, Ma'am.

14 Q. Okay, you told Private Richmond that you were there to help  
15 him?

16 A. I told him I was there to help him tell the truth or to  
17 help him explain to the prosecutor what happened in this  
18 investigation.

19 Q. Did he believe you?

20 A. I assume he did, Ma'am.

21

1 Q. And you told him that if he wasn't truthful with you than  
2 you wouldn't be able to help him?

3 A. I probably said something to that effect, yes, Ma'am.

4 Q. And you in fact told him that the result of that polygraph  
5 would be used at court or used by a military judge?

6 A. I told him that it could be entered if the military judge  
7 allowed it.

8 Q. You didn't tell him, "The military judge will look at this.  
9 A jury will look at this."

10 A. I told him that if the military judge allows it, then a  
11 military jury could look at that.

12 Q. And you told him that he better explain himself now so that  
13 they didn't find him guilty.

14 A. I don't remember saying, "so he wouldn't find himself  
15 guilty." I said he should explain himself so he could put a truthful  
16 statement into the case file.

17 Q. And you told him that the profile resulting from his  
18 polygraph showed that he was a murderer?

19 A. I don't think I told him anything about a profile showing  
20 that he was a murderer.

21

016952

1 Q. But you could have?

2 A. I don't remember--I don't think I would say something like  
3 that, that he is the profile of a murderer. During the pre-  
4 instrument phase, going over the question list, there are some  
5 different types of questions in there. Some of them are control  
6 questions, which I explain as profile questions.

7 Q. But you didn't tell Private Richmond all of those profile  
8 questions.

9 A. Excuse me?

10 Q. You didn't tell him all of those questions. You just told  
11 him some of those questions.

12 A. No, I told him all of the questions that were going to be  
13 on the polygraph.

14 Q. So it is your procedure to review every single question  
15 that is going to be on the polygraph before hand?

16 A. Yes, Ma'am, absolutely.

17 Q. But yet you indicated that after the polygraph you can't  
18 tell which specific questions he's failed?

19 A. That's right, Ma'am. It is an overall pass or fail test  
20 based on the relevant questions on the test.

21

016953

1 Q. And Private Richmond asked you after the polygraph which  
2 questions he did fail?  
3 A. Right.  
4 Q. And you told him that you couldn't tell him that?  
5 A. I couldn't tell him specifically which question he may  
6 have----  
7 Q. And you didn't----  
8 A. ----which questions----  
9 Q. ----and you didn't explain to Private Richmond that it was  
10 because he didn't fail certain questions but that the indicative  
11 questions, you know, the relevant questions showed that he was being  
12 untruthful? You didn't explain that to him, did you?  
13 A. Yes, I did explain that to him.  
14 Q. During the pre-polygraph exam you had asked Private  
15 Richmond, "Have you ever lied to a person in a position of  
16 authority?" Correct?  
17 A. I believe that is very possible, Ma'am.  
18 Q. And you asked him a general question like, "Have you ever  
19 lied?"  
20 A. Yes, Ma'am.  
21

016954

1 Q. And Private Richmond indicated to you that he felt  
2 uncomfortable answering those questions?

3 A. Yes, Ma'am. He is supposed to feel uncomfortable answering  
4 those questions.

5 Q. And he told you then that he would want to check with a  
6 lawyer for those questions as well, isn't that right?

7 A. No, that is not right, Ma'am.

8 Q. And then, you at that point just changed the line of  
9 questioning?

10 A. No, I wouldn't have changed the line of questioning on the  
11 background or control questions.

12 Q. But you did tell him that the answers to these preliminary  
13 questions, the lying questions, would determine that if he was a  
14 murderer because if somebody was lying, well then they must be a  
15 murderer.

16 A. I would explain to him that those questions would fit the  
17 profile of somebody who is a murderer.

18 Q. And again, you indicated with the drug questions, there  
19 were also some additional questions where Private Richmond said, "I  
20 can't talk about that. I want to see a lawyer if you want to talk  
21 about that."

22 A. Yes, Ma'am.

23

1 Q. And you again didn't fulfill his request for a lawyer, you  
2 just continued on with your own questioning?

3 A. Well I didn't pursue that line of questioning concerning  
4 the drug issue at that point.

5 Q. Well did you clarify whether he wanted a lawyer for the  
6 drug issue or for another issue?

7 A. For the drug issues, Ma'am.

8 Q. And where would that be notated in your case file?

9 A. It wouldn't. Anytime someone even mentions a lawyer during  
10 that pre-instrument phase, I stop and I clarify as to whether they  
11 are asking for an attorney at that time.

12 Q. And did you clarify--well you didn't clarify with Private  
13 Richmond at that time if he wanted a lawyer.

14 A. Yes, I did, Ma'am.

15 Q. You didn't clarify with him later on and read him his  
16 rights again, did you?

17 A. No, I did not, Ma'am.

18 Q. Now the polygraph--the polygraph on that day is not  
19 conclusive.

20 A. That is correct, Ma'am.

21

016956

1 Q. But you didn't tell Private Richmond that, did you?

2 A. No, I don't tell anybody if their test is inconclusive. I

3 either tell them if they--if they are passing or if they are failing

4 a test, Ma'am.

5 Q. And so Private Richmond did not know that this paperwork

6 had to go through a quality control laboratory in Fort Belvoir,

7 Virginia?

8 A. No, Ma'am.

9 Q. He thought he failed a polygraph.

10 A. He probably did, Ma'am.

11 Q. And he thought, based on your representation, that it could

12 be used against him at trial?

13 A. Yes, Ma'am.

14 Q. And you told him that he better explain it to you then

15 because he might not get a chance to later on?

16 A. That is correct, Ma'am. b(6)-1

17 Q. Agent [REDACTED] the statement that you took from Private

18 Richmond on the 29th, that doesn't contain everything that you talked

19 about, does it?

20 A. No, it wouldn't contain everything. It would just have the

21 pertinent information in there, Ma'am.

22

016957

1 Q. Okay, would a reenactment of the crime be pertinent  
2 information?

3 A. Would a reenactment of the crime?

4 Q. Yeah.

5 A. I would think, you know, it is hard to write a reenactment  
6 into a statement, Ma'am.

7 Q. Did you videotape the reenactment?

8 A. No, I did not.

9 Q. Did you audiotape tape the reenactment?

10 A. No, Ma'am.

11 Q. Didn't indicate that anywhere in your report either, did  
12 you?

13 A. No, Ma'am.

14 Q. You were the one that typed that statement up on the  
15 computer?

16 A. Yes, Ma'am.

17 Q. And Private Richmond did sign it?

18 A. Yes, Ma'am. He was sitting next to me as I typed it and I  
19 wanted to make sure it was accurate also, and he also had a chance to  
20 read it before he signed it.

21

016958

1 Q. And as soon as he read it, he was able to leave the  
2 interrogation, wasn't he?

3 A. He was able to leave at anytime, but yes, he did leave  
4 after he signed the statement.

5 Q. He left approximately 10 to 30 seconds after he signed the  
6 statement?

7 A. Right after I swore him in, that is when he left.

8 Q. And you indicated that Agent [REDACTED] was kind enough to go  
9 and get him an MRE from another room? b(6)-1

10 A. Yes, Ma'am.

11 Q. And that didn't occur until approximately 1400 that  
12 afternoon, did it?

13 A. I don't remember what time that happened. It would have  
14 been before that time though because the statement was signed shortly  
15 after 1400 if I remember right. So, he had a chance to eat his MRE  
16 while he was there.

17 Q. Briefly as you were typing the statement is when----

18 A. Well I believe so, Ma'am.

19 Q. So approximately 1345 to 1400? Would that be a fair  
20 assessment?

21 A. I suppose so. I don't remember the exact times on that,  
22 Ma'am.

23

016959

b(6)-1

1 Q. Agent [REDACTED], if a subject passes a polygraph, you don't  
2 conduct any further interrogation, do you?

3 A. It is not a further interrogation. The way the polygraph  
4 exam is set up, the examinee is going to be lying to the control  
5 questions on the test, so at the end of a passing test, I will still  
6 challenge the person taking the test telling them they weren't 100  
7 percent honest on the test.

8 Then it will be these background questions. Have you ever  
9 lied to someone? Have you ever lied to someone in a position of  
10 authority--that I will push their buttons a little bit before I let  
11 them go from the test. But they are not showing deception on the  
12 relevant questions on the test.

13 Q. So if they don't show deception on the relevant questions,  
14 you don't do a significant post-poly interview?

15 A. That is correct, Ma'am, unless the case facts are so  
16 overwhelming that there could have be an error on the test of some  
17 sort.

18 Q. And you certainly wouldn't have taken a written statement  
19 in that situation would you?

20 A. Well it depends.

21

016960

1 Q. It depends?

2 A. Sometimes people pass a polygraph exam that have pertinent  
3 information about a specific case but they weren't the actual  
4 perpetrator of the event, at which time, sometimes I will take a  
5 sworn statement from those individuals. Then I will add it to the  
6 case file.

7 Q. Now, you indicated that you did have the opportunity to  
8 review the case file in Private Richmond's case prior to the  
9 polygraph exam?

10 A. Yes, Ma'am, I did.

11 Q. So you were aware that Private Richmond had given  
12 approximately 5 previous statements?

13 A. I didn't count how many I just read through the information  
14 that is in the case file to determine if there is a dichotomy in the  
15 case that could actually be tested at the polygraph.

16 Q. So you recall then that those five statements were actually  
17 all very consistent in substance?

18 A. Um, to be honest with you, I don't remember reading five of  
19 them, but the statements that I did read, they uh--they were pretty  
20 consistent.

21

016961

1 Q. And it was your job, as you said previously, to break away  
2 the story?

3 A. Well it was my job to show the veracity of the statement or  
4 to show that the statement was not true through the use of the  
5 polygraph.

6 Q. That is your job, not the job of the polygraph.

7 A. It is my job, yes.

8 Q. Private Richmond didn't come right off his story right  
9 away, did he?

10 A. No, Ma'am, he didn't.

11 Q. And you had to rake that story away little by little,  
12 didn't you?

13 A. Right. He came off a little bit of it during the pre-  
14 instrument phase and then he came off the rest of it during the post-  
15 instrument phase.

16 Q. And that was due to your questioning?

17 A. My questioning and his decision to tell the truth about  
18 what happened.

19 Q. You told Private Richmond that you were there to help him  
20 out?

21 A. I don't know that I would use those exact words, "to help  
22 him out" but I am sure I made something to the affect of I am there  
23 to help him verify the truthfulness of his statement.

016962

1 Q. And you told Private Richmond that once you left Kirkuk,  
2 that you wouldn't be able to help him anymore.  
3 A. I probably told him that, yes, Ma'am.  
4 Q. Part of your common interrogation technique is to use  
5 hypothetical situations.  
6 A. Yes, Ma'am.  
7 Q. Okay, and you do that to confuse an interviewee, don't you?  
8 A. I wouldn't say to confuse them but it is a technique to get  
9 them thinking about other possibilities of, you know, basically to  
10 give them an out.  
11 Q. It is also a technique to confuse them about what happened,  
12 isn't it?  
13 A. Well I have no real intentions of actually confusing  
14 anybody about what happened when I interview them.  
15 Q. But that might be a beneficial side effect?  
16 A. Well I don't see how confusing somebody would be beneficial  
17 to anybody.  
18 Q. You asked PFC Richmond several "what if" type questions?  
19 A. Yes, Ma'am.  
20

1 Q. And that included the, "What if it was a negligent  
2 discharge?"

3 A. I may have brought that up, yes, Ma'am.

4 Q. And it included, "What if he didn't lunge at Sergeant  
5 Waruch?"

6 A. Probably. I probably used a lot of what if scenarios,  
7 Ma'am.

8 Q. How about the what if scenario such as, "Lets say out there  
9 you knew you shot him but it was an accident?"

10 A. That is very reasonable that I may have said something like  
11 that, yes, Ma'am.

12 Q. Or possibly posed--could you have possibly posed the  
13 scenario to him that he tripped and started to fall and then at that  
14 point had a discharge?

15 A. Yes, Ma'am. I very possibly may have gave that as a  
16 scenario.

17 Q. Or, let's say you knew the Iraqi was cuffed and you didn't  
18 think anyone would see?

19 A. I don't remember using that particular one, but once again,  
20 I am not going to say that I didn't because I don't remember if I did  
21 or not.

22

016964

1 Q. But you indicated on your direct testimony that PFC  
2 Richmond said, "He knew the Iraqi farmer was flex-cuffed."  
3 A. That is what he told me, Ma'am.  
4 Q. Okay and so if he said, "I knew the Iraqi farmer was flex-  
5 cuffed," then that certainly would have been in his statement then,  
6 right?  
7 A. I believe so, Ma'am, yes.  
8 Q. Now you knew that Private Richmond had not given a sworn  
9 statement prior to the 29th--well let me rephrase that. On the 29th  
10 Private Richmond gave a sworn statement.  
11 A. Yes, Ma'am.  
12 Q. And the last time that he had spoken to law enforcement  
13 before that date was the 1st of March.  
14 A. I believe that is correct, Ma'am.  
15 Q. Okay, and at the time that you interviewed him, Private  
16 Richmond told you that he had seen other statements regarding his  
17 case, right?  
18 A. He may have said something like that. I don't recall him  
19 actually saying that.  
20

1 Q. Well Private Richmond indicated to you that he knew more  
2 information on March 29th about what happened then he did on February  
3 28th. That for sure he told you.

4 A. Well, he told me more information, yes, Ma'am.

5 Q. Right. On the 29th of March, the investigation was  
6 wrapping up. It was near its conclusion.

7 A. Yes, Ma'am.

8 Q. And in fact there had been almost no CID activity up from  
9 early March until the polygraph was actually given.

10 A. Not that I know of, Ma'am.

11 DC: May I have a moment, Your Honor?

12 [Long pause.] b(6)-1

13 Q. Agent [REDACTED] the ultimately [sic] polygraph for PFC  
14 Richmond was inconclusive?

15 A. Yes, Ma'am, that is correct.

16 Q. And that is what you had indicated on that day, that you  
17 believed that it inconclusive.

18 A. I hadn't really fully decided. I was leaning toward it was  
19 inconclusive, but it was one of those tests that was kind of  
20 borderline on the continuum of whether somebody is nondeceptive on  
21 one side and deceptive on the other.

22

1           A.    As it squeezes in there is an area in the middle that is an  
2 inconclusive area. He is between the inconclusive and the deceptive  
3 area. I ultimately wrote the exam as inconclusive and it was quality  
4 controlled as inconclusive.

5           Q.    So, final answer?

6           A.    Yes, inconclusive.

7           Q.    Do you recall what the relevant questions were for Private  
8 Richmond's polygraph?

9           A.    I don't recall right off the top of my head, but if I could  
10 see my report, I could tell you what they are.

11          Q.    And it would have been those questions that you would have  
12 wanted to clarify during the post-poly interview?

13          A.    Yes, Ma'am.

14          Q.    But you never did the repolygraph PFC Richmond?

15          A.    I never did what, Ma'am.

16          Q.    Repolygraph him.

17          A.    No, I did not repolygraph him.

18          Q.    So after the post-trial [sic] interview, you never gave him  
19 the chance to take a polygraph again?

20          A.    That is correct, Ma'am.

21

1 Q. And he in fact offered to take a polygraph again, didn't  
2 he?

3 A. I don't recall if he did or not, Ma'am. I normally don't  
4 in cases like that. b(6)-1

5 Q. Agent [REDACTED], when Private Richmond came to the first floor  
6 of the building and you introduced yourself in this friendly manner,  
7 you actually told him that his command had ordered the polygraph,  
8 didn't you?

9 A. No, Ma'am, I didn't tell him that.

10 DC: Nothing further, Your Honor.

11 MJ: Government, any redirect?

12 TC: Yes, Your Honor.

13 **REDIRECT EXAMINATION**

14 **Questions by the trial counsel:** b(6)-1

15 Q. Agent [REDACTED], when the defense attorney was just asking you  
16 questions about did you offer a further polygraph testing or whether  
17 or not you felt further polygraph testing was discussed, you  
18 mentioned that you didn't quite recall. Would it help you to refer  
19 to your report to recall?

20 A. It might if he declined to another further polygraph  
21 testing that I would put that he declined to do further testing in  
22 the report.

23

016968

1 Q. Okay, you don't specifically recall?

2 A. I don't specifically recall, no Ma'am--or Sir, sorry.

3 Q. I am handing you Appellate Exhibit III.

4 DC: Your Honor, I believe the court is planning on considering  
5 what was attached to the----

6 MJ: Yeah, I mean if all you want to get is what the questions  
7 were, that is already in evidence as part of the----

8 TC: I withdraw my question.

9 MJ: The difference between a preliminary matter and trial,  
10 okay?

11 TC: Yes, Your Honor.

12 MJ: Okay.

13 TC: No further questions.

14 **EXAMINATION BY THE COURT-MARTIAL**

15 **Questions by the military judge:** b(6)-1

16 Q. Agent [REDACTED] you said that after the polygraph examination  
17 you went right into the interrogation interview portion, correct?

18 A. Right, after the polygraph examination there is a period of  
19 time there where I am scoring the polygraph charts.

20

016969

1 Q. Okay.

2 A. Yes, Ma'am.

3 Q. Defense counsel asked you if you had advised him of his  
4 rights at that point, and you said, "No." Is that standard  
5 procedure?

6 A. That is correct, Ma'am. We only advise at the beginning of  
7 the polygraph and----

8 Q. So you wouldn't normally readvise?

9 A. Not unless we came back a different day. Then we would  
10 readvise on another day.

11 Q. Now, you stated that during the pre-interview or the pre-  
12 poly, you asked him questions about if he had ever been charged with  
13 a crime before and there was something about drugs and he said  
14 something to the effect, "If you want to ask me about, I want to talk  
15 to a lawyer." Is that right?

16 A. Yes, Ma'am.

17 Q. Now you said that you clarified that. How did you clarify  
18 that?

19 A. Right, anytime somebody brings up about a lawyer in  
20 passing, which happens pretty regularly, then I stop the interview at  
21 that point.

22

016970

1           A.    I find out if they have a lawyer already, and if they don't  
2 have a lawyer I ask them if--well if it is about the case at hand  
3 that we are talking about, if he had been talking about a murder or  
4 something then I would have stopped and asked him, "Do you want a  
5 lawyer at this time?" If they say, "no" then I would continue on  
6 with the interrogation.

7           When it is an off issue, like the drugs, that has nothing  
8 to do with the investigation that I am doing, then I just don't push  
9 the issue about drugs anymore.

10          Q.    Okay. Did you ask him if he had a lawyer?

11          A.    I did ask him if he had a lawyer, Ma'am.

12          Q.    And what did he say?

13          A.    He said that he did not. This is when I advised him of his  
14 rights initially.

15          Q.    Okay. Right, what I am trying to figure out is that at the  
16 time he said, "Hey, I don't want to talk to you about that. I think  
17 I want to talk to a lawyer first if you want to ask me those  
18 questions."

19          A.    Right.

20          Q.    Did you then ask him any other questions about that to  
21 clarify the lawyer business?

22          A.    I don't----

23

1 Q. Or did you just dump the line of questioning with the drugs  
2 and move back to the----

3 A. In this particular case I think I just dumped the line of  
4 questioning about drugs.

5 Q. Okay.

6 A. Because it was an off issue.

7 Q. Okay.

8 A. Because once they start doing that then I just tell them,  
9 "Look, well we just won't talk about the drugs then."

10 Q. Are you convinced that the suggestion that he might want to  
11 talk to a lawyer was solely in connection with----

12 A. Yes, Ma'am.

13 Q. ----these other charges and had nothing to do with the  
14 Charges under investigation?

15 A. I am convinced that it had nothing to do with the Charges  
16 under investigation.

17 MJ: Any questions based on mine? Government?

18 TC: No, Your Honor.

19 MJ: Defense?

20 DC: No, Your Honor.

21

016972

1 [The witness was duly warned, temporarily excused, and withdrew from  
2 the courtroom.]

3 MJ: Government?

4 TC: Your Honor, the government does--now does not intend to  
5 call further witnesses, rather, the government would ask the court to  
6 consider the following prosecution exhibits for identification in  
7 ruling on the motion. b(6)-1

8 The first two exhibits Agent [REDACTED] testified about,  
9 Prosecution Exhibits 3 and 4 for identification.

10 The government also offers Prosecution Exhibit 1 for  
11 identification, which is the rights waiver for the accused's 1 March  
12 statement and his actual statement, Prosecution Exhibit 2 for  
13 identification.

14 The government further offers a 17 April Article 32  
15 testimony of PFC Richmond as Prosecution Exhibit 6 for  
16 identification.

17 DC: Your Honor?

18 TC: Not offering it into evidence but ask that you review it  
19 for the motion. b(6)-2

20 MJ: Okay, matter of style Major [REDACTED], but normally if it is  
21 to be considered for the purposes of the motion, it is marked as an  
22 Appellate Exhibit.

23

016973

1 I won't have you remark them because depending on what my  
2 ruling is, I anticipate that you may want to use some or all of them  
3 tomorrow.

4 But to tell you, none of them will be admitted, noting your  
5 objection, obviously to Prosecution Exhibits 3 and 4, but I will take  
6 them into consideration to the extent that they are relevant to my  
7 decision on the motion, all right?

8 Now let me make sure though, defense, you have no issue  
9 with regard to a motion to suppress Prosecution Exhibit 1 and 2,  
10 right?

11 DC: Your Honor, I am quite frankly a little confused about  
12 which exhibit is which. I assume what Major [REDACTED] is showing is--  
13 is but I am not----

b(6)-2

14 MJ: Come on up and take a look, but Prosecution Exhibit 1 is  
15 the 3881 on the 1 March statement and Prosecution Exhibit 2 is the  
16 actual statement from 1 March. I just want to make sure that the  
17 only thing that you are talking about suppressing is the 29 March  
18 3881 and statement, right?

19 DC: Your Honor, the defense's motion relates specifically to  
20 Prosecution Exhibit 3 and 4, however, we believe that it encompasses  
21 any evidence of the polygraph that is mentioned in the 32.

22

1 MJ: All right.

2 DC: Let me put it this way, Your Honor. The polygraph is not  
3 mentioned in the Article 32 testimony. Specifically, I think both  
4 parties are aware of that issue that they actually took the word  
5 "polygraph" out but there is some kind of--it talks around it at the  
6 unsworn Article 32 statement.

7 MJ: Okay. All right, so government, you have no further  
8 evidence on this motion, correct?

9 TC: That is correct, Your Honor.

10 MJ: Defense, any evidence on this motion?

11 DC: Yes, Your Honor. We will be calling PFC Richmond, if I may  
12 have a moment?

13 MJ: You may.

14 DC: Your Honor, may we take a brief comfort break?

15 MJ: You may. Court's in recess.

16 [The session recessed at 1027, 3 August 2004.]

17 [The session was called to order 1039, 3 August 2004.]

18 MJ: Court is called to order.

19 All parties present when the court recessed are again  
20 present. Defense?

21

1 PRIVATE FIRST CLASS EDWARD L. RICHMOND JR., U.S. Army, was called as  
2 a witness for the defense, was sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the trial counsel:

5 Q. You are the accused Soldier in this case?

6 A. Yes, Sir.

7 TC: Your witness.

8 Questions by the defense counsel:

9 Q. Good morning Private Richmond.

10 A. Good morning, Ma'am.

11 Q. Private Richmond, how old were you on March 29th of this  
12 year?

13 A. Twenty, Ma'am.

14 Q. What kind of high school diploma do you have?

15 A. Uh, a GED, Ma'am.

16 Q. Did you ever--what was the last year of high school that  
17 you completed?

18 A. Uh, tenth grade, Ma'am.

19 Q. Okay, and what did you do at tenth grade?

20 A. What did I do, Ma'am?

21

016976

1 Q. Did you drop out? Did you go on to college?

2 A. I dropped out after that. I went for a semester at LSU,

3 but that was about 2 years later, Ma'am.

4 Q. Okay. Do you remember when you got your GED?

5 A. I don't remember the exact year, Ma'am. I think it was

6 about year after I dropped out, Ma'am.

7 Q. Private Richmond, prior to the investigation in this case,

8 have you ever been read your rights before?

9 A. Yes, Ma'am.

10 Q. Have you ever been read your rights before by anyone in the

11 military?

12 A. No, Ma'am.

13 Q. Ever had any involvement with law enforcement during your

14 time as an active duty Soldier?

15 A. No, Ma'am.

16 Q. Private Richmond, the offense that you are charged with

17 happened on the 28th of February of this year?

18 A. Yes, Ma'am.

19 Q. And after that date, or on that date, and after that date,

20 you gave several statements in this case. Isn't that right?

21 A. Yes, Ma'am.

22

1 Q. And you gave a statement to CID on the 1st of March as  
2 well?

3 A. Yes, Ma'am.

4 Q. Where were you physically on the 1st of March?

5 A. I was in FOB Warrior. It was downstairs in the JAG office  
6 in Kirkuk, Ma'am.

7 Q. And was that normally the FOB that you lived on?

8 A. No, Ma'am.

9 Q. Okay, when were you moved from your normal FOB to FOB  
10 Warrior?

11 A. The 29th of February, Ma'am.

12 Q. So from the 29th of February to the 29th of March you were  
13 at FOB Warrior that whole time?

14 A. Yes, Ma'am.

15 Q. What knowledge did you have about what was going on with  
16 your case during that 1 month time period?

17 A. Slim to none, Ma'am. Every time I would ask someone about  
18 it they would just tell me to don't worry about it, things are  
19 getting worked out, you know. Just do your job basically. So I had  
20 no idea what was really going on, Ma'am.

21

016978

1 Q. And who did you check with when you would ask them what was  
2 going on?

3 A. I believe I asked my commander and my first sergeant, and  
4 my first line supervisor, but pretty much everybody was just like,  
5 you know, don't worry about it right now, so.

6 Q. And so from the time of March 1st from the first time that  
7 you met with CID through, say, March 28th, did you have any kind of  
8 action or information--anything on your case?

9 A. No, Ma'am.

10 Q. What happened on the morning of March 29th?

11 A. I was around where our company headquarters is and Sergeant  
12 [REDACTED] and Sergeant [REDACTED] found me and they were saying that I needed  
13 to be at the legal office at approximately 1000 hours and this was  
14 probably at 0900, Ma'am.

15 Q. Who is Sergeant [REDACTED] b(6)-2

16 A. He is the S-1 NCO, Ma'am.

17 Q. Who is Sergeant [REDACTED]

18 A. He was my first line supervisor at the time, Ma'am.

19 Q. Did you report in to Sergeant [REDACTED]?

20 A. At that time, yes, Ma'am.

21

1 Q. And, did they tell you why you had to go to the legal  
2 office?  
3 A. No, Ma'am.  
4 Q. Did you ask?  
5 A. Yes, Ma'am.  
6 Q. What was their response?  
7 A. "We don't know. You just need to go to legal."  
8 Q. And, what time did you arrive at the legal office that  
9 morning?  
10 A. Probably at 1000 hours, Ma'am. b(6)-1  
11 Q. And, who did you meet when you first arrived?  
12 A. I don't remember if I saw Specialist [REDACTED] b(6)-2 first when I  
13 came in or Special Agent [REDACTED], but I met with Special Agent [REDACTED]  
14 That was the first person that I talked to.  
15 Q. What--where did you go when you first entered the building  
16 when you met Agent [REDACTED] b(6)-1  
17 A. There is a room off to the left in front of the stairs on  
18 the first floor. I went in that room, Ma'am.  
19 Q. How did Agent [REDACTED] identify himself on that morning?  
20 A. He was saying that he was a CID agent, he was a  
21 polygrapher, he had been doing this in the Army for 20 years, so,  
22 that is how he introduced himself, Ma'am.  
23

1 Q. Was he wearing any rank?  
2 A. No, Ma'am.  
3 Q. Was he wearing any branch insignia?  
4 A. No, Ma'am.  
5 Q. How did you recognize him in terms of authority? Did you  
6 think he was a PFC?  
7 A. No, Ma'am. If you have been in the Army 20 years, I don't  
8 know what rank you would have acquired by then but it is a lot higher  
9 than mine, Ma'am.  
10 Q. And, he certainly told you that he was CID?  
11 A. Yes, Ma'am.  
12 Q. Did you know what CID was?  
13 A. Yes, Ma'am.  
14 Q. Was there anyone else with him when he first introduced  
15 himself?  
16 A. I don't think so, Ma'am.  
17 Q. What was his demeanor like when you first met him?  
18 A. He seemed friendly, Ma'am.  
19 Q. You have heard Agent [REDACTED] testify about a rights waiver  
20 form. b(6)-1  
21 A. Yes, Ma'am.  
22

1 Q. Are you familiar with that form?

2 A. Yes, Ma'am.

3 Q. Where did you sign that? When you signed that form, where

4 were you in the building?

5 A. I was downstairs in that room across from the stairwell,

6 Ma'am.

7 Q. And did you understand at that time that you did not have

8 to talk to Agent [REDACTED] b(6)-1

9 A. Yes, Ma'am.

10 Q. And, what did he tell you about why you were there that

11 day?

12 A. He told me that my command had ordered a polygraph so he

13 was there from Tikrit to give it to me, Ma'am.

14 Q. And he told you--did he use the word, "ordered?"

15 A. Uh, I don't remember if he used the word "ordered." I just

16 remember him saying, you know, that the command had ordered a

17 polygraph.

18 Q. Had you heard anything between March 1st and March 29th

19 about getting a polygraph?

20 A. No, Ma'am.

21

016982

1 Q. Had anybody contacted you?

2 A. No, Ma'am.

3 Q. Had you canceled any appointments with them?

4 A. No, Ma'am.

5 Q. Agent [REDACTED] at some point escorted you up to the second  
6 floor? b(6)-1

7 A. Yes, Ma'am.

8 Q. Where did he take you when you arrived at the conference  
9 room on the second floor?

10 A. Um, once we came into the room, there was the big chair  
11 that the actual polygraph was done in, and then right behind it there  
12 was a metal folding chair and that is where he directed me to sit at,  
13 Ma'am.

14 Q. Was the polygraph equipment already set up?

15 A. Yes, Ma'am.

16 Q. What else was in that room other than the table, the  
17 chairs, and the polygraph equipment?

18 A. It had large wall lockers. It had the black storage bins,  
19 several of those. It had just boxes laying around.

20 Q. Did it look like the room was being used for any kind of  
21 office space?

22 A. No, Ma'am.

23

016983

1 Q. Was it being used for any kind of living space?

2 A. No, Ma'am.

3 Q. What was the lighting like in the room?

4 A. Um, I remember it being dim, Ma'am.

5 Q. What about the temperature in the room? What do you recall

6 about that?

7 A. I can't recall what the temperature was.

8 Q. Do you recall if there was ventilation?

9 A. Not that I know of, Ma'am.

10 Q. Were any of the windows open?

11 A. No, Ma'am

12 Q. Were either of the doors open?

13 A. One of the doors kept swinging open periodically, but

14 beside that, no, Ma'am.

15 Q. Was that a distraction during the interview?

16 A. Yes, Ma'am.

17 Q. Private <sup>Richmond</sup> [REDACTED] when you first entered this room, where

18 did you sit? Did you sit in the polygraph chair or did you sit in a

19 different chair?

20 A. I sat in a different chair. They had that metal folding

21 chair behind the actual examination chair and that is where I sat at,

22 Ma'am.

23

b(6)-1

1 Q. Where did Agent [REDACTED] sit when you were sitting in the  
2 metal chair?

3 A. He sat across, facing me. He had his laptop in front of  
4 him so I was kind off to the side of the table and he was on the  
5 table, Ma'am.

6 Q. Do you know Special Agent [REDACTED] b(6)-1

7 A. Yes, Ma'am.

8 Q. Where was Agent [REDACTED] b(6)-1 during this time?

9 A. He was sitting off the in the far right corner of the room,  
10 Ma'am.

11 Q. Was he near the door or away from the door?

12 A. He was away from the door, by the windows, Ma'am.

13 Q. Did he ever identify himself to you?

14 A. I don't remember if he did it or if Special Agent [REDACTED]  
15 did it, but somewhere along the lines, you know, somebody was like,  
16 "This is Special Agent [REDACTED] So, that was about all there was to  
17 it, Ma'am. b(6)-1

18 Q. How much interaction did you have with Special Agent [REDACTED]  
19 during the interrogation?

20 A. None, Ma'am.

21

016985

1 Q. How often was he present in the room during the  
2 interrogation?

3 A. I believe he was there for most of it, Ma'am.

4 Q. How did Agent [REDACTED] start the interview with you prior to  
5 the polygraph? b(6)-1

6 A. I believe first we went over how a polygraph works, like  
7 the history of a polygraph, the legitimacy of it in court, why  
8 polygraphs are used, and things like that, Ma'am.

9 Q. What did he tell you about the legitimacy of a polygraph in  
10 court?

11 A. That it could be used in court, Ma'am. That it is  
12 admissible, Ma'am, once the findings are the--you know, once the  
13 findings come out then it is admissible.

14 Q. After he explained to you how the equipment worked, did he  
15 start to ask you questions about your case?

16 A. Yes, Ma'am.

17 Q. How long did that phase last when he was asking you  
18 questions about your case?

19 A. I would say approximately--I mean, with the actual  
20 background of the polygraph and then the questions before hand, maybe  
21 45 minutes.

22

016986

1 Q. Okay, and what kinds of questions did he ask you?

2 A. There were three different types of questions as I remember  
3 it, Ma'am. They were basic ones like, "Are the lights on in here?  
4 Is the grass green? Are we in Iraq?"

5 Then there was things related to the case as far as, "Did  
6 you know he was flex-cuffed? Did you shoot him for the reason that  
7 you say you did?" Things of that nature, Ma'am.

8 Then they had a third section that he said was to determine  
9 my profile to see if I had the profile of a murderer. And those were  
10 things like, "Have you ever lied to someone in authority? Have you  
11 ever lied before?" Things of that nature, Ma'am.

12 Q. Let's go back to each set of questions. The first set  
13 which you said indicated some fairly factual questions.

14 A. Yes, Ma'am.

15 Q. Is today Tuesday? Those types of questions.

16 A. Yes, Ma'am.

17 Q. Did you have any problem answering those?

18 A. No, Ma'am.

19 [END OF PAGE]

20

1 Q. Did he actually require you to answer them, or were they  
2 just sample questions?

3 A. They were--I mean at that time we were just going over the  
4 general types of questions that were going to be on the polygraph but  
5 I was answering them because they were--they were really obvious  
6 questions, Ma'am.

7 Q. Okay, once you transitioned to the second set of questions,  
8 did Agent [REDACTED] have any documents in front of him that he was  
9 reviewing when he was asking you questions?

10 A. Not that I could recall, Ma'am.

11 Q. Did he indicate to you if he had read the case file prior  
12 to discussing these questions with you?

13 A. I believe he had, Ma'am.

14 Q. And at that point, were you answering the questions, or was  
15 he just giving you sample questions?

16 A. We were talking--I mean he gave the general questions but  
17 we were talking about it, you know, he was like--he was, you know,  
18 "When I ask you on the polygraph if you knew if he was flex-cuffed, I  
19 am asking you if you had seen it when, you know, on the 28th of  
20 March."

21

1           A.    It was just--he went into detail, you know, because he  
2    didn't want me to be answering a question that I did not understand,  
3    so.

4           Q.    And the third set of questions you indicated was things  
5    like, "Have you ever lied?"

6           A.    Yes, Ma'am.

7           Q.    You used the phrase, "profile of a murderer."

8           A.    Yes, Ma'am.

9           Q.    Where does that phrase come from?

10          A.    He was telling me the background of it.  It was either--I  
11    think it was when he was telling me the background of the polygraph.  
12    He said that they would go out to jails and prisons and study people  
13    who had convicted of, you know, the more serious crimes and study  
14    their background.

15                You know, how much they lie to people and things like that  
16    and they had formed profiles of certain people who commit certain  
17    crimes and this was relevant as far as if I fit the profile of a  
18    murderer or not.

19          Q.    Private Richmond, Agent [REDACTED] testified that there was a  
20    reenactment at some point.  Was this prior to the polygraph or after  
21    the polygraph?

22          A.    This was afterwards, Ma'am.

23

b(6) -1

016989

1 Q. Okay, and was there any reenactment done prior to the  
2 polygraph?

3 A. Not that I can recall, Ma'am.

4 Q. Did Agent [REDACTED] give you the opportunity to review any of  
5 your previous statements prior to giving you the polygraph  
6 examination?

7 A. I don't believe so, Ma'am.

8 Q. Okay, you didn't have them in front of you, certainly?

9 A. No, Ma'am.

10 Q. At what point did you move from the metal folding chair to  
11 the polygraph chair?

12 A. After we had reviewed all the questions, Ma'am, he sat me  
13 in the large chair and we began the practice run.

14 Q. And was it in the polygraph chair or the folding chair  
15 where he asked you the questions about the drugs?

16 A. That was the folding chair, Ma'am.

17 Q. Right before the polygraph actually began?

18 A. Yes, Ma'am.

19 Q. And at any point did you ask Agent [REDACTED] if you could talk  
20 to a lawyer?

21 A. Lawyer?

22

1 Q. Yes.

2 A. I told him that I didn't feel comfortable, you know, with  
3 everything that he was talking about, you know, I think I need to  
4 check with a lawyer. I told him that, Ma'am.

5 Q. How did he respond?

6 A. He was saying--I asked him a few different times and he was  
7 saying, "There's no defense lawyers even here in Kirkuk, so let me  
8 just change the line of questioning." Or, "Hold on, I will switch  
9 over to this." It was those types of responses, Ma'am.

10 Q. Did he ever clarify whether in fact you wanted a lawyer at  
11 that point?

12 A. No, Ma'am.

13 Q. Private Richmond, did you know if there was a lawyer  
14 available in Kirkuk?

15 A. I had no idea, Ma'am. b(6)-1

16 Q. What did Agent [REDACTED] tell you about the purpose of his  
17 trip to Kirkuk that day?

18 A. Uh, his sole purpose was to come give me a polygraph,  
19 Ma'am.

20 Q. Did he tell you that he was there to help you?

21 A. Yes, Ma'am.

22

1 Q. What did he say about that?

2 A. "You know I am here to help you out. I came all the way  
3 from Tikrit." Are we talking about before the polygraph or  
4 afterwards, Ma'am?

5 Q. You let me know which one you are answering to.

6 A. Okay before, you know, he was like, "I am here to help you  
7 out with the whole polygraph thing and get this cleared up. You know  
8 I came from Tikrit for you." So, I was like, okay you know I was  
9 agreeing to the polygraph.

10 Afterwards he was saying several times, "Well I am here to  
11 help. I don't want to come all this way--let me help you out." So,  
12 several things of that nature, Ma'am.

13 Q. Private Richmond, what is your recollection of how  
14 dangerous it was to travel throughout Iraq around the 28th, 29th of  
15 March this year?

16 A. Just as dangerous as it has always been, Ma'am.

17 Q. What types of things do you characterize as being  
18 dangerous?

19 A. IEDs, ambushes, things of that nature, Ma'am.

20 Q. Did it seem to you that it must have been fairly important  
21 to make a dangerous trip from Tikrit to Kirkuk?

22 A. Yes, Ma'am.

23

b(6)-1

1 Q. Did Agent [REDACTED] indicate to you any kind of threat level,  
2 any kind of danger that he had experienced on his way up?

3 A. I don't remember when exactly he said it, but he was like,  
4 "You know I understand what it is like out there. I have had people  
5 die next to me on convoys. I know how it is out there. It is  
6 rough." Things of that nature, Ma'am.

7 Q. So you are not sure if he said that pre-poly or after the  
8 poly?

9 A. I am not sure, Ma'am.

10 Q. All right. Once you moved over to the polygraph chair,  
11 approximately how long did it take for him to conduct the polygraph  
12 exam itself?

13 A. Approximately 20 minutes, Ma'am.

14 Q. Do you recall what questions he asked you as part of the  
15 polygraph examination?

16 A. I don't remember the specific questions for the first phase  
17 of questioning, like I was saying, the given questions. I remember  
18 he asked me if I knew that he was flex-cuffed. I remember that he  
19 asked me if I shot him for the reason that I said I did, and I can't  
20 remember the third question.

21

1 Q. Okay and----

2 A. That was actually for the relevant information. For the  
3 other line he was asking me if I had ever lied to somebody in  
4 authority.

5 Q. Uh huh.

6 A. In the military and things of that nature, Ma'am.

7 Q. Approximately how long was it from the conclusion of the  
8 polygraph to the time that Agent [REDACTED] told you that you had failed?  
9 A. Thirty seconds, Ma'am. b(6)-1

10 Q. When did he indicate to you that his results that day  
11 weren't actually final?

12 A. He didn't, Ma'am.

13 Q. Did he ever mention a quality control board at Fort  
14 Belvoir, Virginia?

15 A. No, Ma'am.

16 Q. What did you think those results where that day?

17 A. He told me I failed, Ma'am, so I thought that they came  
18 back negative.

19 Q. Did you think that they were final?

20 A. Yes, Ma'am.

21

1 Q. Did you ask Agent [REDACTED] about why you had failed?  
2 A. Yes, Ma'am. b(6)-1  
3 Q. What did he tell you?  
4 A. At first I was asking him what kind of questions did I fail  
5 and which specific ones because I was confused and probably for about  
6 20 or 30 minutes and I would think about it and I am like, I don't  
7 understand how I failed this, and which questions did I fail, and you  
8 know, what's going on. Eventually he was like, "You failed  
9 everything."  
10 Q. He didn't identify any specific questions?  
11 A. Not in the beginning, Ma'am. Then, at the end, he said,  
12 "You failed everything."  
13 Q. Agent [REDACTED] moved right from the polygraph results into  
14 the subsequent interview? b(6)-1  
15 A. Yes, Ma'am.  
16 Q. There was no break in between there?  
17 A. I might have had a cigarette break, I don't--I don't  
18 remember, Ma'am.  
19 Q. Okay.  
20 A. I don't remember.  
21

b (b)-1

1 Q. How did Agent [REDACTED] tell you that those polygraph results  
2 could be used?

3 A. He told me that once this came to trial, if it did, that  
4 the judge and the jury would be looking at them, that they were  
5 admissible, they were going to get brought in.

6 Q. And what did he tell you about how to explain the failed  
7 results?

8 A. He told me to let him help me explain it. That I have to  
9 give a statement to explain to the judge and the jury why I have got  
10 a failed polygraph exam so if I can't explain this in a statement, I  
11 am going to get convicted. Things like that, Ma'am.

12 Q. Did you think that was in your best interest to cooperate  
13 with Agent [REDACTED] b (b)-1

14 A. Yes, Ma'am.

15 Q. Okay, and did he show you any of the post-polygraph  
16 paperwork?

17 A. I saw it briefly for maybe 10 or 15 seconds right after he  
18 printed it out, Ma'am. But I didn't understand any of it.

19 Q. Did he show you anything that said you failed?

20 A. No, Ma'am.

21

016996

1 Q. At some point did you find out what the results of the  
2 polygraph were?  
3 A. Yes, Ma'am.  
4 Q. And what were they?  
5 A. Inconclusive, Ma'am.  
6 Q. Okay, and how long did the post-polygraph interview phase  
7 last?  
8 A. Two to two and half hours, Ma'am. b(6)-1  
9 Q. Okay and what types of questions was Agent [REDACTED] asking  
10 you?  
11 A. Hypothetical and scenarios. Some of it wasn't even  
12 questions, Ma'am. He would talk for like 10 or 15 minutes and just  
13 make up his own version of what could have happened that day, and you  
14 know, I would try to be like, "No, Sir. That is not how it  
15 happened."  
16 And, he would be like, "No, hold on. Just picture this and  
17 hear me out." So, I was going along with that and occasionally he  
18 would ask me, "So, did it happen like that?" I would be like, "Well  
19 no, that is not how I remembered it." And things of that nature,  
20 Ma'am.

21

1 Q. Approximately--well how much involvement did you have  
2 really in that post-poly interview?

3 A. Not much, Ma'am.

4 Q. Did the reenactment occur during this part?

5 A. Yes, Ma'am.

6 Q. Was it videotaped?

7 A. No, Ma'am.

8 Q. Was Agent [REDACTED] a part of this reenactment?

9 A. I don't believe he was, Ma'am.

10 Q. Just you and Agent [REDACTED] b(6)-1 (all)

11 A. I believe so, Ma'am.

12 Q. Was there any indication of this reenactment on the sworn  
13 statement form that you ultimately signed?

14 A. No, Ma'am.

15 Q. Okay, and did Agent [REDACTED] pose the hypothetical to you,  
16 "Let's say you were out there and you knew you shot him but it was an  
17 accident?"

18 A. Yes, Ma'am.

19 Q. Yes?

20 A. Yes, Ma'am.

21

016998

b(6)-1 (au)

1 Q. Okay and did Agent [REDACTED] pose the hypothetical to you,  
2 "What if you tripped and started to fall and had an accidental  
3 discharge?

4 A. Yes, Ma'am.

5 Q. Did Agent [REDACTED] ask you, "Lets say you knew the Iraqi was  
6 cuffed and you didn't think anyone would see?"

7 A. Yes, Ma'am.

8 Q. Did you answer those questions with him?

9 A. Um, roger, Ma'am. I was answering most of the hypothetical  
10 questions with hypothetical answers, Ma'am.

11 Q. Did you tell him that you were uncomfortable answering  
12 hypothetical questions?

13 A. Like I said, I was trying to tell him, "Look, that's not  
14 how I remember it, Sir." You know, trying to get him to listen to  
15 what I had to say, Ma'am, but he would just tell me, "Well just sit  
16 here and listen and imagine this. Hold on. Just hear me out." And  
17 things like that.

18 Q. When you talked to Agent [REDACTED] on the 29th of March, did  
19 you in fact know more about what had happened on the 28 of February?

20 A. Yes, Ma'am.

21

1 Q. What did you know on the 29th of March that you did not  
2 know back on the February 28th?

3 A. I knew everyone else's position. I had seen the sworn  
4 statements from Sergeant [REDACTED] and a few other people from the TCP.  
5 I don't remember them specifically but mainly from Sergeant [REDACTED]  
6 Ma'am. b(6)-2

7 Q. On the 28th of February did you know--when you shot the  
8 Iraqi man on the 28th of February, did you know that he was flex-  
9 cuffed?

10 A. No, Ma'am.

11 Q. On the 29th of March, when you gave the statement to Agent  
12 [REDACTED] did you know then that the man had been hand cuffed when you  
13 shot him? b(6)-1

14 A. Yes, Ma'am.

15 Q. Private Richmond, once you signed the sworn statement,  
16 approximately how much time did you spend with Agent [REDACTED] before  
17 you left the building? b(6)-1

18 A. Probably 10 seconds, Ma'am.

19 Q. Did you understand that once you signed the statement that  
20 you were able to leave?

21 A. Yes, Ma'am.

22

1 Q. Okay, you didn't stay around to chit chat?  
2 A. No, Ma'am.  
3 Q. Private Richmond, do you have ADHD?  
4 A. Yes, Ma'am.  
5 Q. And what is your understanding of what that is?  
6 A. It's, uh, I guess you could say it is a condition that  
7 makes me fidgety and impulsive, like quick decisions without thinking  
8 and things like that, Ma'am.  
9 Q. Okay, and how--approximately how long have you suffered  
10 from ADHD?  
11 A. I believe that I was diagnosed when I was 7, Ma'am.  
12 Q. And are you currently on any medication for that?  
13 A. No, Ma'am.  
14 Q. Were you on March 29th?  
15 A. No, Ma'am.  
16 Q. On March 1st?  
17 A. No, Ma'am. b(6)-1  
18 Q. Did Agent [REDACTED] ask you that during the pre-interview  
19 phase?  
20 A. Not that I remember, Ma'am.  
21

1 DC: May I have a moment, Your Honor?

2 [Long pause.]

3 Q. Private Richmond, just a brief follow up on my last series  
4 of questions. You said that spent only about 10 seconds from when  
5 you signed the statement to when you left?

6 A. Yes, Ma'am.

7 Q. How much time did you spend to review that statement before  
8 you----

9 MJ: I missed that.

10 DC: Ma'am?

11 MJ: Ten seconds from what?

12 DC: From the time he signed the statement until he left the  
13 conference room.

14 Q. How much time did you spend reviewing that statement before  
15 you signed it?

16 A. It was brief, Ma'am. Maybe 30 seconds.

17 Q. Did you look at it carefully?

18 A. No, Ma'am.

19 Q. Did you initial each page?

20 A. Yes, Ma'am.

21

1 Q. Did you know that once you had initialed each page, you  
2 would be free to go?

3 A. Yes, Ma'am.

4 DC: Nothing further, Your Honor.

5 MJ: Government?

6 **CROSS-EXAMINATION**

7 **Questions by the trial counsel:**

8 Q. Private Richmond, did you know what the statement said?

9 A. Um, roger, Sir. I read it though.

10 Q. In this particular case, you made five previous statements.

11 Is that right?

12 A. I believe so, Sir.

13 Q. And in all of those statements that you made, those were  
14 voluntary statements, is that right?

15 A. Yes, Sir.

16 Q. And on your 1 March statement, that was your first CID  
17 interview, isn't it true that you told him that you would take a  
18 polygraph.

19 A. Yes, Sir.

20 Q. You thought it might be able to help you?

21 A. Yes, Sir.

22

017003

1 Q. So you wanted to take a polygraph?

2 A. At that time, yes, Sir.

3 Q. And you wanted to pass a polygraph?

4 A. Roger, Sir.

5 Q. These two interviews on 1 March and 29 March, they took

6 place in the same building, right?

7 A. Yes, Sir.

8 Q. And that is also the JAG building?

9 A. Yes, Sir.

10 Q. You are familiar with that building, the legal office,

11 right?

12 A. I am now, Sir.

13 Q. And you knew you were with CID agents both times, isn't

14 that right?

15 A. Yes, Sir.

16 Q. And--now you were read your rights before the 1 March

17 statement and before the 29 March statement. Did you understand your

18 rights?

19 A. Yes, Sir.

20 Q. You knew that you could stop the interrogation?

21 A. Yes, Sir.

22

017004

1 Q. And you knew that you could request a lawyer and that would  
2 stop the interrogation?

3 A. Yes, Sir. b(6)-1

4 Q. On the 29 March interview you warned Agent [REDACTED] that you  
5 would need to--that you might need to talk to a lawyer if he wanted  
6 to pursue that line of questioning, right?

7 A. Roger, Sir.

8 Q. If he would have kept pursuing that line of questioning,  
9 presumably about drugs, you would have asked for a lawyer, wouldn't  
10 you of?

11 A. Well I told him right there, Sir, that I didn't feel  
12 comfortable with those questions.

13 Q. So he stopped asking those types of questions?

14 A. He switched back and forth between it a few times. It took  
15 about two or three times for me to say that before he finally left it  
16 alone.

17 Q. Okay, you weren't going to answer those types of questions,  
18 right?

19 A. No, Sir.

20 Q. And there was nothing he could do to bring that information  
21 out?

22 A. There is nothing he did to bring that information out.

23

1 Q. So you were able to say to yourself, "No, I am not going to  
2 talk about that."

3 A. Roger, Sir. I didn't want to discuss that. I wanted to be  
4 as forthcoming as I could, you know, to help with the case and the  
5 investigation but I didn't feel comfortable with it and that is why I  
6 asked--said that I needed to see a lawyer.

7 Q. Right.

8 A. If this is what you all are going to be doing to me.

9 Q. Right, so within yourself, you were able to not discuss  
10 something?

11 A. Um, I--like I said I said, Sir, I wanted to be as  
12 forthcoming as possible but I just--I didn't feel comfortable with  
13 that subject.

14 Q. I have talked to some folks from your unit and that know  
15 you and they basically describe you as that you basically say what  
16 you think. Is that a correct statement?

17 A. Depends on the circumstances, Sir. Not all the time.

18 Q. For the most part though?

19 A. It depends, Sir. If I am around other privates, then I do,  
20 Sir.

21

017006

1 Q. You have also been described as strong willed, is that an  
2 accurate statement?

3 A. I think so, Sir. I think everybody in the Army should be  
4 described as that.

5 Q. Now you have described that you have reenacted the events  
6 out there on the field on the 28th of February with Agent [REDACTED]. Is  
7 that right?

b(6)-1

8 A. I believe so, Sir.

9 Q. And the reenactment, isn't that--wasn't that <sup>consistent</sup> ~~consisted~~ with  
10 the final statement that you signed?

b(6)-2

11 A. No, Sir.

12 Q. Okay, talk to me about that.

13 A. Um, I don't remember all the details of it, Sir, but I  
14 would assume that I reenacted it with him the same way I did with CID  
15 agents on the 1st of March.

16 Q. Okay, so in this reenactment, you didn't say anything about  
17 that you must have known that the Iraqi had flex-cuffs.

18 A. No, Sir.

19 Q. And in this reenactment, you didn't say anything about that  
20 he must not have--he probably didn't lunge?

21 A. No, Sir.

22

b(6)-2

1 Q. Okay----

2 A. I was open to the possibility that Sergeant [REDACTED] had  
3 pulled him or that he had tripped or something because I had seen  
4 other statements, Sir, but I didn't say that that was what I knew,  
5 Sir.

6 Q. Okay, so--so the reenactment was different from your  
7 statement?

8 A. Roger, Sir.

9 Q. And why was your statement different?

10 A. Well after I reviewed it, since I got a copy of it, Sir, it  
11 just--it--you know, they don't match up, Sir.

12 Q. The reenactment and your statement?

13 A. Roger, Sir.

14 Q. But you reviewed your statement?

15 A. Roger, Sir.

16 Q. And you didn't say anything about it when you reviewed your  
17 statement?

18 A. No, Sir.

19 Q. What about your statement that you did not want to make  
20 that day?

21 A. Excuse me, Sir.

22

017008

1 Q. What about the statement on 29 March did you not want to  
2 make that day?

3 A. What about the statement did I not want to make, Sir?

4 Q. Exactly.

5 A. At the time, I wanted to make any statement that I was  
6 under the impression that this was going to help me, you know, that  
7 this was going to explain the failed polygraph so I wanted to make a  
8 statement that was going to help me, Sir.

9 Q. Defense counsel asked you questions about ADHD. What does  
10 that stand for?

11 A. Uh--attention deficit hyper disorder--hyperactivity  
12 disorder or something like that, Sir.

13 Q. And you were diagnosed when you were 7 years old?

14 A. I believe so, Sir.

15 Q. Um--these--you said that it makes you fidgety and  
16 impulsive?

17 A. Yes, Sir.

18 Q. And that it--you make quick decisions without thinking  
19 about it?

20 A. Sometimes, Sir.

21

1 Q. Now with this attention deficit hyper--or the disorder, uh,  
2 the quick decision without thinking, how does that apply to this  
3 particular scenario in this statement?

4 A. I'm not sure.

5 Q. Not to the 28th of February but to the statement on the 29  
6 March?

7 A. I am not sure, Sir. I am not sure if it would add to my  
8 gullibility at that time or not, Sir. I am not sure.

9 Q. Now you stated on direct examination that you have had your  
10 rights read to you before prior to this case. Would you describe the  
11 circumstances of that?

12 A. Um--I've been arrested a few times in the past. I don't  
13 exactly remember when or what for or specific charges or anything  
14 like that, but I know some time in the past I have had my rights  
15 read, Sir.

16 Q. Approximately how many times?

17 A. Two or three, Sir.

18 Q. How old were you when you were read these rights?

19 A. I think 14 or 15.

20 Q. Uh huh.

21 A. Maybe 16, Sir.

22

017010

1 Q. Now when you were read your rights when you were 14, 15, or  
2 16, those were the only other times that you were read your rights  
3 then?

4 A. Only times I can remember, Sir. I mean, outside of this  
5 case.

6 Q. Okay, how old were you in 2001?

7 A. In 2001?

8 Q. Yes.

9 A. Seventeen.

10 Q. Were you read your rights when you were 17?

11 A. I might have been, Sir.

12 Q. Okay so two or three times, you were read your rights  
13 before?

14 A. That I can remember, Sir, roger.

15 Q. And each time you were read your rights before did you  
16 waive your rights?

17 A. I don't remember, Sir.

18 Q. You stated that you don't remember what you were being read  
19 your rights for?

20 A. I don't remember the specific charges, Sir.

21

1 Q. Isn't it true that in 2001 you were read your rights for  
2 possession with intent to sell cocaine, possession of marijuana, and  
3 battery on a police officer, and fleeing a police officer?

4 A. I don't know if that was 2001, but I was read my rights for  
5 that, Sir.

6 Q. And that was Ascension Parish, Louisiana?

7 A. Yes, Sir.

8 Q. When you were read your rights for that particular event,  
9 did you make a statement after that?

10 A. Not that I recall, Sir.

11 Q. Did you invoke your rights?

12 A. I don't remember, Sir.

13 Q. Now that you say--you stated that on the 29th, your  
14 statement with Agent [REDACTED] you were told that the command ordered a  
15 polygraph? b(6)-1

16 A. Yes, Sir.

17 Q. And you knew from what you already said that you wanted to  
18 do a polygraph right?

19 A. Um--I believe that it was Special Agent [REDACTED], I told  
20 him that I wanted to do a polygraph, Sir. b(6)-1

21

1 Q. Okay, so when the agent said that you were ordered to do a  
2 polygraph, that didn't really phase you at all? You still wanted to  
3 do a polygraph?

4 A. I was surprised, Sir, but I still wanted to do a polygraph,  
5 roger.

6 Q. And you wanted to do a polygraph after your rights were  
7 read that day?

8 A. Yes, Sir.

9 Q. And you wanted to do a polygraph when you were conducting  
10 the polygraph?

11 A. Yes, Sir.

12 Q. Now inside the room, the lights--they were dim you stated  
13 that?

14 A. I believe so.

15 Q. You could see pretty well though?

16 A. You could see, Sir.

17 Q. It wasn't dark was it?

18 A. It wasn't pitch black or anything, Sir.

19 Q. But you didn't have any bright lights in your face?

20 A. No, Sir.

21

017013

1 Q. And throughout this entire process, you knew that you could  
2 stop questioning, right?

3 A. Yes, Sir.

4 Q. And you knew that you could ask for a lawyer?

5 A. Yes, Sir.

6 Q. You had a couple of cigarette breaks during the entire  
7 process?

8 A. I think so, Sir.

9 Q. That tends to calm you down?

10 A. I smoke cigarettes, Sir. I wouldn't say that it calms me  
11 down but-----

12 Q. Now these hypothetical scenarios, for instance Agent [REDACTED] <sup>b(6)-1</sup>  
13 tried to see if you would say that it was an accident, is that right?

14 A. Yes, Sir.

15 Q. And you said, "No, no, no, it wasn't an accident."

16 A. Roger, Sir.

17 Q. And your story was that you intended to shoot the Iraqi,  
18 right?

19 A. When the shot was fired, roger, Sir.

20

1 Q. So you were able to say to the agent, "No, that wasn't the  
2 way it was. It was this way."

3 A. Uh--it wasn't like that, Sir. I would begin to, like I  
4 would say, "That's not what I remembered." Then he would stop me and  
5 he would be, "Well just listen, you know, hear me out. Imagine this.  
6 Picture it in your head." Whatever, and it would go back and forth  
7 like that for at least an hour and a half, two hours, Sir.

8 Q. So the discussion over the negligent discharge scenario,  
9 you never agreed to that actually being what happened, isn't that  
10 right?

11 A. It is not like he ever presented any scenario at any  
12 specific time that I was like, "That's exactly what happened." That  
13 didn't happen, Sir.

14 Q. So your statement basically evolved throughout this  
15 process?

16 A. Um, we were talking, Sir. Nobody was writing down any  
17 notes. Nothing was being kept track of, Sir.

18 Q. It wasn't a negligent discharge, and you stated that you  
19 intended to shoot the Iraqi at the time?

20 A. Roger, Sir.

21

1 Q. You stated that you had the benefit of reading statements  
2 that were from the case already on the--by the 29th of March. Is  
3 that correct?

4 A. On the 1st of March, one of the CID agents showed me some  
5 of the other statements.

6 Q. Okay, on the day of your first interview?

7 A. Yes, Sir.

8 Q. So that gave you a different perspective of what happened,  
9 or at least the way others saw it happen that day, right?

10 A. Yes, Sir.

11 Q. So that caused you to rethink, "Maybe I was wrong?"

12 A. No, Sir.

13 Q. Now that this statement that you made on the 29th of March,  
14 you initialed and signed that statement, right?

15 A. Yes, Sir.

16 Q. And you swore that it was the truth?

17 A. I think that there is a section there that you sign on,  
18 Sir, that says that. I don't actually remember actually standing up  
19 and raising my hand or anything like that, Sir.

20 Q. Right, but you knew about that section?

21 A. Roger, Sir.

22

1 Q. And you were swearing that it was the truth at the time?

2 A. Roger, Sir.

3 TC: No further questions.

4 MJ: Redirect?

5 DC: Yes, Your Honor.

6 **REDIRECT EXAMINATION**

7 **Questions by the defense counsel:**

8 Q. Private Richmond, during the hypothetical questioning by  
9 Agent [REDACTED], were you confused?

10 A. Yes, Ma'am. *b(6)-1*

11 Q. Why?

12 A. Um, well first off, he told me that I had failed the  
13 polygraph. That threw me off pretty big and then from there, just  
14 the scenarios that he was presenting, they were just weird, Ma'am,  
15 and he wouldn't really let me explain. "No, that is it not how it  
16 happened, you know it happened like this."

17 He was like, "Just picture it." So, I was just sitting  
18 there listening to what he was saying and trying to imagine all these  
19 things, and then on top of it, just being told that I had failed a  
20 polygraph, it was confusing, Ma'am.

21

1 Q. You indicated that you answered his hypothetical questions  
2 with hypothetical answers.

3 A. Yes, Ma'am.

4 Q. Were some of those hypothetical answers the ones that made  
5 it on to the sworn statement?

6 A. I believe so, Ma'am.

7 Q. You indicated that you wanted to make a statement if it was  
8 going to help you.

9 A. Yes, Ma'am.

10 Q. And, did you also want to make a statement if it was the  
11 truth?

12 A. What do you mean, Ma'am?

13 Q. Did you only want to make the statement if it was going to  
14 help you? What if it was going to hurt you?

15 A. No, I just wanted to make the statement if it was going to  
16 help me because my understanding of it was that if I don't do this, I  
17 have nothing to explain to the jury why I failed a polygraph and I am  
18 going to get convicted behind this.

19 Q. And, in the context of the interrogation by Agent [REDACTED]--  
20 would--did you express to Agent [REDACTED] that you were uncomfortable  
21 answering these hypothetical questions? b(6)-1

22 A. Yes, Ma'am.

23

1 Q. But ultimately, that is what he ended up putting down on  
2 the sworn statement?

3 A. Yes, Ma'am.

4 Q. And were you confused at that time as to what you were  
5 signing, as to whether it was to what had happened or what this  
6 hypothetical situation could have been?

7 A. Um, my impression was just that I was signing something  
8 that he was helping me out with, you know, to explain--I knew--I am  
9 sorry, I kind of lost my train of thought. Can you repeat that for  
10 me?

11 Q. That is okay. Private Richmond, in your statement you make  
12 several statements that a certain fact or a certain incident, you  
13 say, "It did not register in my mind." Is that your language or  
14 Special Agent [REDACTED] language? b(6)-1

15 A. His language, Ma'am.

16 Q. There is also language in there that, "Looking back on the  
17 entire situation, I would like to make some corrections to that  
18 statement at this time." Is that your language or is that Agent  
19 [REDACTED] Language?

20 A. That's his language, Ma'am.

21 Same

1 Q. What about, "I had to know he had on flex-cuffs before I  
2 shot him but it just did not register in my mind at the time." Who's  
3 language is that?

4 A. It was all in Special Agent [REDACTED] language, Ma'am. He  
5 typed up the whole thing.

6 Q. And--I'm sorry, "In my previous statement, I said the Iraqi  
7 man lunged. Again, looking back on it now, I don't think he lunged."  
8 Is that your language or Agent [REDACTED] language?

9 A. His language, Ma'am.

10 Q. And to clarify, what you knew about the facts on February  
11 28th was different from what you knew about the facts on March 29th,  
12 correct?

13 A. Yes, Ma'am.

14 Q. So on March 29th, you knew that the man might have  
15 stumbled?

16 A. Yes, Ma'am.

17 Q. And on March 29th, you knew in fact that the man was flex-  
18 cuffed?

19 A. Yes, Ma'am.

20 Q. But you didn't know that on February 28th or March 1st?

21 A. That is correct, Ma'am.

22

1 DC: Nothing further, Your Honor.

2 MJ: Anything else government?

3 TC: Yes, Your Honor.

4 **RECROSS-EXAMINATION**

5 **Questions by the trial counsel:**

b(6)-1

6 Q. PFC Richmond, Agent [REDACTED] testified that when he was  
7 talking to you about that, that it would help you to tell the truth,  
8 is that right?

9 A. No, Sir.

10 Q. He never said that?

11 A. He didn't say it like that, Sir. Definitely not.

12 Q. How did he say it?

13 A. When he was writing the whole thing and telling me that he  
14 wanted to help me out and everything, Sir, I was like, "Well I am not  
15 supposed to lie in this." He was like, "Oh, don't worry. You are  
16 not going to lie. We are just going to bend it and don't worry. I  
17 will be able to help you out." Just things like that, Sir.

18 Q. Are you sure?

19 A. Yes, Sir.

20 TC: No further questions.

1 MJ: I have a couple questions, PFC Richmond.

2 **EXAMINATION BY THE COURT-MARTIAL**

3 **Questions by the military judge:**

4 Q. You said that between the 29th of February when you went to  
5 FOB Warrior and the 29th of March when you went to legal, that you  
6 had asked several people; your commander, your first sergeant, and  
7 your first line supervisor, what was going on, and they told you,  
8 "Don't worry about it. Just do your job."

9 A. Yes, Ma'am

10 Q. Now did those conversations with them take place on FOB  
11 Warrior?

12 A. Yes, Ma'am.

13 Q. So they were there as well?

14 A. Yes, Ma'am.

15 Q. On your 29 March statement, the last few questions are:  
16 "How do you feel you were treated today?" The answer was, "Good."  
17 Was that true?

18 A. Yes, Ma'am. I felt I was being treated good because, you  
19 know, I thought they was helping me out, you know, so I was  
20 definitely feeling good about the whole thing at that time, Ma'am.

1 Q. Okay. What about the next question? It said, "Were you  
2 given the opportunity to drink, eat, and use the restroom today?"

3 A. Uh, yes, Ma'am. They brought me an MRE while he was typing  
4 up the statement about 1400. That is when I was eating, Ma'am.

5 Q. Now, your defense counsel asked you if some of these words  
6 were your words and the language, you said, was really Special Agent  
7 [REDACTED] language, right? b(6)-1

8 A. Yes, Ma'am.

9 Q. Did you agree with that language then?

10 A. I didn't really read it over that closely, Ma'am. I have  
11 had a lot of time to review it after I got a copy of it, but at the  
12 time I didn't really review it too much, Ma'am. I glanced over it  
13 once or twice.

14 Q. Okay, were you sitting next to him when he was typing it  
15 up?

16 A. I was sitting off to the side, off to an angle. I was  
17 eating my MRE. I wasn't watching him type it as he was typing it,  
18 Ma'am.

19 Q. Did he type and read it to you? I am trying to figure out  
20 if you knew what was in the statement.

21 A. Um, I read the statement. He printed it out and I read it,  
22 Ma'am.

23

1 Q. Okay, so you knew what was in it?  
2 A. I saw the statement before I signed it, yes, Ma'am.  
3 MJ: Any questions based on mine, defense?  
4 DC: No, Your Honor.  
5 TC: No, Ma'am.  
6 MJ: All right PFC Richmond, thank you for your testimony. Go  
7 ahead and have a seat by your counsel, all right?  
8 [The accused did as directed.]  
9 MJ: Any other evidence on this issue?  
10 DC: No, Your Honor.  
11 TC: I would like to call Agent [REDACTED] to rebut the accused's  
12 version.  
13 MJ: Okay.

14 [END OF PAGE]  
15

b(6)-1 (all)

1 SPECIAL AGENT [REDACTED], U.S. Army, was called as a witness  
2 for the prosecution, was sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the trial counsel:

5 Q. Can you please state your name, your position, and your  
6 unit?

7 A. [REDACTED] Special Agent, 286th CID.

8 Q. How long have you been a CID agent?

9 A. Five years, Sir.

10 Q. How long have you been in law enforcement?

11 A. I have been affiliated with CID since '97, so 7 years.

12 Q. Agent [REDACTED], I turn your attention to the 29th of March of  
13 this year. Where were you on that day?

14 A. We had gone up to Kirkuk to FOB Warrior and I was scheduled  
15 to observe and interview.

16 Q. Okay I am going to go right in to the interview process.  
17 Did you actually observe portions of the interview?

18 A. Yes, I did, Sir.

19 Q. And who was the interview with?

20 A. The interview was between Mr. [REDACTED] and Private Richmond.

21

1 Q. During the course of that interview, was there a  
2 reenactment of the events that were charged in this case?

3 A. Yes, Sir.

b(6)-1 (all)

4 Q. Would you describe how that reenactment went?

5 A. Basically, Sir, PFC Richmond described to Mr. [REDACTED] as to  
6 the events that happened that day and then to better--to get a better  
7 picture, PFC Richmond actually showed Mr. [REDACTED] as to what actions  
8 he took and demonstrated how the Iraqi national was turned and then  
9 as his partner turned him around, moved him a little bit, and then at  
10 that point in time, that is when he said the Iraqi left his sights  
11 and he shot him.

12 Q. Okay was there any discussion on whether or not there was a  
13 lunge during this reenactment?

14 A. I believe he said something along the lines of, that he  
15 might have thought that when his partner turned him but--I remember  
16 him turning Mr. [REDACTED] and he said that he might have taken that as  
17 him lunging him towards his partner.

18 Q. Was there anything said about whether or not the flexi-  
19 cuffs being on was registered?

20 A. Um, he said several times when I was in there that he must  
21 have known the flex-cuffs were on, thinking back on it. So, that is  
22 all I know.

23

1 TC: No further questions.

2 MJ: Defense?

3 **CROSS-EXAMINATION**

4 **Questions by the defense counsel:**

5 Q. Agent [REDACTED], Special Agent [REDACTED] posed several  
6 hypothetical questions to PFC Richmond during his interrogation,  
7 isn't that correct?

8 A. I believe so.

9 Q. And during the reenactment phase, Agent [REDACTED] actually  
10 told Private [REDACTED] that Sergeant [REDACTED] said that he was turning the  
11 Iraqi, how would that have happened?

12 A. I don't remember that.

13 Q. So then you don't recall that it was then that Private  
14 Richmond said, "If that's what happened, here is how it would have  
15 happened."

16 A. I don't remember how the conversation actually went down.  
17 All I remember him, is the demonstration portion of it but I don't  
18 remember the exact questions that were asked.

19 Q. And during the demonstration portion, there were actually  
20 several different scenarios that were acted out, isn't that right?

21 A. I know that there were a couple of different ones because  
22 he demonstrated it a couple of times to Mr. [REDACTED] as to what was  
23 going on.

1 Q. And there were other kind of options like, "If this, then  
2 this." Those types of scenarios?

3 A. I don't remember. I just remember him talking about when  
4 he turned him. And--and then he said something about his sights,  
5 that the Iraqi national left his sights and then that is when it  
6 happened?

7 DC: Okay. Nothing further, Your Honor.

8 TC: No questions, Ma'am.

9 [The witness was duly warned, temporarily excused, and withdrew from  
10 the courtroom.]

11 MJ: Government, anything further?

12 TC: No, Ma'am.

13 MJ: All right counsel, what I would like to do is hear your  
14 arguments on this motion and then take a break for lunch, send people  
15 to chow, and then we will come back and do the rest of the motions  
16 after this. All right?

17 DC: Yes, Your Honor.

18 TC: Yes, Ma'am.

19 MJ: Government.

20

017028

1 TC: Ma'am, the statement is voluntary using the preponderance  
2 of evidence standard.

3 You have before you the 1 March rights waiver and sworn  
4 statement and PFC Richmond's admission that he had been read his  
5 right several times and several times before. He knew the drill. He  
6 knew his rights. He knew that he could stop questioning at any time.  
7 He knew that he could ask for a lawyer at any time.

8 You have before you the actual sworn statement and the  
9 rights waiver for the 29 March statement. Both of those, with the  
10 signatures of Richmond, and his testimony today, and the agent's  
11 testimony today indicate that they were voluntary.

12 The 17 April Article 32 testimony is testimony by PFC  
13 Richmond that tries to explain away the statement that he made in the  
14 29th March statement. In that explanation it says nothing about  
15 involuntary statement. He was just saying, "What I meant was," and  
16 then following it by what his new version of the facts were.

17 Your Honor, case law with this particular case and this  
18 particular situation seems to point to the military judge's  
19 discretion on <sup>how</sup> ~~who~~ they view the accused on the stand when they  
20 testify about whether or not their statement was voluntary.

21 *b(6)-2*

017029

1           The government submits today, Your Honor, that the accused  
2 has not shown at all that his statement was involuntary. Rather,  
3 this is a case of regret.

4           Richmond was strong enough to say or terminate a portion of  
5 the questioning by warning or that he would get a lawyer. That takes  
6 strength. That shows that he has the will that can not be overborne.  
7 He refused to talk about his past misconduct.

8           Your Honor, all the testimony today and the evidence today  
9 points towards a voluntary statement because he made an inculpatory  
10 statement should not be grounds for a finding of an involuntary  
11 statement.

12         MJ: Defense?

13         DC: Your Honor, the totality of the circumstances support that  
14 the statement given by Private Richmond given to CID on the 29th was  
15 a product of coercion and over zealous CID agents.

16           Private Richmond did not have the option to say, "No," and  
17 he did not have the option not to leave that room without signing a  
18 statement.

19           Your Honor, the government tries to rest on the fact that  
20 Private Richmond had been read his rights and knew his rights on  
21 previous occasions.

22

1           That is certainly one of many factors that this court  
2 should consider. Additionally, the fact that he had given prior  
3 statements voluntarily is only but one of but many factors to be  
4 considered.

5           What the defense asks the court to look at is specifically  
6 the behavior of his interactions with Private Richmond. Agent [REDACTED]  
7 had an opportunity to review the case file and he knew that Private  
8 Richmond's five prior statements were consistent. Consistent with  
9 the same story and the same facts that Private Richmond gave Agent  
10 [REDACTED] on that day.

11           But that wasn't good enough for Agent [REDACTED], so what he  
12 did was plagued this 20-year old combat arms Soldier's mind with  
13 "what if" situations and scenarios from approximately an hour and a  
14 half to two hours of "What if this? What if that?"

15           He didn't give the Soldier an opportunity to fully tell his  
16 version of events and what had actually happened. A version, Your  
17 Honor, that is consistent with statements one through five.

18           Your Honor, what should come into play there is the fact  
19 that Agent [REDACTED] lied to Private Richmond. He told him that he  
20 failed the polygraph.

b(6)-1 (all)

21

b(6)-1 (c11)

1 Well if Agent [REDACTED] is as upfront and as straight forward  
2 as the CID agent he claims to be, then there is no reason for him to  
3 lie to this young 20-year old Soldier in order to get the statement  
4 that he wants.

5 So the fact that he lied to him and told him that he  
6 failed, when he knew at that time that at least preliminarily, that  
7 it was inconclusive, should weigh heavily in favor of the accused to  
8 suppress the statement.

9 What the court should also look at is that Agent [REDACTED]  
10 says that the results on that day are not conclusive but he never  
11 told Private Richmond that. He took the time to explain to him how  
12 the whole polygraph system works, what it reads and whatnot, yet he  
13 neglected to tell him--to tell him the key fact that this result  
14 isn't even final.

15 What else he failed to tell him, Your Honor, was that the  
16 polygraph was not admissible. This agent with over 17 years of law  
17 enforcement experience, over 450 polygraph interviews, and thousands  
18 of subject interviews total in his time in law enforcement didn't  
19 tell Private Richmond what he knew about polygraphs. What he told  
20 him was a lie.

21

017032

1           He lied to him and told him that this will be used by a  
2 military judge if this case goes to court, but I am here to help you.  
3 I am the good cop. This case won't go to court if I help you, if you  
4 let me help you. And so he lied to this young Soldier and told him  
5 that this will be used by a court. This will be used by a jury. You  
6 fit the profile of a murderer. b(6)-1

7           When combined with each of these things, step by step, it  
8 shows how Agent [REDACTED] did break this Soldier down to get the story  
9 that Agent [REDACTED] wanted. He broke him down and then he confused him  
10 to get him to sign this statement that isn't accurate, Your Honor.

11           Your Honor, he also--the defense also asks the court to  
12 consider not that Private Richmond invoked his right to counsel, but  
13 we ask you to look at the fact that Private Richmond said, "If you  
14 want to talk about that, I think I want to talk to a lawyer."  
15 Because that goes to Private Richmond's state of mind at the time  
16 that he gave the statement.

17           The facts may not rise to actually invocation of his right  
18 to counsel, but it certainly goes to his state of mind that, wait a  
19 minute here, something is not quite right.

20

b(6)-1

1           Agent [REDACTED] had an obligation to clarify that, Your Honor.  
2   An obligation that he did not fulfill. Instead he told Private  
3   Richmond, "Well there are no TDS counsel at Kirkuk anyway."  
4   Discouraging the Soldier from actually going forward if he wanted to,  
5   and in effect saying, "Well I will stay away from the drug stuff but,  
6   you know, there is no lawyer that can help you anyway, and, oh by the  
7   way, I am traveling in a combat zone for you, PFC Richmond. Me, with  
8   over 20 years in the military, law enforcement."

9           A criminal agent certainly out ranking Private Richmond,  
10   certainly more mature in experience and age than Private Richmond.  
11   "I have risked my life to come help you young PFC." And once again,  
12   Your Honor, "Help me to help you." And that is exactly the guise  
13   that Private Richmond was under when he made the statement, Your  
14   Honor.

15           Your Honor, the law supports the defense's position in this  
16   case. I cited in our motion, United States versus Hansome. The  
17   court has indicated that admonishing a person to tell the truth is  
18   not coercion per se, however, if an exhortation to speak the truth is  
19   connected with a suggestion of threat or benefit, the confession is  
20   inadmissible.

21

b(6)-1 (a11)

1           That is what happened here, Your Honor. What Agent [REDACTED]  
2 told Private Richmond is, "Hey Buddy, I am in a combat zone. Once I  
3 leave Kirkuk, I can't help you anymore." And so he persuaded the  
4 Soldier to keep talking and to answer these confusing hypothetical  
5 what if scenarios.

6           What you will see in the statement is that there is no  
7 indication of these what if scenarios. It is a statement typed by  
8 Agent [REDACTED] in Agent [REDACTED] words. It doesn't give different  
9 hypothetical scenarios of what may have happened.

10           It doesn't clarify in there that on March 29th Private  
11 Richmond knew more facts about the case then what he knew back on  
12 February 28th and March 1st.

13           What it is also missing, Your Honor, is any indication at  
14 all, of any reenactment that certainly is just as important as any  
15 kind of statement itself. It is not even mentioned, Your Honor.

16           And, why is that? Because that reenactment supports  
17 Private Richmond's version of the facts and what happened. So Agent  
18 [REDACTED] didn't even reference that, Your Honor, because it didn't  
19 benefit him to get his statement.

20           What is also noteworthy, Your Honor, is that this polygraph  
21 was inconclusive. Yet Agent [REDACTED], after talking to Private  
22 Richmond for 2 hours didn't even offer to give him another one.

23

1           Didn't say, "Hey buddy, I am here to help you. Let's do  
2 that polygraph thing again so we can get you a passing flag." No,  
3 Your Honor. It was an agent with an agenda. An agenda that he was  
4 able to fulfill and now the government is trying to use that against  
5 this 20-year old Soldier to convict him of murder.

6           Thank you, Your Honor.

7           MJ: In your pleading counsel, you referenced the CID forms 28.  
8 Did you want to put those into evidence as Appellate Exhibits?

9           DC: Your Honor, I have reviewed the discovery that was provided  
10 to us and they were not actually provided.

11           I apologize, I am not trying to put the government on  
12 surprise here. I was given some 28s but I was not given the 28s that  
13 are referenced in here, so if CID has the original case file, which I  
14 believe does exist on FOB Danger, at the court's discretion, those  
15 can be included. They would not provide them to defense counsel  
16 absent a court order, Your Honor.

17           MJ: Have you reviewed the 28s government, and are you satisfied  
18 that the three statements on page two exist?

19           TC: Your Honor, it was my understanding that the defense  
20 counsel had copies of those and they do exist. I remember reading  
21 them.

22

1 MJ: Okay, any objection to me considering those if I need to in  
2 decision?

3 TC: No, Your Honor.

4 MJ: Defense?

5 DC: No, Your Honor.

6 MJ: Very well. Court is in recess.

7 [The session recessed at 1142, 3 August 2004.]

8 [The session was called to order at 1305, 3 August 2004.]

9 MJ: Court is called to order. All parties present when the  
10 court recessed are again present.

11 All right counsel, the only other motion that has  
12 witnesses--well actually and the foundation for the photographs, lets  
13 do the Article 13 motion next, and then the photographs, and then we  
14 will handle both of the motions in limine, all right?

15 MJ: Ma'am, Lieutenant [REDACTED] is going to testify during the  
16 Article 13 motion, if I could just ask the foundation questions  
17 during the----

18 MJ: Roger, do it all at once. That sounds good.

19 [END OF PAGE]

20

b(6)-2

017037

b(6)-2

1 CAPTAIN [REDACTED], U.S. Army, was called as a witness for  
2 the prosecution, was sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the trial counsel:

5 Q. Captain [REDACTED] please state your full name, your rank,  
6 and your position. b(6)-2

7 A. [REDACTED] Captain, Headquarters and  
8 Headquarters Company Commander.

9 Q. Are you Private Richmond's company commander?

10 A. Yes.

11 Q. How long have you been Private Richmond's company  
12 commander?

13 A. For 8 months.

14 Q. How long have you been the company commander?

15 A. For 8 months.

16 Q. Where is your company located?

17 A. Currently we are located at three different FOBs, FOB Gains  
18 Mills, FOB McHenry, and FOB Warrior.

19 Q. And are those three FOBs the 1-27--where 1-27 Infantry,  
20 your battalion, is that where they are located?

21 A. Yes, it is.

22

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1 Q. And what--which FOB are you--the company headquarters  
2 located on?

3 A. My--I am personally located at FOB Warrior down at Kirkuk  
4 Regional Air Base.

5 Q. Okay, and is that the same location as the brigade  
6 headquarters?

7 A. Yes, it is.

8 Q. Okay, and prior to 28 February, where was the accused  
9 located at?

10 A. PFC Richmond was located at FOB McHenry.


11 Q. What is at FOB McHenry?

12 A. FOB McHenry is where the battalion commander is and the  
13 bulk of the 1-27 infantry unit. We have two companies and the  
14 remaining support assets of the task force is there. Charlie Company  
15 and a few headquarters elements are at Gains Mills.

16 Q. And the Headquarters and Headquarters Company element is at  
17 FOB----

18 A. FOB Warrior.

19 Q. Where in your company in terms of the task force  
20 organization was PFC Richmond?

21 A. PFC Richmond is assigned to the mortar platoon, which is  
22 currently down at FOB McHenry.  b(6)-2

23

1 Q. And his MOS is 11 charlie?

2 A. Yes, it is.

3 Q. At post 28 February, after that, where was Richmond located

4 at?

5 A. He was brought to FOB Warrior.

6 Q. Could you describe the circumstances of that?

7 A. On the evening of 28 February my first sergeant had

8 approached me and let me know that there had been an incident at FOB

9 McHenry in which a man had been shot in the back of the head and

10 allegedly PFC Richmond had shot him in the back of the head. Due to

11 reasons that the colonel did not want him at FOB McHenry, he was

12 brought to FOB Warrior.

13 Q. Besides the--did you ever receive any reasons why the

14 colonel, meaning the battalion commander, did not want PFC Richmond

15 at the FOB?

16 A. At the time, the mortar platoon was going through turmoil,

17 the <sup>mortar</sup> ~~motor~~ platoon had issues, and it would not be feasible for

18 Richmond to be there. And besides, he was being charged with a

19 crime. b(6)-2

20 Q. Okay what would make FOB Warrior a better place in relation

21 with being charged with a crime?

1           A.    FOB Warrior had easier access to JAG.  FOB Warrior could  
2  also--he could come there and get a lot of things done that he  
3  couldn't have gotten done at FOB McHenry.

4           Q.    What is FOB McHenry like?

5           A.    FOB McHenry is a smaller FOB.  They take a lot more fire  
6  and stress then FOB Warrior takes and since it is a smaller FOB, when  
7  artillery or mortar rounds hit it is impacted.  The entire FOB feels  
8  it, the entire FOB senses it, so FOB Warrior essentially would be a  
9  safer place for a soldier than FOB McHenry.

10          Q.    What type of structures are on FOB McHenry?

11          A.    You have hescos, container housing units.  You don't have  
12  the same level of container housing units at FOB McHenry that you  
13  have at FOB Warrior.

14          Q.    Compared to Kirkuk, FOB Warrior, what are the structures  
15  like at FOB Warrior?

16          A.    On FOB Warrior, you have more structured buildings as  
17  opposed to the dining facility at FOB McHenry is a tent, whereas at  
18  FOB Warrior, it is a hard shell.

19                You have a PX there at FOB Warrior that you don't have  
20  access to at FOB McHenry.  You better have a triage of medical  
21  facility that you don't have at FOB McHenry.

22          Q.    All right, the morning of 28 February of this year, was PFC  
23  Richmond assigned a weapon?

1 A. Yes.

2 Q. What type of weapon was he assigned?

3 A. He was assigned an M4.

4 Q. Did the M4 have any other attachments?

5 A. It had an M68.

6 Q. That is a scope?

7 A. Yes, Sir.

8 Q. After the shooting, what happened with the weapon?

9 A. The weapon was confiscated and taken into evidence.

10 Q. Into evidence meaning? Eventually who did it get to?

11 A. Eventually it went to CID and they ran tests on it and it

12 was sent to the states for testing and then was brought back.

13 Q. Are you positive it was sent back to the states for

14 testing? Did it ever make it?

15 A. The word I was given was that once the weapon was

16 confiscated, it would be sent back to the states for testing.

17 Q. Did you issue PFC Richmond another weapon?

18 A. Negative.

19 Q. Why not?

20 A. Because at the time he was still under investigation for

21 the shooting and we did not feel it feasible for him to have a weapon

22 at that time.

23

1 Q. And-----

2 A. Notwithstanding, he was on FOB Warrior and he was not  
3 scheduled to leave FOB Warrior at any time, it would not be necessary  
4 for him to have a weapon.

5 Q. PFC Richmond was separated from his platoon and brought to  
6 the company. Is this normal in this type of situation?

7 A. Yes, it is.

8 Q. What did you do with PFC Richmond at FOB Warrior?

9 A. Initially, we had assigned him--he had been informed that  
10 he was going to be doing details and he had been informed that he was  
11 going to be in a holding pattern until the investigation was done.

12 Q. And did----

13 A. He had inquired about when he could go back to his platoon.  
14 He inquired as to what was going on with him. At that point, I did  
15 not have all the facts to the case so I could not speak intelligently  
16 on it, so I told him, "Don't worry about it. Just go on with your  
17 daily duties."

18 Q. Please describe his daily duties.

19 A. Basically he would show up at the formation or at the ALOC,  
20 and then whichever details would need the most help, those are the  
21 details he was assigned.

22

1 Q. What is an ALOC?

2 A. An alternate location for a TOC.

3 Q. And was that was--was that basically your command

4 headquarters?

5 A. Yes, Sir.

6 Q. Where exactly did PFC Richmond work?

7 A. Basically----

8 Q. On these details?

9 A. Basically all over the FOB wherever he was needed.

10 Q. Who did he work for?

11 A. Initially he worked for--he was tasked out to S-4 and the

12 S-4 would task him out. Then, to give him more close supervision, we

13 attached him to Sergeant [REDACTED] b(6)-2

14 Q. And who is Sergeant [REDACTED]

15 A. Sergeant [REDACTED] is the training NCO. He was also my EO rep

16 and my NBC noncommissioned officer.

17 Q. When you said, "details," what kind of details would PFC

18 Richmond perform?

19 A. Police call, PMCS, sand bag detail, small details not

20 enough to really smoke a Soldier but just enough to keep him

21 occupied.

22

017044

1 Q. Well did you intend to smoke the Soldier?  
2 A. Negative.  
3 Q. Did you have any other Soldiers E4 and below on FOB  
4 Warrior?  
5 A. Yes.  
6 Q. Approximately how many?  
7 A. I have approximately 35 other Soldiers that are E4 and  
8 below.  
9 Q. And--uh, do these 35 other Soldiers have to perform  
10 details?  
11 A. Yes.  
12 Q. On a regular basis?  
13 A. Yes, Sir.  
14 Q. Are they the same types of details that PFC Richmond has to  
15 perform?  
16 A. Exactly the same.  
17 Q. Including the filling of the sandbags?  
18 A. Including filling the sandbags.  
19 Q. Where did PFC Richmond live on FOB Warrior?  
20 A. Initially----  
21

017045

1 Q. He lived in a couple of places?

2 A. Initially, when he first got there we were still in the old  
3 ALOC, he stayed there until we could get him in a container housing  
4 unit. Once we got him in a container housing unit, he was living  
5 with Sergeant [REDACTED]. Then upon request, we moved him from the room  
6 with Sergeant [REDACTED] to a room with Private [REDACTED] and Private First  
7 Class [REDACTED] b(6)-2

8 Q. What was the first building like in the old ALOC?

9 A. The old ALOC, there was a hooch where he was there  
10 basically by himself and the issue that we had with it was whether--  
11 where the room was located, we couldn't really tell if he was in  
12 there or not unless somebody physically walked in there which I had  
13 instructed them to do because the brigade policy is that no one below  
14 the rank of E6 is to go anywhere alone.

15 Q. But the brigade policy, is it enforced?

16 A. Yes.

17 Q. Is it enforced by you for your Soldiers?

18 A. Yes, Sir.

19 Q. The brigade policy where no one is to go anywhere alone----

20 A. Yes, Sir?

21

1 Q. What does that mean? Where can't you go?

2 A. Basically anywhere you are going on the FOB, you should

3 take a buddy. You are to use the buddy system so if anything

4 happens, not only do you have a buddy, but the NCOIC is to know of

5 your whereabouts.

6 Q. How big is FOB Warrior?

7 A. FOB Warrior is a larger sized FOB, whereas, you can go on

8 side of the FOB and not see clearly to the other side, whereas at

9 McHenry, I can stand on the left corner of McHenry and see clear

10 across the other side.

11 Q. What--where in relation to where the ALOC is--you had

12 mentioned the other side, what is in the middle and what is on the

13 other side?

14 A. From our ALOC, the current ALOC we are in now, across the

15 street there is an internet café, the JAG office, and the brigade

16 headquarters. On the other side, in between that, you have Charlie

17 Med, you have the SSA for 2-25 Forward Support Battalion, on the

18 other side you have the PX and container housing units, the EMED

19 station from the Air Force, the civil engineers of the Air Force, the

20 continuing education, the CLAM team that was at the MWR tent that the

21 Air Force has.

22

1           There is a dining facility, there is a gymnasium between  
2 the brigade headquarters and the SSA and there is a new gym being  
3 built adjacent to the dining facility.

4           Q.    When you say, "on the other side" it is on the other side  
5 of what?

6           A.    On the other side of FOB Warrior.

7           Q.    What is in the middle of FOB Warrior?

8           A.    In the middle you have the civil engineers, you'll have  
9 other Air Force units, 506th Engineer Group, SF Group, there's  
10 towers, there's a fuel point, and there is a laundry point.

11          Q.    Is there an airfield on FOB Warrior?

12          A.    Yes, Sir.

13          Q.    And where is that located?

14          A.    The airfield?

15          Q.    Yes.

16          A.    The airfield, it is smack dab in the middle of Kirkuk  
17 Regional Air Base.

18          Q.    You mention all these places, the PX, the dining facility,  
19 that are on the other side, E6, or below E6, does the brigade policy  
20 apply to those places in terms of a buddy?

21          A.    Yes, Sir.

22

1 Q. What were there--what was the first billeting inside the  
2 old ALOC, what was that like?

3 A. There was a cot, there was blankets, and there was a pillow  
4 there.

5 Q. Was there electricity?

6 A. The electricity came on and off.

7 Q. Is that normal for FOB Warrior?

8 A. Roger, Sir. Due to the electrical wiring in those  
9 buildings, yes, Sir. The more consistent electricity is run by the  
10 generators in the container housing units.

11 Q. Did other people have rooms in the ALOC?

12 A. Yes, Sir.

13 Q. Other people--what types of ranks?

14 A. Captains, staff sergeants, and lieutenants.

15 Q. And you mentioned that you moved PFC Richmond in with  
16 Sergeant [REDACTED] why did you move him in with Sergeant [REDACTED] b(6)-2

17 A. Initially, Sir, no one wanted to room with PFC Richmond.  
18 Nobody wanted to be around him. None of the NCOs wanted to take  
19 charge of him. Sergeant [REDACTED] stepped up and said that he would be in  
20 charge of him and we put him with Sergeant [REDACTED]

1 Q. And that was----

2 A. For one, because Sergeant [REDACTED] stepped up and said he would  
3 take charge of him and two, all the other rooms were filled at that  
4 time.

5 Q. And what--what type of housing did Sergeant [REDACTED] have at  
6 that time?

b(6)-2 (all)

7 A. He had a containerized housing unit.

8 Q. And that would be on the other side of the airfield from  
9 the ALOC.

10 A. Yes, Sir.

11 Q. And what type of container was that? Please describe a  
12 container for the military judge.

13 A. A container is a rectangular shape container, Ma'am, and  
14 initially we were housing four Soldiers to a container and then as we  
15 expanded, we got more containers, we bumped down to two and three man  
16 containers. So initially PFC Richmond was with Sergeant [REDACTED] in a  
17 two-man room.

18 Q. So these containers, you said that you were putting four in  
19 there.

20 A. Yes, Sir.

21

017050

1 Q. Is it normal to put three of four Soldiers in one of those  
2 containers?

3 A. Yes, Sir. The division policy was that they wanted us to  
4 bump it down to three or two, but at the minimum space of containers  
5 that we were given, we were forced to go four to a room and then we  
6 were forced to put people in the ALOC. Once they were able to give  
7 us additional container housing units, we were able to spread  
8 Soldiers out.

9 Q. So what was the purpose of having him with an NCO?

10 A. The purpose of having him with an NCO was someone would  
11 take charge of him and Sergeant [REDACTED] not only had PFC Richmond, he  
12 had Private [REDACTED] PFC [REDACTED] so he had approximately three Soldiers  
13 with him that fell under his charge.

14 This way, if anybody for any reason, gave PFC Richmond a  
15 problem, they would have to answer to Sergeant [REDACTED] and then  
16 ultimately answer to me.

17 Q. How close did you monitor how Richmond was treated?

18 A. Very closely.

19 Q. And you mentioned that PFC Richmond requested to move?

20 A. Yes, Sir.

21

017051

1 Q. Would you describe how that happened?

2 A. Allegedly there were differences of opinion between him and

3 Sergeant [REDACTED] and PFC Richmond brought them to my attention. Also,

4 he had conferred with his counsel. I spoke with her over the phone

5 and I spoke with her in person and we agreed and when asked to move

6 him, we moved him immediately.

7 Q. And you moved him in with two other Soldiers, a PFC by the

8 name of [REDACTED] and a guy named [REDACTED]?

9 A. Yes, Sir. b(6)-2 (all)

10 Q. Isn't [REDACTED] being chaptered?

11 A. Yes, Sir.

12 Q. And what about [REDACTED]?

13 A. Private First Class [REDACTED] is a rehab transfer. He had

14 returned from being AWOL and currently he is working as a TC and an

15 escort?

16 Q. Is there a future for [REDACTED] in the Army?

17 A. Yes, Sir.

18 Q. Now do other Soldiers live in the same situation and the

19 same types of quarters as PFC Richmond and those other two Soldiers

20 live in?

21 A. Yes, Sir.

22

1 Q. Was PFC Richmond treated any differently than any other E4  
2 and below other than being monitored on FOB Warrior under your  
3 control?

4 A. No, Sir. As I briefed him, I told him that he was not  
5 going to be under any specific restrictions or the only difference  
6 was that he would not be carrying a weapon. He would adhere to the  
7 same policies, pull the same details, and still be treated as a  
8 Soldier until such time as the investigation was complete.

9 Q. Okay, did you restrict his movement if there was a buddy  
10 system?

11 A. Roger, Sir. I restricted everybody's movement if there was  
12 no buddy system.

13 Q. Okay, if he had a buddy, would you be restricting his  
14 movement?

15 A. Negative, Sir.

16 Q. And did PFC Richmond have the opportunity to use the  
17 telephone?

18 A. Yes, Sir.

19 Q. How often?

20 A. As often as he needed.

21

1 Q. How about use of the internet and the internet café?

2 A. Yes, Sir.

3 Q. Do you all have--did he ever request or have opportunities  
4 to consult with his attorney?

5 A. Yes, Sir.

6 Q. How did he do that?

7 A. He would--he requested it through me. I would come in and  
8 request it through JAG and contact his attorney.

9 Q. By telephone?

10 A. Yes, Sir.

11 Q. Uh--did--what were, in general, PFC Richmond's duty hours  
12 each day?

13 A. Pretty much, he would show up at 0845 for the formation, he  
14 would go help out with the mail as they would pick up the mail  
15 whenever the mail was available, and basically if they didn't need  
16 him he was at the internet café or with Private [REDACTED] wherever they  
17 went. b(6)-2

18 Q. Would he go off FOB Warrior?

19 A. The only time he would go off of FOB Warrior was to go and  
20 see his attorney.

21

1 Q. And how did he get to go and see his attorney?

2 A. He went by convoy. We had a problem getting a flight out,  
3 so 701st, which convoys up and back often agreed to bring him.

4 Q. In the defense motion they state that Richmond requested a  
5 weapon and was not given a weapon for this tactical convoy. Is there  
6 a reason for that?

7 A. Roger, Sir. He was still under investigation and I  
8 consulted with the battalion commander. My recommendation was that  
9 while he was still under investigation, no, he shouldn't be allowed  
10 to have the weapon. Plus, he was going with an escort, Sergeant  
11 [REDACTED], who was escorting him at the time and he was riding in an up-  
12 armored HMMWV so he was protected. *b(6)-2*

13 Q. Are you positive that he rode in an up-armor?

14 A. Yes, Sir. I watched him get in the vehicle.

15 Q. Now when a convoy leaves FOB Warrior to come to Tikrit or  
16 Speicher, what type of security does it have?

17 A. Normally it has gun trucks in the front and in the rear.  
18 Those gun trucks either carry a .50 cal or a Mk 19. Also, they  
19 usually have LMTVs. Depending on the size of the convoy, which 701st  
20 had several LMTVs, several gun trucks, several up-armored vehicles  
21 with them.

22

1 Q. Are there any other, in a typical convoy, would there be  
2 any other unarmed individuals?  
3 A. Negative.  
4 Q. What about interpreters?  
5 A. They go, a majority of them, I would say about 90 percent  
6 of them are unarmed.  
7 Q. Are unarmed?  
8 A. Yes, Sir.  
9 Q. Do they go on these convoys?  
10 A. Yes, Sir.  
11 Q. How about local nationals who drive trucks?  
12 A. Local nationals go on the convoys. They do not have  
13 weapons.  
14 Q. You were talking about his normal duty day. What time  
15 would his normal duty day end?  
16 A. Normal duty day, basically end when the mission is  
17 complete, however, PFC Richmond never worked late.  
18 Q. Okay, and during the duty day, did he have any time for  
19 meals?  
20 A. Yes, Sir.  
21

1 Q. What time are the chow hours?

2 A. From 1130 to 1300, Sir.

3 Q. And did PFC Richmond, in the course of preparing for his  
4 court-martial, did he ever any disagreements with you about personal  
5 time?

6 A. Yes, Sir. He had approached me one evening about having  
7 some personal time to himself, alone, uninterrupted, so that he could  
8 better prepare his case. We found a location called the Oasis that  
9 is there behind the PX. It is like a library that very few people go  
10 in there.

11 <sup>b(6)-2</sup> I coordinated through the Air Force and a Master Sergeant  
12 [REDACTED] and we agreed that he could come in there from 11 to 12  
13 everyday. At 1200 he was to walk across the street to the dining  
14 facility where he was to eat lunch, link up with 1-27 Soldiers and  
15 then go back to the ALOC.

16 Q. Back to the details. Did PFC Richmond ever cut grass?

17 A. Not that I am aware of.

18 Q. Did any Soldiers in your unit cut grass?

19 A. Yes, Sir, NCOs. First Sergeant had a detail where he had  
20 the NCOs not cut the grass, but to hand pull the grass out.

21

1 Q. And what was his reasoning for that?

2 A. It was his NCOPD. He was showing Soldiers certain things  
3 and telling Soldiers about leaders getting back into the work mode so  
4 only NCOs pulled that detail. No enlisted Soldiers pulled that  
5 detail.

6 Q. One moment please.

7 A. Yes, Sir.

8 [Long pause.]

9 Q. Are you familiar with the incident involving PFC Richmond  
10 and Lieutenant [REDACTED] b(6)-2

11 A. Yes, Sir.

12 Q. What do you know about that incident and what action, if  
13 any, did you take?

14 A. Basically I was informed on 9 April, the day after the  
15 incident, and I was informed by PFC Richmond what happened and  
16 immediately the first thing I asked was, "Why wasn't I informed about  
17 this incident when it happened?" Because shortly after the incident  
18 had taken place I had walked into the ALOC and nobody said a word to  
19 me. But on the 9th of April, once they had told me what happened, I  
20 immediately got on the phone and contacted the battalion XO, Major

21 [REDACTED] b(6)-2

22

1 A. I said, "Hey, Sir, here is the situation. We brought a  
2 Soldier down here to get away from this particular activity and now  
3 that he is down here I don't want him bothered and I want him treated  
4 fairly. And, I would appreciate it if you would say something to  
5 Lieutenant [REDACTED]" He said, "Roger, we'll take care it."  
6 Q. Did that ever happen again?  
7 A. Negative. b(6)-2 (a11)  
8 Q. Okay is Lieutenant [REDACTED] in the company chain of command at  
9 all?  
10 A. He is the Alpha Company Executive Officer.  
11 Q. Would he be in your Battalion Chain of Command at all?  
12 A. Negative, Sir.  
13 Q. Are you aware of an incident involving First Sergeant  
14 [REDACTED] your first sergeant, your unit first sergeant?  
15 A. Yes, Sir.  
16 Q. Could you describe what you know about that incident?  
17 A. We were standing outside of Charlie Med waiting shots.  
18 Myself, I had already went inside and received my shots. First  
19 Sergeant was doing accountability and he called out commo, support,  
20 S-1, S-4, and allegedly turned to Private First Class Richmond and  
21 Private [REDACTED] and said, "Criminals."  
22