

COURT-MARTIAL RECORD

NAME RICHMOND, EDWARD L. PFC

SSN [REDACTED] (b)(6) (b)(7)(C)

ACTIONS CODED:

INITIAL _____

ACCA _____

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IV of VII

VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

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:

US ARMY JUDICIARY

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

RECORD OF PROCEEDINGS

017062

1 Q. Would you agree that that is not a proper comment?

2 A. Roger, Sir. But I would also say that First Sergeant

3 (b)(6) [REDACTED] calls everyone a criminal. He calls me a criminal.

4 Q. To your knowledge has this ever occurrence ever happened
5 before or after that?

6 A. Negative, Sir. First Sergeant does not address PFC
7 Richmond much. I think that I address PFC Richmond more than anyone
8 else.

9 TC: No further questions.

10 MJ: Defense?

11 DC: Yes, Your Honor.

12 **CROSS-EXAMINATION**

13 **Questions by the defense counsel:**

14 Q. Captain (b)(6) [REDACTED], approximately what day did the incident
15 with First Sergeant (b)(6) [REDACTED] occur?

16 A. I can't pinpoint the exact day but I can say that it had to
17 be about 30 days ago when we received shots.

18 Q. Sometime in June?

19 A. Yes.

20 Q. With regard to the incident with Lieutenant (b)(6) [REDACTED] you said
21 you went to the battalion XO and said----

22

(b)(6)-2

1 Q. Now Captain [REDACTED] there was also an incident with the
2 mortar platoon where some Iraqi civilians were shot on approximately
3 18 February?

4 A. Yes.

5 Q. And that involved the members of the mortar platoon that
6 actually did the firing?

7 A. Yes.

8 Q. That NCO was not moved permanently from FOB McHenry, was
9 he?

10 A. Yes, he was.

11 Q. Didn't he in fact just go to FOB Warrior for several days
12 and then return to FOB McHenry?

13 A. No, he came to FOB Warrior, he underwent some tests, and
14 then he stayed. He had symptoms of----

15 Q. He didn't go back to FOB McHenry? You are saying that he
16 stayed at FOB Warrior the whole time?

17 A. He stayed at FOB Warrior for about 4 or 5 months and we
18 just sent him back.

19 Q. Well if he had--so after the 18th, he stayed at FOB Warrior
20 then?

21 A. No, he was brought up 2 days before Private First Class
22 Richmond.

23

1 Q. About the 27th of February?

2 A. Yes.

3 Q. He was at FOB Warrior?

4 A. Yes.

5 Q. Now you talked about you and the battalion commander had

6 had some conversations about whether or not Private Richmond should

7 be moved?

8 A. Yes.

9 Q. And you in fact thought that he should be moved because he

10 was a trouble maker?

11 A. No.

12 Q. You thought that he should be moved away from his squad and

13 his platoon?

14 A. The battalion commander ordered that he would be brought to

15 FOB Warrior.

16 Q. Why did the battalion commander tell you that he ordered

17 that?

18 A. After the incident the battalion commander felt that

19 Richmond should not be at FOB McHenry and he said that the Soldier

20 will come to FOB Warrior.

21

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1 Q. So you were just following the orders of your battalion
2 commander?

3 A. Yes.

4 Q. There are no full time members of the mortar--there are no
5 members of the mortar platoon that live at FOB Warrior full time,
6 isn't that correct?

7 A. Yes.

8 Q. And Private Richmond, in fact, didn't know anyone other
9 than his immediate chain of command at FOB Warrior when he was moved
10 there on the 29th of February when he was moved there, isn't that
11 correct?

12 A. Yes.

13 Q. And with combat arms folks, part of what they pride
14 themselves in is the camaraderie that they have among their squad
15 members and platoon members?

16 A. Yes.

17 Q. Since the time you have been in command, those 8 months,
18 Private Richmond has been a member of the mortars platoon, isn't that
19 correct?

20 A. Yes.

21

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1 Q. And he is, still in fact, a member of the mortars platoon,
2 right?

3 A. Yes.

4 Q. Private Richmond was not allowed to go back to FOB McHenry
5 from the 29th of February to the current date, was he?

6 A. No.

7 Q. And he asked to go back to FOB McHenry several times,
8 didn't he?

9 A. Yes, he did.

10 Q. Private Richmond also asked for his weapon back, some kind
11 of weapon, isn't that also correct?

12 A. Yes.

13 Q. And FOB Warrior does in fact receive mortar attacks several
14 times a week?

15 A. Yes.

16 Q. And insurgents from the outside do try to penetrate the
17 FOB?

18 A. Yes.

19 Q. Private Richmond was not given an issued Army weapon at
20 anytime to defend himself from February 29th to the present date,
21 isn't that correct?

22 A. That is correct.

23

1 Q. And Private Richmond was not given any kind of an Army
2 issued weapon for--to convoy down from FOB Warrior down to Tikrit,
3 was he?
4 A. No, he wasn't.
5 Q. If Private Richmond was moved from the HMMWV at any time
6 during the convoy, you wouldn't have knowledge of that, right?
7 A. If he was moved from that HMMWV?
8 Q. You said that you saw him get in a HMMWV to convoy, is that
9 right.
10 A. Yes.
11 Q. And if at any time he was told to leave that HMMWV and go
12 to another vehicle, then you wouldn't have knowledge of that, would
13 you?
14 A. After the convoy SP'd?
15 Q. Yes.
16 A. No, I wouldn't.
17 Q. Have you pretty much closely monitored how Private Richmond
18 was treated?
19 A. Yes, I did.
20

1 Q. Private Richmond in fact only left the FOB once between the
2 29th of February to the present day, not including when he came here
3 for his pending court-martial, but he only left that FOB once, didn't
4 he?

5 A. That is correct.

6 Q. But part of the reason that you moved him to FOB Warrior is
7 that he would have easier access to travel places?

8 A. No, that he would have easier access to certain things for
9 his defense.

10 Q. Okay, now there are no trial defense attorneys on FOB
11 Warrior, are there?

12 A. Nope.

13 Q. There are phones on FOB McHenry though, right?

14 A. There is phone system. It is not very consistent but there
15 is one there, yes.

16 Q. And there is an internet system on FOB McHenry also?

17 A. Yes, and that too is not consistent.

18 Q. And Private Richmond's comrades certainly were on FOB
19 McHenry that whole time, weren't they?

20 A. Yes.

21

1 Q. His support system?

2 A. Yes.

3 Q. Most of the battalion, 1-27 battalion, is at FOB McHenry,
4 is that correct?

5 A. Yes, it is.

6 Q. You'd indicated that the colonel, in ordering Private
7 Richmond to be moved to FOB Warrior, in your words, you said that it
8 was not feasible to have PFC Richmond at FOB McHenry during that
9 time.

10 A. Yes.

11 Q. Why, in your mind, was it not feasible to keep him at FOB
12 McHenry.

13 A. At the time, they had conducted a mission, they felt the
14 mission had went well, once this incident had occurred a lot of
15 emotions got high, a lot of friendships were severed, and a lot of
16 people took things personally and maybe in the wrong light.

17 Q. Now you weren't at FOB McHenry at all during this time
18 period, were you?

19 A. At that point, no, I wasn't.

20 Q. But you'd know that emotions were running high and whatnot?

21 A. Yes, I do.

22

1 Q. And yet the decision to move PFC Richmond was made within
2 24 hours of that--the killing of the Iraqi farmer, isn't that also
3 right?

4 A. Yes.

5 Q. And during most of that 24-hour period Private Richmond was
6 secluded in a tent?

7 A. At the time, I have no idea where he was secluded. I laid
8 eyes on him the morning of the 29th.

9 Q. But you were very closely monitoring how he was being
10 treated?

11 A. Once he got to FOB Warrior, yes, I did.

12 Q. You had indicated that part of the reason the battalion
13 commander ordered you to move Private Richmond to FOB Warrior was
14 because Private Richmond was being charged with a crime?

15 A. Yes.

16 Q. That was on February 29th?

17 A. Yes.

18 Q. And yet you didn't prefer charges against Private Richmond
19 until 5 April?

20 A. Correct.

21

1 Q. But this Soldier was already being charged with a crime at
2 the time that he was moved to FOB Warrior?

3 A. That was the commander's intent.

4 Q. As a commander, how many Soldiers do you have under your
5 command?

6 A. [REDACTED] (b)(2)-3

7 Q. And the safety of those, I'm sorry, [REDACTED]

8 A. Yes.

9 Q. The safety of those [REDACTED] Soldiers is a paramount concern to
10 you, isn't that right?

11 A. Yes, it is.

12 Q. And no one Soldier really should be handled with kid gloves
13 versus other Soldiers, isn't that correct?

14 A. Yes.

15 Q. The fact that there was a better medical facility at FOB
16 Warrior really didn't come into play in your decision to move him to
17 FOB Warrior, did it?

18 A. No, it didn't.

19 Q. And the fact that there is a PX at FOB Warrior didn't
20 really come into play?

21 A. No, it didn't.

22

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1 Q. The fact that there was a gym at FOB Warrior also did not
2 come into play?

3 A. No, it didn't. The fact that the colonel ordered him came
4 into play.

5 Q. You didn't question that order, did you?

6 A. No, Ma'am.

7 Q. You said that Private Richmond--that we did not think it
8 was feasible for Private Richmond to have a weapon.

9 A. Yes.

10 Q. Who is "we?"

11 A. Myself and the chain of command.

12 Q. Who in the chain of command?

13 A. First Sergeant and the colonel.

14 Q. And why, collectively, did the three of you not think it
15 was feasible for Private Richmond to have a weapon?

16 A. At that time charges had been preferred, he was still under
17 investigation, and we saw no need to give him a weapon. At that
18 time, his current assigned weapon was still confiscated.

19 Q. Certainly the Army has other weapons they could have issued
20 to the Soldier?

21 A. Yes.

22

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1 Q. Correct?

2 A. Yes.

3 Q. Actually his weapons were taken from him on the 28th of
4 February?

5 A. Yes.

6 Q. And you said that he didn't need a weapon because he wasn't
7 leaving the FOB?

8 A. Correct.

9 Q. But you did let him leave the FOB without a weapon?

10 A. Yes.

11 Q. And you let him go on about a 2 to 2 and a half hour convoy
12 from Kirkuk to Tikrit without a weapon?

13 A. Yes.

14 Q. And Sergeant (b)(6), (b)(7) [REDACTED] wasn't in the vehicle with him when he
15 was on that convoy.

16 A. Yes, he was. He was in the vehicle that I saw him get in
17 to.

18 Q. But again, if he changed vehicles or if he was ordered to
19 change vehicles you wouldn't know that?

20 A. Once the convoy left, no, I wouldn't.

21

1 Q. Okay, but you are very closely monitoring how he was
2 treated?
3 A. Yes.
4 Q. At FOB McHenry, it is a fully functioning 24-hour 7--it is
5 its own entity right?
6 A. Yes.
7 Q. FOB McHenry can sustain without--it could sustain if it had
8 to without kind of outside help from Warrior, if it had to?
9 A. [REDACTED] b2-3
10 Q. So they have police call duties on FOB McHenry?
11 A. Yes.
12 Q. Soldiers fill sand bags?
13 A. Yes.
14 Q. Soldiers do gate guard on FOB McHenry?
15 A. Yes.
16 Q. They sit and man the TOC checking TOC badges?
17 A. Yes.
18 Q. They work in the chow facility there?
19 A. Yes.
20 Q. Latrine detail?
21 A. Yes.
22

017076

1 Q. Maybe chaplain's assistants? Are there chaplain's
2 assistants at FOB McHenry?

3 A. Yes, there is one.

4 Q. So all of the duties that you tasked Private Richmond to do
5 at FOB Warrior, he could have done at FOB McHenry?

6 A. Yes.

7 Q. But you didn't think that was feasible.

8 A. No.

9 Q. Private [REDACTED] (S)(U)? is being chaptered under what chapter?

10 A. Chapter 14-12, pattern of misconduct.

11 Q. Okay and what were the patterns of misconduct for Private
12 [REDACTED]? (S)(U)?

13 A. Private [REDACTED] stole some CDs. He was Specialist [REDACTED] at
14 the time. He was given a field grade Article 15. After the field
15 grade Article 15 he proceeded to stick a M249, squad automatic
16 weapon, in his mouth and allegedly squeezed the trigger. He claimed
17 that he no longer wanted to be in the Army. He came down to FOB
18 Warrior shortly thereafter.

19 Q. And you----

20 A. He stayed----

21

1 Q. He also claimed that he no longer wanted to live, isn't
2 that right?

3 A. Yes.

4 Q. Not just no longer in the Army?

5 A. Correct.

6 Q. And that was the Soldier that was PFC Richmond's battle
7 buddy.

8 A. Yes.

9 Q. And that was fairly common knowledge that Private [REDACTED] was
10 being chaptered? (b)(6)✓

11 A. Yes.

12 Q. And it was fairly common that it was for some kind of
13 misconduct?

14 A. Yes. (b)(6)✓

15 Q. Private [REDACTED] you said was a rehab transfer from being AWOL,
16 right?

17 A. Yes.

18 [END OF PAGE]

19

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1 Q. And you, as the commander, chose to have Private [REDACTED] live
2 with Private [REDACTED] and Private Richmond? ^{b6-2}
3 A. Yes.
4 Q. That was your choice?
5 A. Yes.
6 Q. And you chose that because he had been AWOL?
7 A. No.
8 Q. Private Richmond was the only PFC to have to live with an
9 E5 during this March to April time frame, wasn't he?
10 A. Yes.
11 Q. Okay, and he was the only Soldier that effectively had to
12 have an NCO escort during that time period?
13 A. No.
14 Q. Sergeant [REDACTED] ^{(b)(6)-2} did not allow Private Richmond to have a
15 junior enlisted battle buddy, isn't that correct?
16 A. I don't recall that.
17 Q. You don't recall that Sergeant [REDACTED] himself told Private
18 Richmond that he, Sergeant [REDACTED] ^{(b)(6)-2}, would go everywhere with Private
19 Richmond?
20 A. No, I don't.
21 Q. So you don't recall Private Richmond asking if he could
22 just have a PFC battle buddy just like everybody else?
23 A. Yes.

1 Q. You do recall that?

2 A. Yes.

3 Q. And you told him no, that Sergeant (b)(6)-(b)(7)(D) would be his
4 escort?

5 A. At that time, at that night, yes.

6 (b)(6)-(b)(7)(D) Q. Okay, approximately how long did that last where Sergeant
7 [REDACTED] was his escort?

8 A. Approximately 30 days.

9 Q. Can you recall approximately what 30-day time period that
10 would have been?

11 A. I would say the month of April.

12 Q. Approximately?

13 A. Yes.

14 Q. And during this 30 day time period, he lived with Sergeant
15 [REDACTED]?

16 (b)(6)-(b)(7)(D) A. Yes.

17 Q. He was required, if he wanted to go to the internet lab,
18 Sergeant [REDACTED] had to go with him?

19 (b)(6)-(b)(7)(D) A. Sergeant [REDACTED] went everywhere with him. The issue came in
20 where the two in the living arrangements were not getting along.

21

1 Q. In fact----

2 A. Private Richmond came to me one night and told me about
3 everything.

4 Q. In fact you testified on direct that Private Richmond and
5 his lawyer both came to you to ask you?

6 A. Yes.

7 Q. And then it was remedied?

8 A. Yes.

9 Q. Because certainly if you had been monitoring the situation
10 very closely, you wouldn't have let that happen?

11 A. No.

12 Q. There are no trial defense attorneys on FOB Warrior full
13 time, is that correct?

14 A. That is correct.

15 Q. So there was no one in the JAG office on FOB Warrior that
16 Private Richmond needed to meet with on any kind of regular basis,
17 isn't that correct?

18 A. That is correct.

19 Q. You'd indicated that no one wanted to room with Private
20 Richmond.

21 A. No.

22

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1 Q. And that is because everyone thought he was a criminal,
2 isn't that right?

3 A. People were afraid of him. Some Soldiers just didn't like
4 him or didn't want to be associated with him.

5 Q. But there was no one from the mortars platoon even on FOB
6 Warrior, isn't that right?

7 A. That is correct.

8 Q. And Private Richmond, when he got there on February 29th
9 didn't even know anyone on FOB Warrior other than his immediate chain
10 of command?

11 A. That is correct.

12 Q. You'd indicated that on April 9th you received a report
13 about a situation with Lieutenant [REDACTED] that Major [REDACTED]
14 referenced? (b)(6)-2

15 A. Yes.

16 Q. And you said that once they told you that, that you made
17 sure that nothing like that ever happened again?

18 A. Right.

19 Q. And the incident with the first sergeant happened in June
20 2004?

21 A. Yes.

22

(b)(6)-2

1 Q. Captain [REDACTED], where did Private Richmond sleep last
2 night?

3 A. Last night he slept in tent two.

4 Q. How did he get to tent two?

5 A. Sergeant [REDACTED] took him to tent two.

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

7 A. Sergeant [REDACTED] works in the JAG office.

8 Q. Okay, you didn't get Private Richmond to bring him to tent
9 two, did you?

10 A. I didn't get----

11 Q. You didn't pick him up, Sergeant [REDACTED] (b)(6)-2 did it?

12 A. Right.

13 Q. And that was at approximately 2200 last evening?

14 A. Approximately 2215 was the time I was given.

15 Q. At 2215, and you would have had a call with your battalion
16 commander last night, didn't you?

17 A. Yes, I had a conference call.

18 Q. What time? (b)(2)-3

19 A. Every night at [REDACTED] there is a conference call with company
20 commanders call and you get to talk to the battalion 3 and we talk to
21 the battalion chain of command.

22

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1 Q. And in fact, the battalion commander didn't want Private
2 Richmond near any of his comrades from the mortars platoon, didn't
3 he?
4 A. No, that was my call.
5 Q. So you chose not to have----
6 A. I chose----
7 Q. ----Private Richmond----
8 A. ----not to have Private Richmond in the same AO with the
9 witnesses.
10 Q. Okay so you left him here for Sergeant [REDACTED] to take care
11 of him? (b)(6)-2
12 A. No, I didn't leave him here. The----
13 Q. Didn't you say----
14 A. The plan was, that I was to come back, pick him up, and
15 take him to move rooms because it was asked of me, by you, so that he
16 wouldn't have to live there in the alternate location that he was
17 living in.
18 Q. Isn't it in fact your responsibility as a commander to
19 provide housing and transportation and food for your Soldiers?
20 A. Yes.
21

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1 Q. But it is not your job to baby-sit PFCs, is it?

2 A. No, it isn't.

3 DC: One moment, Your Honor.

4 [Long pause.]

5 DC: Nothing further, Your Honor.

6 MJ: Government?

7 TC: Yes, Ma'am.

8 **REDIRECT EXAMINATION**

9 **Questions by the trial counsel:**

10 Q. Captain (b)(6)-2, what type of unit are you in?

11 A. Infantry unit. I am the Headquarters and Headquarters
12 Company Commander. I resupply all the line companies and I have the
13 specialty platoons consisting of the (b)(2)-3 and

14 Q. What type of Soldiers do you have?

15 A. I have infantry Soldiers.

16 Q. Defense already asked you a question about when Sergeant
17 (b)(6)-2 came to FOB Warrior for the extended period, you stated that
18 it was 27 February. If the actual shooting alleged were alleged to
19 have occurred on 28 February, do you still stick to the 27 February,
20 Sergeant (b)(6)-2 arriving at FOB Warrior?

21 A. He arrived and went back, which is, he came down on a
22 LOGPAC, turned around and went back. That following week he was
23 brought back down.

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1 Q. Okay, so he was at FOB McHenry for the 28 February mission
2 then?

3 A. Yes, he did in fact go back. So, on my earlier statement I
4 was wrong. He did come down to FOB Warrior, turn around and go back,
5 and then was brought back down.

6 Q. You have described FOB McHenry pretty well. What is a
7 Soldier without a weapon going to do at FOB McHenry?

8 A. Very little if anything. He is going to pull trivial
9 details.

10 Q. Are there other individuals on FOB Warrior who are not
11 armed?

12 A. Yes.

13 Q. Approximately how many people?

14 A. In my company there are [REDACTED] b2-3

15 Q. What about other people on the FOB?

16 A. Yes, there are several other Soldiers on the FOB without
17 weapons.

18 Q. Anybody besides Soldiers?

19 A. Yes, TCNs, [reporters note - Throughout Iraq, Third Country
20 Nationals are referred to as "TCNs"] interpreters, they don't have
21 weapons either.

22

017086

1 Q. How about the other branch of services element?

2 A. [REDACTED]

3 [REDACTED]

4 [REDACTED] b2-3

5 Q. Are there other people--are there people on FOB Warrior who
6 never leave the FOB?

7 A. Yes.

8 Q. Under normal, non-emergency circumstances, would you ever
9 reissue a weapon to a Soldier who remained suspected of murder?

10 A. No.

11 TC: No further questions.

12 MJ: Defense?

13 DC: Yes, Your Honor.

14 **RECROSS-EXAMINATION**

15 **Questions by the defense counsel:**

16 Q. The same--well you found duties for Private Richmond to do
17 while he was at FOB Warrior?

18 A. Yes.

19 Q. And he could have actually done those same duties or
20 similar duties at FOB McHenry without a weapon?

21 A. Yes.

22

1 Q. But you wouldn't normally issue a weapon back to somebody
2 who had shot and killed someone?

3 A. No.

4 Q. But you gave Sergeant ^{b6-5} [REDACTED] his weapon back after he shot
5 at three Iraqis the week before?

6 A. We never took his weapon.

7 Q. He had shot and killed folks and you didn't take his
8 weapon?

9 A. No.

10 Q. Sergeant ^{(S)(G)-2} [REDACTED], when he returned to FOB McHenry prior to
11 the 27 February mission, your intent was for him to stay at FOB
12 McHenry, isn't that right?

13 A. On the 27th?

14 Q. Yes?

15 A. No.

16 Q. Your intent was just to send him back to FOB McHenry for a
17 few days and then he would return to Warrior?

18 A. No.

19 Q. What was your intent?

20 A. Upon his arrival to FOB McHenry, he came on a LOGPAC, also
21 some injured personnel were brought with him. Got back, brought in
22 some civilians who had wounded----

23

1 (S)161-2 Q. Okay, just let me--what was your intent with Sergeant
2 [REDACTED]? After the 18th of February, you had brought him to FOB
3 Warrior?
4 A. Yes.
5 Q. When he returned to FOB McHenry, was it your intent that he
6 would stay at FOB McHenry?
7 A. At that time he was still competent and still with the
8 mortars, yes.
9 Q. So your intent was to keep him there?
10 A. Yes.
11 Q. At some point though, he became incompetent, and you chose
12 to move him to FOB Warrior?
13 A. Roger, he had signs of early post-traumatic stress
14 disorder.
15 Q. There are [REDACTED] Soldiers in your company who do not carry a
16 weapon? (S)161-3
17 A. Yes.
18 Q. Those are-----
19 A. Well there are [REDACTED] Soldiers within my battalion.
20 Q. Within your battalion?
21 A. Yes.
22

(b)(2)-3

1 Q. [REDACTED] in the whole battalion?

2 A. Yes.

3 Q. Right?

4 A. Yes.

5 Q. And you all wear the same patch, of the 2-25, that you are

6 deployed with?

7 A. Yes.

8 Q. And your uniform is certainly distinct from that of an Air

9 Force Uniform?

10 A. Yes.

11 Q. And certainly distinct of that of any contractor that might

12 be on post?

13 A. Yes.

14 Q. Two of those (b)(2)-3 [REDACTED] Soldiers are in fact PFC Richmond and

15 Private (b)(6)-7 [REDACTED], isn't that right?

16 A. Yes, (b)(2)-3 [REDACTED] Soldier has since been sent back to

17 Schofield.

18 Q. Why was that Soldier sent back to Schofield?

19 A. Because he was going back to be with rear-d, rear

20 detachment.

21

1 Q. Why was he going back to be with rear detachment?

2 A. Because he had family issues.

3 DC: Nothing further, Your Honor.

4 MJ: Anything else?

5 TC: No, Ma'am.

6 **EXAMINATION BY THE COURT-MARTIAL**

7 **Questions by the military judge:**

8 Q. Captain ^{(b)(6)-(7)} [REDACTED], you said that FOB McHenry is ^{b2-3} [REDACTED] and
9 takes a lot of fire.

10 A. Yes, Ma'am.

11 Q. Between the two, FOB McHenry and FOB Warrior, which would
12 you say takes more fire?

13 A. FOB McHenry. A lot of times if we take fire on FOB
14 Warrior, if the fire is not within very close proximity we may not
15 know that fire has even hit until we get an alarm red signal.

16 Q. Okay. Do you consider Warrior to be safer then?

17 A. Yes.

18 Q. Other than the one trip to Tikrit to visit his defense
19 counsel, did PFC Richmond take any other off-FOB missions?

20 A. No, Ma'am.

1 Q. Do you consider that his safety was jeopardized during that
2 mission?

3 A. No, Ma'am.

4 Q. Trial counsel asked you, "Did you intend to smoke the
5 Soldier by making him do police call, PMCS, and sandbag detail?" Do
6 you recall that?

7 A. Yes, Ma'am.

8 Q. What do you mean by "smoke the soldier?"

9 A. "Smoke" is a term that they use in the infantry where we
10 are pretty much doing corrective action or we are PT-ing a Soldier
11 excessively to show that we are more physically fit.

12 At no time would I allow PFC Richmond to be degraded or
13 would I ever tolerate it and I kept an open-door policy which he used
14 several times whenever he had issues, concerns, or questions.

15 There were nights where he showed up at my room at 2 in the
16 morning. He was never turned away. We always listened. We always
17 talked.

18 Q. Did you intend to punish him by the details that he
19 performed?

20 A. No, Ma'am.

21

017092

1 Q. You said that upon request the accused was moved from
2 Sergeant (b)(6)-2 container-housing unit to a container-housing unit
3 with (b)(6) and (b)(6) right?
4 A. Yes, Ma'am. (b)(6)-2
5 Q. Whose request?
6 A. The Soldier's request. The Soldier and his attorney.
7 Q. Okay, if I understand your testimony, the purpose of moving
8 the accused to Warrior was to separate him from (b)(6) right?
9 A. Yes, Ma'am, and that was the colonel's directive. He was (b)(2)-3
10 to go FOB Warrior.
11 Q. Right, but was that to forgo any other incidents, or----
12 A. After that incident, Ma'am, the order I was given was that
13 PFC Richmond was coming to FOB Warrior. He would not be placed in
14 pretrial confinement. He was not to go back to FOB McHenry. He
15 would come down to FOB Warrior. He would be under my charge.
16 Q. Right, but did he say that he did that--you said that there
17 was some bad blood.
18 A. Yes, Ma'am.
19 Q. That there were some emotions running high?
20 A. Yes, Ma'am.
21

1 Q. And that sort of thing?

2 A. Yes, Ma'am.

3 Q. So do you think that entered into the equation as to why he
4 moved down to Warrior?

5 A. Ma'am, I can't speak intelligently on what the colonel was
6 thinking at the time. I do know that when I went down there, when I
7 talked to the (b)(7)(D) when I talked to Alpha Company and other
8 Soldiers, there was a lot of tension and the best place for him, I
9 concluded at that time, was FOB Warrior.

10 Q. The convoy to Tikrit, was that a 1-day convoy?

11 A. Yes, Ma'am.

12 Q. Did you stay overnight or convoy back that night?

13 A. No, he stayed a few nights.

14 Q. Stayed a few nights.

15 A. Yes, Ma'am.

16 Q. I did not catch the name of the NCO that you said was
17 escorting him. Was it (b)(7)(D)?

18 A. Sergeant (b)(7)(D)-2.

19 Q. Okay.

20 A. Yes, Ma'am.

21

(b)(6)-2

1 Q. Was Sergeant [REDACTED] armed?

2 A. Yes, Ma'am.

3 Q. Do you all have contractors on your FOBs?

4 A. Yes, Ma'am.

5 Q. Are they armed?

6 A. No, Ma'am.

7 Q. Approximately when did you send up this 11 to 1200 everyday

8 in the Oasis for the accused?

9 A. Approximately April 15th.

10 Q. And how long did he avail himself to that?

11 A. As long as he wanted, Ma'am.

12 Q. Okay, so it is still----

13 A. Yeah, he can still do it.

14 Q. What is the status of weapons on FOB----

15 A. Warrior?

16 Q. Warrior?

(b)(2)-3

17 A. Everyone is to carry a weapon and have a magazine. They

18 will walk with [REDACTED] The

19 only people who can be at [REDACTED]

20 [REDACTED]

21

017095

1 A. Those who are at [REDACTED]
2 [REDACTED] are pulling some sort of guard duty, either on the
3 gate or at the D-Cell. Upon entering the FOB, you lock and clear all
4 weapons.

(S)(2)-3
5 Q. Roger, so anyone else carrying an M4 is walking around with
6 [REDACTED]

7 A. Yes.

8 Q. Is it safer to be on the FOB or off of it?

9 A. On the FOB.

10 Q. Was Sergeant (S)(6)-2 [REDACTED] ever charged with murder?

11 A. No, Ma'am.

12 MJ: Any questions based on mine?

13 TC: No, Ma'am.

14 MJ: Defense?

15 DC: Yes, Your Honor

16 **RECROSS-EXAMINATION**

17 **Questions by the defense counsel:**

18 Q. Captain (S)(6)-2 [REDACTED], you referenced a commander's inquiry that
19 you did into the [REDACTED] platoon?

20 A. Yes, Ma'am. (S)(2)-3
21

017096

1 Q. And it was a result of that inquiry that you made the
2 decision to keep PFC Richmond at Warrior?

3 A. No, the basis of my inquiry was not to deal with PFC
4 Richmond at all. I was ordered to do an inquiry because there were
5 certain questions about the mortars as far as (S)(2)-3 as far
6 as discrepancies between Captain (S)(2)-3 and CPT (S)(2)-3, and I had
7 went down there to do a commander's inquiry.

8 Q. And as part of that commander's inquiry, you found out that
9 tensions had been running high in the (S)(2)-3 platoon?

10 A. Yes. (S)(2)-3

11 Q. And that was the reason that you decided to keep PFC
12 Richmond at Warrior and not return him to FOB McHenry?

13 A. The reason that I decided to keep him there is because I
14 was ordered to by the battalion commander.

15 Q. Okay, so the decision to keep Private Richmond at Warrior
16 was not yours? That was made by the battalion and that never
17 changed, right?

18 A. Right, but my opinion----

19 Q. I was just wondering about the decision.

20 A. Right.

21

1 DC: Thanks. Nothing further, Your Honor.

2 MJ: Anything else?

3 [Negative response by the trial counsel.]

4 [The witness was duly warned, temporarily excused, and stepped down

5 from the witness stand.]

6 MJ: Government, anything further?

7 TC: Yes, Your Honor.

8 MJ: Okay.

9 **FIRST LIEUTENANT** (b)(6)-2 [REDACTED], U.S. Army, was called as a

10 **witness for the prosecution, was sworn, and testified as follows:**

11 **DIRECT EXAMINATION**

12 **Questions by the trial counsel:**

13 Q. Can you state your full name and your rank, and your unit

14 also?

15 A. First Lieutenant (b)(6)-2 [REDACTED], Alpha Company, 1-27,

16 Executive Officer.

17 Q. How long have you been in alpha company?

18 A. For 2 years, Sir.

19 Q. How long have you been the executive officer?

20 A. For 1 year, Sir.

21

1 Q. Could you briefly describe your job?

2 A. I am responsible for all the [REDACTED] in
3 the combat zone. Also I am [REDACTED] (S)(2)-3
4 [REDACTED] and various things and that is pretty much it.

5 Q. And where are you currently located, which FOB?

6 A. FOB McHenry.

7 Q. How long have you been at FOB McHenry?

8 A. Since February 21st, Sir, the first day on the ground.

9 Q. Are you familiar with the morning of the 28 February of
10 this year?

11 A. Yes, Sir, I am.

12 Q. To your understanding what occurred outside of the village
13 of Taal Al Jal that day? (S)(2)-3

14 A. I was hitting building 22, which is the South side of Taal
15 Al Jal, that was my tasking. The commander, he, was on the North
16 side of town with buildings three and four tasked to take out Ba'ath
17 party members that are financing the Fedayeen in the city of
18 Fallujah.

19 I heard a shot fired South of my location about 200 meters
20 away. Everyone exited the building thinking that we had made
21 contact.

22

1 A. At that time, the commander said for all leadership to pick
2 up and move to [REDACTED] b2-3. And when we did, I
3 arrived about 5 minutes after it occurred. So, I arrived, First
4 Sergeant (b)(6)-2 [REDACTED] and Captain [REDACTED] had pulled their up-armored
5 HMMWV up next to the gentleman that was shot.

6 Q. Captain [REDACTED] is the--was the Alpha Company Commander
7 at the time? (b)(6)-2

8 A. Roger, Sir. He was the ground commander that day.

9 Q. Okay, and First Sergeant [REDACTED] was the first sergeant for
10 him? (b)(6)-2

11 A. That is right, Sir.

12 Q. And what was your role once you arrived at the scene?

13 A. When I arrived at the scene I was tasked by the CO to
14 ensure that security was properly placed around the area because we
15 are still in an area that may not be friendly.

16 I was tasked by the CO. He said, "Go ahead and get the
17 digital camera out." I got out the digital camera and I began taking
18 pictures of every angle.

19 I took a picture of--my first picture was--first sergeant
20 directed me to--he said, "Go over there and take your first picture
21 of Richmond." I went and took a picture of Richmond.

22

017100

1 A. Then from that point I came over and started taking
2 pictures of all angles of the body.

3 Q. Approximately how long after the shot did you start taking
4 pictures?

5 A. Upon arriving immediately, Sir, I looked out and noticed
6 that the Soldiers had already surrounded us and the security was
7 already in place. I got a good radio check. I pulled out my camera.
8 I was on ground probably about 2 minutes by the time I pulled out my
9 camera.

10 Q. To your knowledge, was the body of the Iraqi moved prior to
11 you taking pictures?

12 A. No, Sir. We did all precautions to--no, it was never
13 moved, Sir.

14 Q. Prior to you taking pictures?

15 A. No, it was never touched. No one ever even came near it,
16 Sir.

17 TC: I am handing the witness what has been, well it is
18 Prosecution Exhibit 7 for identification. Could you take a moment to
19 thumb through those photographs?

20 [The witness did as directed.]

21

017101

1 Q. Okay.

2 A. Yes, Sir. I took all those.

3 Q. You took them with a digital camera?

4 A. Yes, Sir.

5 Q. I would ask you to look at the very first one. Would you

6 describe what is in that picture?

7 A. When I originally started taking pictures, I just started

8 taking them from all angles. You know, I am not a crime-scene

9 photographer but I did the best I could to get every aspect of what I

10 saw on the ground. I took this angle--I took all angles of his body,

11 so.

12 Q. Did--which way is the body facing?

13 A. His head was facing towards the city, Sir, towards Taal Al

14 Jal.

15 Q. And on the pictures that----

16 A. Right----

17 Q. Just the very first picture.

18 A. The very first picture?

19 Q. Right.

20 A. It was facing towards Tall Al Jal.

21

017102

1 Q. Towards the left--or to the right of the photograph?
2 A. Roger, Sir.
3 Q. Okay, is the body on its back or on its front?
4 A. The body is on its back, Sir.
5 Q. Okay. Is that the first view that you had of the
6 individual?
7 A. This is exactly how the Iraqi looked when I arrived on the
8 scene, Sir.
9 Q. I would ask you to look at number two in Prosecution
10 Exhibit 7 for identification. Could you describe for us that
11 photograph?
12 A. It is another angle.
13 DC: If the defense does have all the photographs, if we could
14 just request that maybe the witness maybe just hold it up so we can
15 match up with ours since they are all part of Prosecution Exhibit
16 number 7.
17 WIT: Yes, Ma'am.
18 MJ: In fact, did you mark it 1 of 10, 2 of 10, 3 of 10?
19 [Affirmative response from the trial counsel.]
20 MJ: Okay.
21

017103

1 A. This picture right here, I can't remember----

2 MJ: Lets refer to it that way. Excuse me, I am sorry, lets

3 refer to it that way, second of ten, third of ten.

4 TC: Right now the witness is describing Prosecution Exhibit 7

5 for identification 1 of 10.

6 DC: The defense is actually clear on 1 of 10, Your Honor,

7 because it was at the top of the packet.

8 MJ: Right.

9 DC: It is 2 through 10 that we are concerned about.

10 WIT: Okay.

11 Q. Okay the second one.

12 A. Okay, looking at number 2 of 10. This was the other angle

13 that I took where my back is now to Taal Al Jal and I am taking a

14 picture long ways of his body.

15 Q. And is the body in the same position as it was in the

16 previous picture?

17 A. Yes, Sir, that is correct.

18 Q. You took that immediately after the same time you took the

19 one of----

20 A. Yes, Sir. It was a quick barrage of photos.

21

1 Q. Please take a look at 3 of 10?

2 A. I am now looking at 3 of 10.

3 Q. Can you describe it?

4 A. I took this picture because it stuck out in my mind that
5 the head shot, it was split--it was a head shot to the back of the
6 head. The exit wound out of his face, the eyes basically let me know
7 that it was kind of at close range so I took that.

8 TC: Let the record reflect that this is a photo of the upper
9 torso of the body with the body on the back, the head is facing
10 towards the right.

11 Q. Let's take a look at 4 of 10.

12 A. Uh, 4 of 10 was taken, this is First Sergeant (b)(6)-2
13 boot. This is looking at the West--the Western side of his body.
14 The head is still facing towards Taal Al Jal. I haven't touched him
15 yet. No one has touched him yet.

16 (b)(6)-2 There is a shell casing right next to First Sergeant
17 (b)(6)-2 boot. Looking around, first sergeant found the round, put
18 his foot next to it as to identify the round and I took a picture of-
19 -I laid my M4 between him and the body just to look at the range on
20 how far away the shell casing was fired as opposed to the body.

21

1 Q. That is your M4 in the photo?

2 A. That is correct, Sir. That is my M4.

3 Q. Please take a look at 5 of 10.

4 A. Five of 10, Sir, the reasoning--I have already touched the

5 body. I have rolled over the Iraqi. Basically, that is the

6 commander's vehicle right there. I am still continuing to take the

7 barrage of photos.

8 I have rolled him with my right arm to my left. I just

9 rolled him from the feet, so as everyone can see, Taal Al Jal, this

10 is the city of Taal Al Jal right behind him.

11 That gives you a good indicator of how far away outside of

12 the city he was. It also gives you an indicator of what he was

13 herding that day. The up-armored HMMWV scared off his cows.

14 He was a cow herder and this significance of the photo was

15 his body, and the range from the city, so basically he had to walk

16 out of the city this far and his herd that is now dispersing due to

17 the fact that the herder is no longer alive and that is the reason

18 behind that. The cows are up in the top right-hand corner.

19 [END OF PAGE]

20

1 Q. Why did you turn the body over?

2 A. I was ordered by the commander to turn the body over.

3 Being fresh on the scene, I didn't realize why I was asked at first
4 to turn the body over. I was like, "Like why? I don't want to touch
5 him." He said, "You'll see." "Roger, Sir." Captain [REDACTED] said
6 to roll the body over. (4)(b)-2

7 I basically rolled the man over with one arm. I just took
8 my right hand from his leg, it was already, if we go back to picture
9 1 of 10 you will see that his left leg is like this [looking at photo
10 1 of 10] here. It was a very simple roll-over procedure. I rolled
11 him over.

12 TC: He is describing 1 of 10 where a body--the picture of the
13 body is----

14 WIT: Right, that is----

15 TC: Where the left leg is bent.

16 Q. Okay.

17 A. Right his left leg is bent. I just grabbed his left leg
18 and I rolled him with one arm.

19 Q. Okay, please take a look at picture number six?

20 A. Picture number six.

21

1 Q. Yes.

2 A. Once I have rolled the Iraqi over I was devastated.

3 Filming stopped for a few seconds. Then at that time I started
4 snapping more pictures. This is what I saw upon rolling the Iraqi
5 over.

6 Q. What you are describing--the picture describes, for the
7 record, the individual is on his front and his hands are flex-cuffed
8 behind him?

9 A. That is correct, his hands are flex-cuffed, securely,
10 behind his back.

11 Q. Let's take a look at 7 of 10.

12 A. Okay 7 of 10 was another shot facing South of his body.
13 Just another angle of how his hands were still----

14 Q. Is it the same view of number----

15 A. That is correct, Sir.

16 Q. Six?

17 A. That is correct.

18 Q. Except for from the other side?

19 A. That is correct, Sir. He was only rolled one time before
20 he was put in a body bag.

21

1 Q. Okay.

2 A. It is the same picture.

3 Q. Okay.

4 A. Or the same setting of the body.

5 Q. Please take a look at number 8.

6 A. The reason behind myself blowing this picture up was for

7 the----

8 Q. Please describe the picture.

9 A. The picture is of a close up of the same Iraqi's hand in

10 the same body setting with his hands flex-cuffed. I pulled a close

11 up because it is significant because the man's hands were still

12 purple from how tight they were on his hands.

13 Q. Please take a look at 9 of 10.

14 A. This is the same setting, Sir, a close up of his head.

15 This is the setting of when I have already rolled him over of the

16 last picture. This is where the entrance wound is to the Iraqi's

17 head.

18 Q. And number 10?

19 A. Number 10 is a picture of where we put PFC Richmond and I

20 took a picture of PFC Richmond, the shooter.

21

017109

1 TC: I am retrieving Prosecution Exhibit 7.
2 Q. Now Lieutenant (b)(6)-2 do these photos fairly and accurately
3 depict what you observed that day?
4 A. Yes, Sir, they do.
5 TC: Your Honor, at this time the government offers Prosecution
6 Exhibit 7 for identification into evidence.
7 MJ: May I see it?
8 [The exhibit is handed to the military judge.]
9 MJ: Defense, any objection to Prosecution Exhibit 7 for
10 identification?
11 DC: One moment, Your Honor.
12 [Long pause.]
13 DC: Your Honor, the defense has no objection based on the
14 foundation, however, we feel that some of the photos may be
15 cumulative and unduly prejudicial, but that certainly doesn't go to
16 the authentication or the admissibility, Your Honor.
17 MJ: Your objection is overruled. Prosecution Exhibit 7 for
18 identification is received into evidence as Prosecution Exhibit 7.
19 Q. Lieutenant (b)(6)-2 based on what you observed that morning,
20 what were your emotions?
21

1 DC: Objection, Your Honor. Relevance?

2 TC: Your Honor, this is relevant to the part about the Article
3 13 motion, where it goes to--how it gets to the point----

4 MJ: Sustained, and there is a difference, counsel, between
5 preliminary matters. I would agree, if were this trial, it might not
6 be relevant, but for the purposes of the Article 13 motion I
7 certainly want to hear it, and of course under 104, Military Rules of
8 Evidence, don't apply.

9 DC: Yes, Your Honor. Absolutely.

10 MJ: Go ahead.

11 Q. Okay, what were your emotions based on this?

12 A. Since I had been in Iraq and all the things I have seen,
13 and some unrighteous things I have done, it is probably the most
14 traumatizing thing I think I have ever seen in my life, so, that is
15 how I feel about it.

16 Q. On about 8 April 2004, were you at FOB Warrior?

17 A. Yes, Sir.

18 Q. Why were you at FOB Warrior?

19 A. I had been wounded during the battle of Hawija on April
20 7th, 2004.

21

1 Q. And how were you wounded?

2 A. I engaged four Iraqi men in the streets of Hawija and I had
3 crushed my left hand during it.

4 Q. So you were on FOB Warrior for medical care?

5 A. That is correct, I was medevaced out at 2 in the morning.
6 Captain (b)(6) flew in on the bird and picked me up and I was at
7 Charlie Med from the wee hours of April 8th until about April 9th.

8 Q. After you were discharged from Charlie Med, or after you
9 were released from Charlie Med, did you have the occasion to see the
10 accused PFC Richmond?

11 A. Yes, I did.

12 Q. Would you describe those circumstances?

13 A. I was shocked that he was still here. I didn't realize
14 that he was still here. I honestly can tell you that I thought he
15 was in Baghdad somewhere. I was completely disgusted when I saw him.
16 He was outside doing a detail with other Soldiers and chopping down
17 trees in the front ALOC with a group of other men and I approached
18 him.

19 I've already--it has been running through my mind over and
20 over for about 3 months of all the stuff I have seen and done in the
21 city of Hawijah, so I asked him why--what went through his head when
22 he did this.

23

1 A. And then, then I called him a murderer, but I did pull him
2 aside in the front doorsteps of the ALOC away from his detail. Did I
3 say it loud enough for everyone to hear? Yes, I did, but this--I
4 have intrusive thoughts about this over and over and it has bothered
5 me and I just wanted closure. I didn't even realize he was in FOB
6 Warrior.

7 Q. Did you make the statement towards PFC Richmond to punish
8 him?

9 A. At--negative, Sir.

10 Q. Did you make them to ridicule him?

11 A. Negative, Sir. I just wanted closure.

12 Q. Did you direct any of your statements during this
13 conversation towards anyone besides PFC Richmond?

14 A. Negative, Sir.

15 Q. Did you show any of the photos that you took after your
16 encounter with PFC Richmond?

17 A. I believe I did that day, Sir.

18 Q. Approximately how many times?

19 A. From February 21st until that day, I had to show them to
20 the battalion commander, I had to submit the photos to the battalion
21 S-2 shop.

22

1 **EXAMINATION BY THE COURT-MARTIAL**

2 **Questions by the military judge:**

3 Q. First Lieutenant ^{(b)(6)2} [REDACTED], you said that you guys got to FOB
4 McHenry when? In January or February?

5 A. We got to Iraq January 21st----

6 Q. January.

7 A. ----Ma'am.

8 Q. January 21st.

9 A. The first day on ground I believe, Ma'am, was February
10 21st, that is when I got to FOB McHenry.

11 Q. Okay so----

12 A. I think--it's--I got there in the middle of February,
13 Ma'am.

14 Q. So you had only been at FOB McHenry about a week or so
15 before this mission?

16 A. No, Ma'am, I think I had been there about a month.

17 Q. About a month?

18 A. Yes, Ma'am.

19 Q. Okay.

20 A. About a month, Ma'am.

1 Q. Now on the day in question, were the mortars chopped to
2 Alpha Company to assist in the mission or what?

3 A. Yes, Ma'am, we were using the entire company on a multiple
4 target-building raid. Basically we split the company in half, all
5 three platoons. A platoon and a half went to the North side of town
6 led by Captain [REDACTED] (S) 6-7. The other platoon and a half went
7 with me on the South side of town and hit the target buildings.

8 We need help to block off the positions around us to secure
9 us in the city from threats that may come in and that may come out.
10 It is called a blocking position. In other words, Ma'am, nothing
11 comes in and nothing comes out. It doesn't matter who they are or
12 what they are, they are not going to leave the city and if they want
13 to come in the city, they are not going to come in the city, even if
14 they lived there for 50 years. It is for our safety.

15 Q. And the mortars had that?

16 A. Yes, Ma'am. On the South side of town I had in my blocking
17 position a section of mortars and an ADA truck. It is an Avenger,
18 which has missiles and large guns on the back of it. They were
19 together on the South blocking position. On the North side of town
20 we had another ADA truck with our own blocking position from our
21 company. That is how it was chopped up to us.

22

1 Q. I see. So prior to the 28th of February then, had you
2 worked at all with PFC Richmond?

3 A. Ma'am, I have only met PFC Richmond twice. Once was the
4 day I was called in the field to take pictures and the next day was
5 the day after I got out of the emergency room.

6 Q. Okay.

7 A. That is the only two times that I have ever even met him,
8 Sir. [sic] The first time I never even spoke to him. The second
9 time I did.

10 MJ: Any questions based on mine, government?

11 TC: No, Your Honor.

12 MJ: Defense?

13 DC: No, Your Honor.

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

16 MJ: Government, any further evidence?

17 TC: No, Your Honor.

18 MJ: Okay, we are doing this a little backwards because of
19 course this is your burden, but that is all right. Any evidence,
20 defense?

21

1 DC: I am sorry, Your Honor, did the government not intend to
2 call Sergeant [REDACTED] (S) 6-2
3 TC: No, Your Honor.
4 MJ: Okay.
5 DC: Yes, Your Honor. The defense calls PFC Richmond.
6 MJ: Okay, and this is solely for the purposes of the motion,
7 right?
8 DC: Yes, Your Honor.
9 PRIVATE FIRST CLASS EDWARD L. RICHMOND JR., U.S. Army, was recalled
10 as a witness for the defense, was reminded of his oath, and testified
11 as follows:

12 DIRECT EXAMINATION

13 Questions by the defense counsel

14 Q. Private Richmond, when you first arrived in Iraq with the
15 mortars platoon, what FOB did you live at?
16 A. FOB McHenry, Ma'am.
17 Q. How long did you live at FOB McHenry?
18 A. Approximately a month, Ma'am.
19 Q. During February of this year?
20 A. Yes, Ma'am.

21

1 Q. And, how long had you been with the mortars platoon in
2 total?

3 A. Since October 2002, Ma'am.

4 Q. How long had you been with the squad you were with in
5 February '04?

6 A. For at least the last year, Ma'am.

7 Q. Who are the members of your squad?

8 A. Private [REDACTED], Private [REDACTED], Specialist [REDACTED] at
9 that time, Specialist [REDACTED], and Sergeant [REDACTED].

10 Q. Okay, and who was above Sergeant [REDACTED] in your chain of
11 command?

12 A. Sergeant [REDACTED] was the next NCO above him, Ma'am.

13 Q. Who had you trained with to come to Iraq?

14 A. The mortar platoon, Ma'am.

15 Q. Okay had you always been with these guys?

16 A. Yes, Ma'am.

17 Q. How much time did you spend with them in that year you were
18 together as a squad?

19 A. All of the time, Ma'am. One of them was my roommate. I
20 was the godfather of another one's child. I was good friends with
21 another one. We kept pretty close, Ma'am.

22

1 Q. Okay, did you have any kind of pact, you know, if you went
2 on missions if you were together or not?

3 A. Yeah we were telling, you know, they had us--if they would
4 let us go out on convoys or missions or whatever, they would keep us
5 together because we wanted to be in the back of the truck with each
6 other because that was who we trusted, so you know.

7 Q. How many members are in the mortars platoon?

8 A. There was [REDACTED] back in February, Ma'am. (b)(7)-3

9 Q. And were all [REDACTED] members of that platoon back at FOB
10 McHenry?

11 A. Yes, Ma'am.

12 Q. Were you a close group?

13 A. Yes, Ma'am.

14 Q. How close?

15 A. Well I know within our squad, really close, Ma'am. They
16 divide the platoon into [REDACTED] squads and an [REDACTED] squad
17 and the [REDACTED] squads have a lot of interaction. (b)(7)-3

18 Q. Okay.

19 A. We are really close but the [REDACTED] squads don't
20 really interact that much, Ma'am.

21 Q. Okay, you had testified earlier today in another motion.
22 At that time you were 20 years old?

23 A. Yes, Ma'am.

1 Q. How close were you to these guys?

2 A. I mean, these was my best friends, Ma'am. You know it was
3 a family away from home, so.

4 Q. Once you moved to FOB Warrior, how were you able to contact
5 them when they were at FOB McHenry?

6 A. Like a few months later I saw them because they happened to
7 be up there and I got one of their email addresses, Ma'am.

8 Q. But you didn't have any other contact with them during that
9 time?

10 A. No, Ma'am.

11 Q. When you were moved from McHenry to Warrior on February
12 29th, how many people did you know at FOB Warrior?

13 A. I knew the commander and the first sergeant, Ma'am.

14 Q. Did you hang out with the commander and first sergeant?

15 A. No, Ma'am.

16 Q. Did you know any junior enlisted?

17 A. No, Ma'am.

18 Q. From February 29th through the present day, did you ever
19 return to FOB McHenry?

20 A. No, Ma'am.

21

017121

1 Q. Did you ask your command if you could?
2 A. Yes, Ma'am.
3 Q. What did you ask them?
4 A. You know, can I go back to McHenry? When can I return to
5 my platoon and things of that nature, Ma'am.
6 Q. And how often do you think you asked them?
7 A. In the first month, I would ask every few days or once a
8 week, something like that, Ma'am, but eventually it got apparent that
9 it's not going to happen.
10 Q. Did they tell you why they moved you from FOB Warrior to
11 FOB McHenry?
12 A. In the beginning it was just because they had to do an
13 investigation real quick so I had to be at Warrior for a few weeks,
14 Ma'am.
15 Q. And after those few weeks did you inquire as to the status
16 of the investigation?
17 A. Well it kind of hit me on the 6th of April when they read
18 the Charges, Ma'am.
19 Q. And at that point did you ask if you would be going back to
20 FOB McHenry?
21 A. No, Ma'am, not at that point anymore.
22

1 Q. Pretty clear that you wouldn't be coming back?

2 A. Yes, Ma'am.

3 Q. Private Richmond, how do you feel about being moved from

4 your platoon and your squad?

5 A. It's--I mean going through something like this and not

6 having anybody to talk to, it is difficult. I mean, you learn to

7 cope with it but I wish I could--those were the people I was friends

8 with. It makes the time pass and makes the time being here easier.

9 So, I miss being around them, Ma'am.

10 Q. You've done several types of details while you were at FOB

11 Warrior. Were those details--could you have done the same types of

12 details at FOB McHenry had you remained there?

13 A. Yes, Ma'am.

14 Q. And did you have a room at FOB McHenry before you left

15 there?

16 A. Yes, Ma'am.

17 Q. And who were your roommates?

18 A. My squad, Ma'am.

19 Q. People that you knew, obviously?

20 A. Yes, Ma'am.

21

1 Q. Private Richmond, directing your attention more
2 specifically to after the shooting of Mr. (b)(6)-4 on the 28th of
3 February, where did you go once you left the village and returned to
4 FOB McHenry?

5 A. They brought me to the chaplain's tent and I stayed there
6 for approximately 8 to 10 hours, Ma'am.

7 Q. Who brought you there?

8 A. Sergeant Major (b)(6)-2 Ma'am.

9 Q. Did you have an escort?

10 A. Yes, Ma'am.

11 Q. Did you have a guard?

12 A. Yes, Ma'am.

13 Q. Okay who was that person?

14 A. I don't remember his name.

15 Q. Okay----

16 A. It was just somebody that was walking by and he grabbed him
17 up and was like, "Hey you. You come here. You are gonna watch this
18 guy and make sure he stays in the tent."

19 Q. Sergeant Major (b)(6)-2 told him that?

20 A. Yes, Ma'am. (b)(6)-2

21

1 Q. Were you--during that time period were you allowed to leave
2 the tent?

3 A. No, Ma'am.

4 Q. Were you isolated from your squad at that time or were you
5 allowed to have visitors?

6 A. Um, they came by on the way to the DFAC. I don't know if
7 they were supposed to or not but you know, it was just a passing
8 like, "Hey, what's up?" I was like, "Hey I can't talk. I can't go
9 anywhere." So, they just went on about whatever they were doing
10 then, Ma'am.

11 Q. Where did you sleep that evening?

12 A. I slept on the floor in my squad leader's room. In my
13 squad leader's container. They had them all in one container then,
14 Ma'am.

15 Q. Had you made any kind of suicidal threats on that
16 afternoon?

17 A. No, Ma'am.

18 Q. Had you made any verbal threats to anyone in your chain of
19 command?

20 A. No, Ma'am.

21 Q. Had you threatened anybody with a weapon?

22 A. No, Ma'am.

23 Q. Locked and loaded against anyone?

1 A. No, Ma'am.

2 Q. Was your room--was your bed in your room empty that night
3 then?

4 A. Yes, Ma'am.

5 Q. Okay, could you have stayed there if the command would have
6 let you?

7 A. Yes, Ma'am.

8 Q. Did you ask to stay with your squad leader on the floor in
9 his room?

10 A. No, Ma'am.

11 Q. Private Richmond, at what point did the command take your
12 M4 rifle?

13 A. Uh, 20 to 25 minutes after the shooting, Ma'am.

14 Q. Okay, have you ever got that weapon back?

15 A. No, Ma'am.

16 Q. Have you asked for a weapon back?

17 A. Yes, Ma'am.

18 Q. What has the response of your command been?

19 A. It's not gonna happen, Ma'am.

20 Q. Did they give you any particular reason why?

21 A. Well it is obvious because of everything that was going on,
22 Ma'am.

23

1 Q. Okay.

2 A. But that is what they said it was for, Ma'am.

3 Q. Again, from the 29th, from the time you were moved until
4 the present day, have you made any suicidal threats?

5 A. No, Ma'am.

6 Q. Have you made any verbal threats to anyone?

7 A. No, Ma'am.

8 Q. Any physical threats with your weapon towards anyone?

9 A. No, Ma'am.

10 Q. Any instances of being locked and loaded?

11 A. No, Ma'am.

12 Q. Okay and how did you feel being on FOB Warrior without a
13 weapon?

14 A. Constantly people would come up to me, "Where's your weapon
15 at? Where's your weapon at?" So, I had to put up with that all the
16 time. You can't really explain what is going on because I wasn't
17 allowed to talk about the incident but you don't feel like you fit
18 in, you feel like an outcast, Ma'am.

19 Q. Did you feel safe?

20 A. No, Ma'am.

21

1 Q. Why not?

2 A. Not on the convoy.

3 Q. Well before we get to the convoy, what about when you were
4 on the FOB?

5 A. When I was actually on the FOB, I didn't feel a direct
6 threat from someone climbing over the gate and then coming over me or
7 anything like that, Ma'am.

8 Q. So it wasn't a safety issue, but more of a you were
9 different issue?

10 A. Yes, Ma'am.

11 Q. Once you moved to FOB Warrior, what building did you live
12 in?

13 A. I believe it was building 645. It was where the old ALOC
14 was located when we first got here?

15 Q. Were there any full time permanent parties that lived in
16 that building?

17 A. The building was separated in half, Ma'am. The side I was
18 sleeping on had the medic for the company, the interpreter for the
19 company, and some sergeant that worked at brigade, and it was like
20 transient housing for people going on R and R, emergency leave, and
21 things like that, Ma'am.

22

1 Q. Did full time Soldiers from HHC typically live in that
2 building?
3 A. No, Ma'am.
4 Q. Where did they live?
5 A. They had containers at that time, Ma'am.
6 Q. Okay, is it the same kind of container that you had heard
7 prior testimony about to the judge?
8 A. Yes, Ma'am.
9 Q. It had electricity and water and whatnot?
10 A. Yes, Ma'am.
11 Q. At what point were you required to move from there to live
12 with Sergeant [REDACTED] (b)(6) 2
13 A. I had actually moved one time between that. Do you want me
14 to get into that?
15 Q. Sure.
16 A. I moved from building 645 to building 415 about 4 in the
17 morning one night because I guess they were moving the ALOC and
18 nobody informed me so I guess they kind of had a manhunt going for
19 Richmond, but I was sleeping in my bed there, just nobody had told me
20 that we they had moved.
21

1 A. So, we moved over to building 415 where I stayed for a few
2 weeks and----

3 Q. So nobody told you that they were moving from building 645
4 to 415?

5 A. No, Ma'am.

6 Q. Somebody noticed you were missing?


7 A. Yes, Ma'am.

8 Q. Not--not--I mean somebody noticed that you were not there
9 and they came to find you?

10 A. Yes, Ma'am.

11 Q. Okay and they found you sound asleep right were you
12 belonged?

13 A. Yes, Ma'am.

14 Q. All right when did you move from 415 to live with Sergeant
15  (b)(6)-2

16 A. I think it was sometime in the month of April, Ma'am. I
17 couldn't give you an exact date.

18 Q. Let me go back for a second, Private Richmond. Did you
19 think that your command was trying to punish you by leaving you
20 behind in that building?

21 A. I don't think the command was trying to punish me.
22

017130

1 Q. Okay.

2 A. But several of the NCOs there seem biased against me so I

3 think they just didn't really care. They didn't really seem to want

4 to--or----

5 Q. They weren't concerned with you?

6 A. Yes, Ma'am.

7 Q. And you don't have any problem at all with Captain

8 [REDACTED] (b)(6)-2

9 A. No, Ma'am.

10 Q. Captain [REDACTED] has treated you fine?

11 A. Yes, Ma'am.

12 Q. And he has had an open door policy that you could utilize

13 to see him?

14 A. Yes, Ma'am.

15 Q. No issues at all?

16 A. No, Ma'am.

17 Q. But perhaps there were some NCOs below Captain [REDACTED] (b)(6)-2

18 that maybe weren't doing the right thing. Doing the right thing as

19 far as you thought?

20 A. Yes, Ma'am.

21

017131

1 Q. Who else lived with Sergeant [REDACTED] when you moved in to live
2 with him? (b)(6)-2

3 A. It was just us two, Ma'am.

4 Q. Okay at that time were there any other PFCs that you know
5 of that had to live with an NCO?

6 A. Not that I knew of, Ma'am.

7 Q. You heard your company commander testify that you pretty
8 much had to be with Sergeant [REDACTED] 24-7 for this 30-day period?

9 A. Yes, Ma'am. (b)(6)-2

10 Q. Is that accurate?

11 A. Yes, Ma'am.

12 Q. Okay, were you able to go anywhere on your own?

13 A. No, Ma'am. He just drug me around basically to wherever he
14 was going throughout the day so if he was going to the phones then I
15 could go to the phones. If he ~~was~~^{was} going to eat then I could go and
16 eat and things like that, but, if I had to do laundry or pick up
17 laundry or anything like that, then I was out of luck. ,

18 Q. What if you wanted to call home to your family?

19 A. Well if he wasn't going to the phones, Ma'am, then I wasn't
20 going to the phones.

21

1 Q. Okay, what if you wanted to go to the phones to call your
2 lawyer?

3 A. If he wasn't going that way then I wasn't going that way,
4 Ma'am.

5 Q. And at some point after that 30-day period, that changed?

6 A. Yes, Ma'am.

7 Q. Okay PFC Richmond, was the [REDACTED] enforced at FOB
8 Warrior? (S)(U)3

9 A. It was in place but I wouldn't say that it was enforced.
10 It was enforced by higher up, like if higher up saw it or something
11 like that, Ma'am, but nobody really used it.

12 Q. Who is higher up?

13 A. Like the brigade sergeant major, our first sergeant, our
14 company commander, things like that.

15 Q. But anybody below the company level wasn't really enforcing
16 this policy?

17 A. No, Ma'am.

18 Q. Was it enforced for you?

19 A. Yes, Ma'am. (S)(U)2

20 Q. Was it enforced for [REDACTED]

21 A. Yes, Ma'am.

22

1 Q. But it wasn't enforced for other junior enlisted as far as
2 you know?

3 A. Yes, Ma'am.

4 Q. Did you have the opportunity to see other junior enlisted
5 from the battalion out and about without a buddy?

6 A. All the time, Ma'am.

7 Q. Private Richmond, you are an 11 charlie?

8 A. Yes, Ma'am.

9 Q. What are the regular duties of an 11 charlie?

10 A. Um, well you're a basic infantryman so the same thing as an
11 11 bravo but we specialize in, you know, using mortar equipment,
12 maintaining and using mortar equipment.

13 Q. Okay.

14 A. Firing mortars, Ma'am.

15 Q. When is the last time that you have performed your duties
16 as an 11 charlie?

17 A. The 27th of February, Ma'am.

18 Q. How do you feel about that?

19 A. I mean I feel like I am getting rusty, Ma'am. I had worked
20 my way up on job performance. I was doing pretty good in my platoon,
21 Ma'am.

22

017134

1 Q. Okay had you requested from your chain of command to be
2 able to perform the duties of an 11 charlie from the time of February
3 27th until now?

4 A. Well you can't at Warrior, Ma'am. I had requested to go
5 back to the platoon but we don't have any [REDACTED] at FOB
6 Warrior so there was nothing I could do along those lines, Ma'am. (S)(U)-3

7 Q. Had you requested to go on any convoy missions?

8 A. The only time I can remember requesting to go on a convoy
9 is--they had a big firefight on I believe the 7th of April or
10 something.

11 We were all hearing about it, you know, these guys are
12 getting hit pretty hard out there. I was like, "Hey, is there
13 anything I can do to help? Can I go out there? I know the situation
14 I am in." But, that was denied, so.

15 Q. Okay how many times did you ask your command to perform
16 duties other than sandbags and cutting grass and filling holes with
17 gravel?

18 A. In the beginning, like every few days, maybe once a week
19 and things like that. It just slowly just got to the point where I
20 didn't ask anymore, Ma'am.

21

1 Q. Why didn't you ask anymore?

2 A. Because I knew what the answer was going to be.

3 Q. And what was the answer going to be?

4 A. Negative.

5 Q. What kind of duties did you do while you were at FOB

6 Warrior from the time of 29 February until the present day?

7 A. For the first few weeks, I was like--I guess it is kind of

8 like staff duty. That was before the [REDACTED] moved into building 415, they

9 had a few people just sitting on the bottom floor to make sure that

10 nobody came in ~~came in~~ and like stole anything. They had some

11 Koreans living upstairs and to make sure that nobody messed with

12 them. So I was on that everyday. (b)(6)-2

13 After that I was with Sergeant [REDACTED] for a week or two just

14 making sure he had a battle buddy to make sure that he would be in

15 the right. After that, after the incident happened where they didn't

16 tell me to move they started--some of the NCOs that lived in the ALOC

17 started putting me on, you know, just random details and stuff.

18 Q. What kind of details?

19 A. Break up this concrete and go throw it in the dumpster and

20 stuff.

21

1 Q. Anything else?

2 A. Cut down these trees, and trim these bushes and cut all
3 this grass. They had all this--they turned this--there was an old
4 building there and they turned it--they are trying to turn it in to
5 the Taj Mahal so I was on that for a good bit for about 30 days,
6 Ma'am.

7 Q. Private Richmond, please let the court know about the
8 detail where they had you cutting grass with your e-tool.

9 A. Sergeant ^{(S)/61-2} [REDACTED] had gotten us a weed-eater to cut the back
10 because the NCOs, I believe it was either the night before or a few
11 nights before they had to pull all the weeds like Captain ^{(S)/61-2} [REDACTED]
12 had said in the front. So, myself and Private ^{(S)/61-2} [REDACTED] were tasked to
13 cut the back. We had a weed-eater but it broke down so I forgot who
14 exactly was in charge of the detail, they were like, "Well, you all
15 got e-tools, right?" So, we were in the back cutting with e-tools,
16 Ma'am.

17 Q. Who were you doing this detail with?

18 A. Private ^{(S)/61-2} [REDACTED], Ma'am.

19 Q. Who did you generally do your details with then?

20 A. ^{(S)/61-2} [REDACTED] and occasionally one or two personnel from support
21 platoon, Ma'am.

22

1 Q. Did you ever do these duties with Soldiers who were facing
2 UCMJ action?

3 A. [REDACTED] Ma'am.

4 Q. Okay, anyone who was fulfilling extra duty from an Article
5 15?

6 A. I don't think anyone was going through extra duty in our
7 company at that time, Ma'am.

8 Q. Generally when you and [REDACTED] did these details and did
9 these duties, were you with a squad-type of a group or were you
10 tasked individually?

11 A. Um, I believe we were tasked individually, Ma'am.

12 Q. Private Richmond, turning your attention to the early April
13 incident with Lieutenant [REDACTED] by the ALOC.

14 A. Yes, Ma'am.

15 Q. How many Soldiers were around when Lieutenant [REDACTED] called
16 you a murderer?

17 A. There were 10 to 15, Ma'am.

18 Q. Of what rank were these Soldiers?

19 A. Um, E6s and down as far as I can remember, Ma'am.

20 Q. Do you know if these folks heard Lieutenant [REDACTED]?

21 A. Yeah, they heard him, Ma'am.

22

017138

1 Q. How do you know that?

2 A. Because we were inside the ALOC and we were all standing
3 around talking or something like that to begin with. So, the
4 farthest person away was from me to you, Ma'am and everybody was
5 really close when it happened.

6 Q. Okay and it was in fact Lieutenant (b)(6)-2 [REDACTED] that approached
7 you?

8 A. Yes, Ma'am.

9 Q. Did you do anything at all that you can think of to egg on
10 Lieutenant [REDACTED] (b)(6)-2

11 A. No, Ma'am. The only thing I was asking him or the only
12 thing I was really saying was I was like, "If you are going to
13 approach me like this, can we please do this outside away from
14 everybody else?"

15 Q. And he did it in an area where everybody could hear, is
16 that right?

17 A. Yes, Ma'am.

18 [END OF PAGE]
19

017139

1 Q. How did you feel being called a murderer by the Executive
2 Officer of Alpha Company?

3 A. It is not a good feeling. I guess I could say that it is
4 humiliating, you know, like people that you start to gain respect for
5 because you been working for them and then you just have somebody
6 come and break that down and now you got to build everything back up
7 again. It is not a good feeling, Ma'am.

8 Q. With this specific group that was there, did their attitude
9 change towards you after that?

10 A. I noticed some people just like cut off their interaction
11 with me, Ma'am.

12 Q. How common was the knowledge around that community in FOB
13 Warrior as to why you were at FOB Warrior and what you had done?

14 A. I think it was pretty common, Ma'am, but it didn't get
15 brought up very much.

16 Q. Okay did that make it any easier for you when he called you
17 a murderer?

18 A. No, Ma'am, not at all.

19 Q. Private Richmond, what happened with the situation with the
20 photographs and Lieutenant [REDACTED]

(b)(6) 2

21 A. Well um----

22

017140

1 Q. Was that before he called you a murderer or after he called
2 you a murderer?

3 A. I wasn't standing--that was after, Ma'am.

4 Q. Where did he go?

5 A. He walked into the actual ALOC. There is a room once you

(S)(b)(3)-3
6 [REDACTED]
7 [REDACTED]

8 And, from what several NCOs told me that were in there, he came
9 in there with the digital camera and was like, "Look at this. He did
10 that. I can't believe he fucking did this." You know, and screaming
11 at all of them and stuff.

12 Q. Okay and these were NCOs that reported that information to
13 you?

14 A. Yes, Ma'am.

15 Q. Do you know how many were in the ALOC at the time?

16 A. I believe it was four or five, Ma'am.

17 Q. Okay. Private Richmond, at some point you had requested to
18 work in the ALOC?

19 A. Well Captain (S)(b)(2) [REDACTED] was trying to put me, you know he was
20 like, "Hey I know its got to suck going through all this, you know,
21 you probably want to work just like everybody else."

22

1 A. So, you know, he was trying to get me in ALOC just like
2 everybody else but that didn't happen, Ma'am.

3 Q. Do you know why that didn't happen?

4 A. Captain [REDACTED] I don't know why, he won't let me step foot
5 in there, Ma'am. (b)(6)-2

6 Q. And do you know who Captain [REDACTED] is?

7 A. He is the S4 officer, Ma'am. (b)(6)-2

8 Q. Does Captain [REDACTED] know that you have been charged with
9 murder?

10 A. Yes, Ma'am.

11 Q. Did you know that you don't need a [REDACTED]
12 [REDACTED] (b)(7)-3

13 A. Did I know that?

14 Q. Yeah.

15 A. No, Ma'am.

16 Q. Private Richmond, there was also a potentially embarrassing
17 situation with First Sergeant [REDACTED]?

18 A. Yes. (b)(6)-2

19 Q. Is that correct?

20 A. Yes, Ma'am.

21

017142

1 Q. When did that occur?

2 A. Um, either late June or early July, Ma'am.

3 Q. And where were you when the first sergeant made these
4 comments?

5 A. We were standing outside of Charlie Med, the Army medical
6 place.

7 Q. And First Sergeant (b)(6)-2 is actually your first
8 sergeant?

9 A. Yes, Ma'am.

10 Q. All right. Now why were you standing outside of Charlie
11 Med?

12 A. We were all waiting to get our anthrax shots, Ma'am.

13 Q. What was it that the first sergeant said that was
14 embarrassing to you?

15 A. Um, just classifying myself and (b)(6)-2 as criminals in front
16 of everybody when everybody at this time already knew what was going
17 on with me. You know, it just----

18 Q. Who is everybody?

19 A. Everybody in the company, Ma'am, that was permanently
20 living at FOB Warrior.

21

1 Q. How do you know that they heard his comments?

2 A. Because everybody was gathered around listening, and then

3 he was like, "Hey everybody, come here and listen." Then he started

4 calling off the different sections to get accountability and make

5 sure that everybody was there for the shot, Ma'am.

6 Q. Okay, and did the other folks that were there react to his

7 comment?

8 A. Some people were laughing, Ma'am. I didn't really say

9 anything because----

10 Q. How did you feel?

11 A. I mean, humiliated again. I mean, like I said with the

12 Lieutenant ^{(b)(1)(2)} incident, you try to build up respect with people by

13 working with them and then just somebody comes and beats that back

14 down so it doesn't feel good to know that you have to build that all

15 back up again.

16 Q. Were there officers and----

17 A. Yes, Ma'am.

18 Q. ----enlisted there present for that comment?

19 A. Yes, Ma'am.

20 Q. NCOs and----

21 A. Yes, Ma'am.

22

017144

1 Q. ----junior enlisted as well?

2 A. Yes, Ma'am.

3 Q. Private Richmond, at some point during your detention at

4 FOB Warrior, you were allowed to convoy down to Tikrit?

5 A. Yes, Ma'am.

6 Q. Why were you coming down to Tikrit?

7 A. I think I had to do some kind of preliminary thing with the

8 sanity board and then I had to meet with you.

9 Q. You have heard that Captain ^{(b)(6)-2} [REDACTED] testified that he saw

10 you get into an up-armored HMMWV, right?

11 A. Yes, Ma'am.

12 Q. All right now did you travel to Tikrit in the up-armored

13 HMMWV?

14 A. No, Ma'am.

15 Q. Did you request a weapon before you came down to FOB

16 Danger?

17 A. Yes, Ma'am.

18 Q. What happened that you did not stay in that up-armor HMMWV?

19 A. I don't remember exactly where we were at when we got into

20 it but myself and Sergeant [REDACTED] got into it and they brought us over

21 to the staging area, Ma'am. (b)(6)-7

22

1 Q. All right.

2 A. And from there we linked up with the convoy commander

3 whoever that was, from the 701st unit and he put me on it looked like

4 an 18-wheeler with an Iraqi driver.

5 Q. Did he know that you did not have a weapon?

6 A. I don't know if he knew it or not, Sir, I mean, Ma'am, I am

7 not sure. I didn't talk to him directly.

8 Q. Now Sergeant [REDACTED] wasn't in that vehicle with you?

9 A. No, Ma'am. (b)(6)-2

10 Q. Was the driver of that vehicle armed?

11 A. No, Ma'am.

12 Q. Sergeant [REDACTED] didn't give you a weapon once you had left

13 that area? (b)(6)-7

14 A. No, Ma'am.

15 Q. How did you feel on the convoy without a weapon?

16 A. At first, I was just like, okay, I will be able to deal

17 with it but you know, once you start rolling through the streets of

18 Tikrit and everything, you know, I was hoping that nobody does

19 anything because I got no way to protect myself if they do so it was

20 like that.

21

017146

1 Q. Did you feel like you were in danger?
2 A. Yes, Ma'am.
3 Q. Did you feel safe?
4 A. No, Ma'am.
5 Q. And again, you did ask your company for a weapon, any
6 weapon, prior to departing?
7 A. Yes, Ma'am.
8 Q. Did they ever offer you a weapon and you said, "No, I need
9 my assigned weapon."
10 A. No, Ma'am. (S)(b)(7)
11 Q. Who is Private [REDACTED]?
12 A. He is--he was my roommate before I came down here about a
13 week ago, Ma'am. He came from Charlie Company, Ma'am, and my
14 understanding is that he is getting chaptered for misconduct. (S)(b)(7)
15 Q. And who is Private [REDACTED]?
16 A. He is also--was also my roommate before I came down here
17 about a week ago, and he is pending UCMJ action for AWOL in the rear,
18 Ma'am.
19 Q. The three of you lived together in one room?
20 A. Yes, Ma'am.
21

017147

1 Q. Were other junior enlisted required to live three Soldiers
2 to a room?

3 A. Uh, there was about a month and a half where it wasn't like
4 that, Ma'am. Right before I left, I believe 1-14 was coming back and
5 we had to give up some containers so they started putting people in
6 three to a room, but for about a month and a half, no, Ma'am.

7 Q. For about a month and a half it was three per room just for
8 you all?

9 A. Yes, Ma'am.

10 Q. But other Soldiers were allowed to live two to a room or
11 one to a room.

12 A. Some were one to a room and some were two to a room, Ma'am.

13 Q. Okay did your command tell you why you all were required to
14 live three to a room?

15 A. No, Ma'am. They just rearranged the housing. They did
16 that periodically so you just kind of go along with the flow and do
17 what you are told, Ma'am.

18 Q. Private Richmond, your company commander testified a little
19 bit about Sergeant ^{(b)(6)-7} [REDACTED] leaving FOB McHenry and going to FOB
20 Warrior and then returning to FOB McHenry.

21 A. Yes, Ma'am.

22

017148

1 Q. Do you remember that testimony?
2 A. Yes, Ma'am.
3 Q. During the time that you saw Sergeant [REDACTED] after the
4 February 18th incident, did Sergeant (S) 6-2 [REDACTED] have a weapon?
5 A. Yes, Ma'am.
6 Q. Did he have a weapon with him on the day of February 28th?
7 A. Yes, Ma'am.
8 DC: Nothing further, Your Honor.
9 MJ: Government, any cross?
10 TC: Yes, Ma'am.

11 **CROSS-EXAMINATION**

12 **Questions by the trial counsel:**

13 Q. You do admit that at FOB Warrior there are [REDACTED]
14 [REDACTED]
15 A. Yes, Sir. (S) 12-3
16 Q. That would include [REDACTED] who wear
17 the DCUs?
18 A. Yes, Sir.
19 Q. It would also include all the contractors and mess hall
20 employees?
21 A. Yes, Sir.
22

017149

1 Q. And all the civilians?

2 A. Yes, Sir.

3 Q. Were you ever denied the opportunity upon a reasonable
4 request, to contact your attorney?

5 A. Not that I can recall, Sir.

6 Q. This convoy that you were on without a weapon, did you have
7 your flak vest on?

8 A. Roger, Sir.

9 Q. And your helmet?

10 A. Roger, Sir.

11 Q. And this convoy had at least two gun trucks in it?

12 A. I would assume it did, Sir.

13 Q. Convoy had several other Soldiers besides the Soldiers in
14 the gun trucks?

15 A. Yes, Sir.

16 Q. So the convoy had security?

17 A. Yes, Sir.

18 Q. You mentioned that when your defense lawyer was asking you,
19 that you (b)(6)-2 were three to a room. It is your testimony
20 that you were the only three Soldiers that had to room together on
21 the FOB?

22 A. For that month to month and half period, roger, Sir.

23 Q. On the whole FOB Warrior?

1 A. Oh, from 1-27, Sir. I don't know about everybody else or
2 how their unit operates, Sir.

3 Q. Now you were moved based upon your request to move away
4 from Sergeant ^{(S) 6-2} [REDACTED] right?

5 A. Roger, Sir, but that was earlier.

6 Q. Now when they took away your weapon, you asked for your
7 weapon back many times, right?

8 A. A few times, roger, Sir.

9 Q. Okay, you wanted to get back to your platoon?

10 A. Yes, Sir.

11 Q. You wanted to go back on patrols, right?

12 A. I wanted to be back around my platoon, Sir, you know, I
13 was--the advice I had was that it would be better if you don't do any
14 missions right now considering everything that was going on that is
15 and to let this develop, but I definitely wanted to be around my
16 platoon, Sir.

17 Q. Okay, you talked about your MOS.

18 A. Yes, Sir.

19 Q. Your MOS is 11 charlie, mortarman, right?

20 A. Roger, Sir.

21

017151

1 Q. Isn't it true that the mortars platoon doesn't perform very
2 many mortars duties in AO West, that is the 1-27s AO?
3 A. I am not sure how they act anymore, Sir. We were firing on
4 a daily basis when I was down there though.
5 Q. You were firing mortars on a daily basis?
6 A. Yes, Sir.
7 Q. At Iraqis?
8 A. Between HE and illum rounds, roger, Sir.
9 Q. You were firing at Iraqis with mortars?
10 A. That was my understanding. I know we were putting them in
11 the tube and dropping them, Sir.
12 Q. Could that have just been harassment fires where you fire
13 to a range?
14 A. I have no idea, Sir. I can't see the impact from a mortar.
15 Q. So you are the--you were the gunner?
16 A. Yes, Sir.
17 Q. Right?
18 A. Yes, Sir.
19 Q. And you were firing mortars and you didn't know where you
20 were firing them to?
21 A. That is the way it works, Sir, roger.
22

017152

1 Q. You were getting a grid so you knew the grid?

2 A. FDC is given a grid. FDC turns that grid into numbers that

3 we put onto the gun system and from there we fire. So all I know is

4 the number, the deflection and the elevation, Sir.

5 Q. Would it surprise you to know that the mortars aren't being

6 used by the battalion in a combat situation?

7 A. What do you mean that mortars aren't being used, Sir?

8 Q. Mortars are not being used by your battalion in combat

9 situations. They are only used as harassment fires.

10 A. Okay, Sir.

11 Q. Do you know what harassment fires are?

12 A. Roger, Sir.

13 Q. Okay, you don't know that?

14 A. I do not--I mean I didn't answer--I mean that wasn't part

15 of my job. I just put the numbers on the gun and fired when they

16 told us to, Sir.

17 Q. All right. Now if you were given your weapon back and you

18 went out on patrol and were placed in the same situation that you

19 were placed in on 28 February then you would do the same thing again,

20 wouldn't you?

21

1 DC: Objection, Your Honor. This is highly irrelevant to an
2 Article 13 motion, Your Honor. It is entirely too speculative.

3 MJ: What is the point of it?

4 TC: Your Honor, the defenses point is that he should have been
5 given a weapon back, and the government's position is that if he was
6 given a weapon back, he would do the same thing that he did before
7 and----

8 MJ: Move on to another point. I don't want to hear that.

9 Sustained.

10 TC: No further questions.

11 MJ: Any redirect?

12 DC: No, Your Honor.

13 **EXAMINATION BY THE COURT-MARTIAL**

14 **Questions by the military judge:**

15 Q. PFC Richmond, you said that the night of the 28th, the
16 night that it happened, you stayed in a chaplain's tent, is that
17 right?

18 A. I was in the chaplain's tent from about noon to 8 or 9
19 o'clock that night, Ma'am. Then that night I slept on the floor of
20 my squad leader's container, Ma'am.

21

017154

1 Q. Okay. Did you have any interaction with your squad at that
2 time?
3 A. No, Ma'am. They kept me separated and told me, you know,
4 to just stay around my squad leader, Ma'am.
5 Q. Do you know what the reaction of your squad was to the
6 incident?
7 A. Um, yes, Ma'am. They were upset.
8 Q. Did they say anything to you?
9 A. Uh, yes, Ma'am. They were like, "What's going on? I can't
10 believe they are doing this to you." Things of that nature, Ma'am.
11 But that was when they were walking past earlier when I had seen them
12 at the chaplain's tent, Ma'am.
13 Q. When you were at McHenry, were you living in a container?
14 A. Yes, Ma'am.
15 Q. With one other Soldier or how many?
16 A. It was four of us in a container, Ma'am, but it was a
17 different container than they had at FOB Warrior, Ma'am.
18 MJ: I have no further questions. Any questions based on mine?
19 TC: No, Ma'am.
20 DC: Two, Your Honor.

21

017155

1 **REDIRECT EXAMINATION**

2 **Questions by the defense counsel:**

3 Q. Private Richmond, you said that the containers at McHenry
4 were different.

5 A. Yes, Ma'am.

6 Q. Were they bigger or smaller?

7 A. They were larger, Ma'am.

8 Q. At McHenry?

9 A. Yes, Ma'am.

10 Q. You also indicated to the military judge that your squad
11 was upset. Do you feel that they were upset at you or were they
12 upset at the situation?

13 A. They were upset at the situation, Ma'am.

14 Q. Did you feel fearful of squad members?

15 A. No, Ma'am, not at all.

16 Q. How did you know that they were upset at the situation?

17 A. When they had walked past I talked to them for 1 to 2
18 minutes when I was standing outside the chaplain's tent and they were
19 like, "Why are they keeping you separated? What happened? You know
20 we hear little bits and pieces, what's going on?"

21

017156

1 A. I was telling them I can't talk about it but they were
2 like, "I can't believe they are doing this to you." Things like
3 that, Ma'am.

4 Q. So they were supportive?

5 A. Yes, Ma'am.

6 Q. Not upset at you?

7 A. Yes, Ma'am.

8 DC: Nothing further, Your Honor.

9 MJ: Okay thank you, PFC Richmond. You have a seat by your
10 counsel.

11 [The accused did as directed.]

12 MJ: Defense, any further evidence?

13 DC: Yes, Your Honor. Are you ready for argument, Your Honor?

14 MJ: I said, "Do you have any further evidence?"

15 DC: Oh, no. No other evidence.

16 MJ: Then yes, I would like to hear your argument first. Go
17 ahead.

18 DC: Your Honor, the defense motion covers several different
19 areas for appropriate relief. The government has already indicated
20 that at least some credit should be granted for this possibly 5 days,
21 if not more, for the comments that the first sergeant made to the
22 entire company when they were waiting to get their anthrax shots.

23

1 Obviously we ask that you consider Private Richmond's
2 testimony towards that.

3 We also ask you that part of that, Your Honor, that you
4 consider the testimony of Captain [REDACTED] in which he indicated that
5 he was going to make sure that nothing happened to Private Richmond
6 again, and yet after the incident with Lieutenant [REDACTED] is when this
7 incident with the first sergeant occurred, so, it was not enough to
8 say that it was stopped ahead of time but rather that this treatment
9 of Private Richmond was in fact allowed to continue after the company
10 commander took steps to ensure that it would not.

11 The next specific area that the defense would like to
12 direct your attention to, Your Honor, is that 30-day window in which
13 Private Richmond basically shadowed Sergeant [REDACTED] was required to be
14 with Sergeant [REDACTED] 24-7.

15 Certainly while he could go to the chow hall and he could
16 go to the gym, he was required to do that when Sergeant [REDACTED] wanted
17 to do that. So when Private Richmond, an independent innocent until
18 proven guilty Soldier wanted to go to the phone lab or to pick up his
19 laundry, he was not allowed to do that if it was not to the
20 convenience of Sergeant [REDACTED].

21

1 He was the only junior enlisted Soldier that was required
2 to have an NCO escort during this time period. Both Private Richmond
3 and Captain (S) (b)(7) had told you that it was about a 30-day straight
4 period in which it was 24-7 with Sergeant (b)(7)

5 At a minimum, Your Honor, that is restriction tantamount to
6 confinement and not only should Private Richmond be granted day for
7 day credit during that time period, he should also be granted credit
8 for any violation of R.C.M. 305 during that 30-day time period.

9 MJ: Well let me ask you, Captain (b)(7), do I have any
10 evidence of whether or not there was a 305 hearing in this case?

11 DC: You do not, Your Honor, and at the court's discretion, the
12 defense would ask that we could reopen and put on evidence unless the
13 government is willing to stipulate otherwise.

14 Certainly, Your Honor, if I had it, I would have attached
15 it to the motion, but you are correct, Your Honor.

16 MJ: Government, are you willing to stipulate that there was no
17 magistrate's hearing either for----

18 TC: Yes, Your Honor

19 MJ: Okay, give me a minute to talk to PFC Richmond about that
20 then.

21

017159

1 DC: Yes, Your Honor.

2 MJ: Private First Class Richmond, in order for me to make a
3 decision on this motion and on any motion, I have to evidence upon
4 which to base my decision. [REDACTED] (b)(2)

5 One of the ~~tenants~~^{tenets} of your counsel's argument is that the
6 requirements for Rule for Court-Martial 305 were not complied with in
7 that there was no magistrate's hearing to determine whether or not
8 the terms of your restriction, if I find that there was restriction,
9 were authorized under that rule for court-martial.

10 Nobody talked about that on the witness stand so I don't
11 have any evidence of that. The government and your defense counsel
12 are willing to stipulate that in this case, there was no magistrate's
13 hearing in your case to determine whether or not your restriction, if
14 there was restriction, was lawful.

15 Now stipulated facts are evidence that I can use upon which
16 to make my determination but no one can be forced to enter into a
17 stipulation and I can only consider that fact if you believe that it
18 is in your best interest to go ahead and stipulate to that.

19 Do you understand that?

20 ACC: Yes, Ma'am.

21

1 MJ: All right, so understanding what I have told you and what
2 your defense counsel may have told you before, are you voluntarily
3 allowing me to use that evidence, that is that there was no
4 magistrate's hearing in your case so that I can use that in making a
5 determination in this case?

6 ACC: Yes, Ma'am.

7 MJ: All right. And counsel, you are willing to stipulate to
8 that fact?

9 TC: Yes, Your Honor.

10 DC: Yes, Your Honor.

11 MJ: Okay, please continue.

12 DC: Your Honor, thank you for liberty with that issue.

13 Moving on, Your Honor, the defense would like to focus the
14 court's attention primarily to what is not only physical restriction
15 but is moral restriction. As we have indicated in our motion, the
16 court is entitled to grant credit for any kind of moral restriction
17 that is put on a Soldier.

18 As Private Richmond has testified to you, he has been a
19 member of the mortars platoon at least for the last year with this
20 same close group of guys.

21

(S)(u)-2

1 Captain [REDACTED] didn't contest that, Your Honor. They
2 both affirmed that there are no members of the mortars platoon on FOB
3 McHenry and at the time that Private Richmond was moved from McHenry
4 to FOB Warrior, at the most, he knew two people, his commander and
5 his first sergeant.

6 Your Honor, in the deployed environment of Iraq, given the
7 testimony of the witnesses and what they have told you about the
8 camaraderie that is required, to move Private Richmond from McHenry
9 to Warrior at the order of the battalion commander was completely
10 arbitrary and baseless and in fact was a form of punishment to PFC
11 Richmond.

(S)(u)-2

12 All we have is the testimony of Captain [REDACTED] as to what
13 the BC told him and what the BC told him at that time, Your Honor,
14 was that Private Richmond was going to face charges. That was as
15 early as February 29th.

(S)(u)-2

16 What Captain [REDACTED] has told you in his own testimony is
17 that he didn't do an investigation and his commander's inquiry until
18 midmonth and that he, as the company commander, never made an
19 independent decision.

20

(S)(b)(2)

1 The defense certainly isn't arguing that Captain [REDACTED]
2 should have disobeyed a direct order from the battalion commander but
3 in the absence of further evidence on that, Your Honor, then the
4 benefit should go to PFC Richmond in that the commander said that he
5 was facing charges and that he was going to be moved.

6 Private Richmond told you that his own squad embraced him
7 and said, "Hey what is going on?" He wasn't a threat to his squad.
8 He never made any threats to himself, to injure himself, towards
9 anyone else. It was again an arbitrary decision from the battalion
10 commander.

11 The defense's position, Your Honor, is that that in fact
12 was a residual effect of the incident with Sergeant [REDACTED] the week
13 prior. The commander had had enough and so he took it out on Private
14 Richmond by moving him to FOB Warrior.

(S)(b)(2)

15 To be considered in that, Your Honor, although not
16 directly, is the attitude of Lieutenant [REDACTED] when he testified. He
17 himself testified that he was shocked to see Private Richmond at
18 Warrior. And that is certainly indicated in some of the testimony
19 from Captain [REDACTED] and Private Richmond as to the attitude that
20 was given to this Soldier, Your Honor. He was branded and shipped
21 out and gotten rid of. Not seen of, not heard of, not thought about
22 and that is certainly something for the court to consider.

(S)(b)(2)

(S)(b)(7)

1 The government has presented evidence with Captain [REDACTED]
2 as to whether the Soldier had access to the internet, to the phone,
3 to the PX facilities, to the laundry facilities, and certainly those
4 are valid concerns in a garrison environment.

5 The restriction that Private Richmond was under is not the
6 same as a garrison environment, Your Honor and that is what we are
7 asking the court to look into, the fact that in a close-knit
8 community where you have trained with a squad, you have deployed with
9 a squad, these are your best friends, your platoon and you are moved
10 from that, that is a form of punishment for this Soldier then, Your
11 Honor.

12 Again, in the absence of further clarification, the order
13 from the battalion commander to move Private Richmond because he was
14 facing charges, that in it of itself should be considered punishment
15 to this Soldier, Your Honor, and we ask that you give him credit for
16 that.

17 Finally, Your Honor, the defense would like you to look at
18 the kind of miscellaneous category of the way that Private Richmond
19 was treated. Certainly the incident with Lieutenant [REDACTED] he is not
20 in the Soldier's chain of command. (S)(b)(7)

1 Your Honor, he is a first lieutenant in the United States
2 Army and the defense's position is that that is enough. He doesn't
3 have to be in the Soldier's chain of command. He was a first-hand on
4 the scene witness on that day on the 28th. He had first-hand
5 knowledge of it and as a first lieutenant what he told you was that
6 he wanted closure.

7 He gave no thought to Private Richmond's feelings. The
8 fact that he had not faced trial yet and was minding his own business
9 but instead, the first lieutenant to clear his own conscious, went up
10 to a PFC, didn't go through Private Richmond's chain of command,
11 didn't walk away, but approached Private Richmond to call him a
12 murderer, Your Honor, in front of other Soldiers.

13 You know, whether Lieutenant (b)(6)-2 [REDACTED] meant to embarrass him
14 or not, that was the natural reaction and the natural side effect of
15 that.

16 Had Lieutenant (b)(6)-2 [REDACTED] been thinking clearly, certainly he
17 may not have done that and he may have realized the embarrassment
18 that that would cause to Private Richmond who has told you, very
19 heartfelt, Your Honor, that he was trying to do his job and trying to
20 be the best and to get rid of this reputation that was lurking there.

21

017165

1 Your Honor, all--and all the work that he had done working
2 with these Soldiers and getting to know people is knocked right back
3 down when somebody like Lieutenant (b)(6)-2 or the first sergeant makes
4 comments that he is a murderer and a criminal.

5 (b)(6)-2 We also ask you to take into consideration that Lieutenant
6 (b)(6)-2 although this is apparently the most traumatic thing he has
7 ever seen in his life, had kept those photos on his thumb drive and
8 camera and was willing to display them to other people in order to
9 disparage the reputation of this innocent Soldier.

10 Further, Your Honor, while the tasks and duties that
11 Private Richmond was required to do at FOB Warrior, certainly are no
12 different than those required of any PFC. Those duties could have
13 been done at FOB McHenry, Your Honor.

14 There is absolutely nothing that indicates he could not
15 have filled sandbags at FOB McHenry, he could not have done police
16 call, he could not have police call, he could not have picked up
17 trash, so, the government can't have it both ways.

18 Those things, you know, maybe he should have been there,
19 maybe he shouldn't, but to do that, if those were really his tasks he
20 could have done them at FOB McHenry.

017166

1 The government has also presented evidence that harassment
2 mortars may be less of a mission than actual targeting mortars and
3 that is not the case, Your Honor. Harassment mortars were certainly
4 still were a very important of the mortars platoon and Private
5 Richmond wasn't doing that during this several month time period.
6 Your Honor, Private Richmond was filling sandbags and he
7 was cutting grass with an e-tool as punishment. He was doing it for
8 embarrassment. He was doing it as humiliation. Certainly there may
9 have been no ill will on behalf Captain (S)(b)(7) who is getting these
10 very detailed reports on his Soldier's progress, however, the
11 commander doesn't always know what is going on on the ground, Your
12 Honor.

13 The defense's position is that these humiliating tasks done
14 out in the open with another Soldier that was very publicly facing a
15 chapter, a Soldier who had put a gun to his mouth and had threatened
16 to kill himself, that was who was basically required to be PFC
17 Richmond's battle buddy and by branding the two of them together it
18 was a very public form of punishment to Private Richmond and Private
19 (S)(b)(7) to have them working outside in this environment doing
20 basically these menial tasks without a squad.

21

1 You know, doing them at the discretion that may have done
2 that. And again, Your Honor, it is that type of moral restriction
3 that we would like the court to also consider in making a decision,
4 that Private Richmond has told you that he wanted to back out there
5 and do his job and that he was trying to be a good Soldier but when
6 you get embarrassed by your leaders, and you get humiliated by your
7 leaders, and you get put on these tasks, and you keep getting told
8 that, "No, you can't have a weapon. No, you can't go back to your
9 FOB."

10 It is that moral kind of degradation, Your Honor, that we
11 ask the court to give serious consideration to in granting relief to
12 Private Richmond.

13 MJ: Government?

14 TC: Yes, Your Honor. The defense's assertions describe a
15 different Army than the Army that 1-27 Infantry lives in combat here
16 in Iraq.

17 Except for the minor issue of the first sergeant's
18 inappropriate comment, this motion has no merit. You heard no intent
19 to punish whatsoever. You heard about basically an administrative
20 move of Richmond from FOB McHenry to FOB Warrior.

21

1 This was an administrative move with no intent to punish.
2 He was moved from a very dangerous FOB that was basically being
3 attacked all the time to a much safer, larger FOB, with facilities,
4 FOB Warrior.

5 That was to better the Soldier's situation. Whether that
6 was the intent or not, that was the effect. The accused, he, also
7 needed to be moved to where he could be supervised and he could be
8 watched.

9 He is a suspect in a murder case. He is an accused in a
10 murder case. At FOB McHenry, those Soldiers are always on duty,
11 always on guard, always ready for combat.

12 The unit could not afford the effort it takes to watch a
13 Soldier who they took a weapon away from. So, they sent him to the
14 company headquarters. Your Honor, he was just moved from his platoon
15 to his company within the same unit.

16 The battalion commander's overriding concern was the
17 welfare of his unit in combat. The company commander testified about
18 not how the squad was reacting to this issue but how the company or
19 the battalion was acting at FOB McHenry. It was for Richmond's own
20 protection to be sent to FOB Warrior.

21

1 In any event, the move had no intent to punish. The being
2 away from his buddies is just an effect, and unfortunate effect.

3 In terms of the weapon, Your Honor, he is a murder suspect.
4 He is suspected of killing an innocent human being, it is very
5 reasonable for the command to take away his weapon and not give him a
6 weapon back under any circumstances short of a serious emergency.

7 PFC Richmond was not restricted anymore than any other
8 Soldier on FOB Warrior. He was not detained. He--it was not
9 anything close to tantamount to confinement. He was required to
10 follow the buddy system and that buddy system is where Soldiers can't
11 go anywhere without a buddy. The accused said it himself, it is
12 enforced by the leadership of the battalion and the company.

13 Having to have an escort, having to check in is not
14 unreasonable for a Soldier being or pending a court-martial.

15 Nothing this Soldier has had to do is unreasonable. He did
16 work that E3s do in the United States Army. He did work that E3s on
17 FOB Warrior do and did in the United States Army. The other Soldier
18 who was in trouble, he is just one of many that has to do these types
19 of jobs.

20

1 The Soldier was treated better than any E3 in an infantry
2 battalion has ever been treated in a combat zone. He has had access
3 to internet, access to telephones, he has been able to go see his
4 lawyer, he has been able to call his lawyer, he has been able to have
5 free time to prepare his case, he has easy working hours for an
6 infantry Soldier in a combat zone.

(S)(b)(1)-(2)

7 Regarding the Lieutenant [REDACTED] incident, this was a
8 personal and emotional, actually visceral conversation that has no
9 official bearing. It came from an officer who got out of bounds,
10 yes, he should not have done that but it was purely personal and it
11 was a one on one conversation that had no intent to punish or
12 ridicule a Soldier. It was just a reaction by the lieutenant.

13 The first sergeant incident, yes, Ma'am, that was an
14 inappropriate comment. Even if he has used that term before against
15 Soldiers it was still wrong. It is the only instance in evidence
16 though where this first sergeant or anyone else beside Lieutenant
17 (S)(b)(1)-(2) [REDACTED] has held Richmond up inappropriately.

18 For that, Your Honor, the government is offering 5 days of
19 credit for this inappropriate comment.

20 Your Honor, no other credit should be given. He wasn't
21 restricted. He wasn't punished, much less unlawfully punished.

017171

1 A finding of tantamount to confinement, Your Honor, would
2 translate into the entire Warrior Brigade being confined. Nothing
3 further.

4 MJ: Let me ask you. You didn't say anything about this 30-day
5 period that Captain (b)(6)-7 is asking about. She sees a distinction
6 between the normal confines of what happened to PFC Richmond from 29
7 February through today and at the very least, the 30-day period that
8 he was escorted by Sergeant (b)(6)-7 Can you comment on that? What is
9 the government's position?

10 TC: Your Honor, the government's position on the 30-day escort
11 period is the same as--as it--the entire argument. It is the buddy
12 system argument. He was required to be watched by the sergeant. It
13 is not 24-7.

14 MJ: Well if he was required to be watched by a noncommissioned
15 officer, then doesn't that suggest restriction tantamount to
16 confinement?

17 TC: Not in this circumstance, Your Honor, it is just a
18 continuous buddy system. He is supposed to stay with his buddy and
19 since they were living together, that equates to 24-7 supervision, I
20 guess.

21

1 TC: There aren't many other places to go on FOB Warrior, Your
2 Honor.

3 MJ: To your knowledge, were there any other E3s that were
4 required to be buddies with a noncommissioned officer?

5 TC: No, Ma'am. Actually, Ma'am, he is the only Soldier that
6 is-that was undergoing court-martial in his battalion since we have
7 been here in this combat zone.

8 MJ: So this was the path that the command chose then, is that
9 right?

10 TC: Yes, Ma'am.

11 MJ: All right. Anything else?

12 TC: No, Ma'am. Thank you.

13 MJ: All right, court's in recess.

14 [The session recessed at 1525, 3 August 2004.]

15 [The session was called to order at 1535, 3 August 2004.]

16 MJ: Court is called to order. All parties present when the
17 court closed are again present.

18 (5)(b)-2 Before we go into the two motions in limine, Captain
19 [REDACTED] during your client's testimony on the last motion he
20 indicated that he had come, I am not sure what trip it was, it must
21 have been the only trip.

22

1 MJ: This at least in part for the purposes of a sanity board.
2 Is there any issue as to a defense of lack of mental responsibility
3 in this case?

4 DC: No, Your Honor.

5 MJ: Okay, I haven't received notice of it so I just wanted to
6 make sure there wasn't.

7 DC: Yes, Your Honor.

8 MJ: All right. Let's move to government motion in limine
9 number one.

10 TC: Yes, Your Honor.

11 MJ: Wait a minute. Before you go on, let me make sure of
12 something.

13 Defense, you are willing to stipulate to the facts as
14 stated in the government motion, correct?

15 DC: Yes, Your Honor.

16 MJ: With the exception that at the last bullet, under 18
17 February 2004 incident where it says, "Subsequent to the incident,
18 the Soldiers of 1-27 Infantry were counseled, briefed, and trained
19 again on ROE." It is your belief that those ROE were changed as
20 opposed to retaught?

21

1 DC: Yes, Your Honor, and actually I believe that the
2 government's position is that those ROE were clarified. I would
3 probably say, "changed" but that is our position.

4 MJ: Okay, well if you guys want to agree or for me to use these
5 facts, then what do you want to agree upon?

6 DC: Well, Your Honor, the defense position is that the ROE
7 changed.

8 TC: Your Honor, it is CFLCC's position that the ROE has never
9 changed.

10 MJ: Okay, well then it seems to me that you would have to put
11 on evidence as to that last bullet and as to what you have put on, in
12 your second paragraph under facts in the defense motion.

13 If you can't agree to it then I will hear evidence on what
14 the ROE was before or after.

15 But, as to all the other facts, you were willing to
16 stipulate, correct?

17 TC: Yes, Your Honor. And, I am not sure how important that--
18 the last bullet about the change or the clarification of ROE is
19 relevant to the actual motion in limine.

20 MJ: All right. I understand that.

21

1 DC: Your Honor, this may interest the court but we are not
2 arguing in any way, shape, or form that the CFLCC ROE changed, um,
3 ROE is adapted for each specific mission. There was a certain
4 refocus, a shifted--Your Honor, I see the court's reaction, however I
5 see----

6 MJ: It is----

7 DC: Your Honor, I see the court's reaction, however, according
8 to mission, the ROE is briefed----

9 MJ: Okay, that is different though. The ROE, the confines of
10 the mission may change and certainly as to the mission on the 18th
11 and or the mission on the 28th and I am open to hear whatever they
12 briefed ROE on. But, you both agree that the Combined Land Forces
13 Component Commander ROE has remained the same from January to
14 present?

15 DC: Yes, Your Honor.

16 TC: Yes, Ma'am.

17 DC: Yes, Ma'am.

18 MJ: All right.

19 TC: The guidance put out by the unit, it is like the defense
20 attorney has said, it does change because----

21

017176

1 MJ: It is based on mission.

2 TC: ----it adapts to the situation, but in this particular

3 case, the actual--what--the ROE never changed but the guidance of

4 what--what was put out----

5 MJ: How to ^{interpret} ~~interrupt~~---- (b)(1)(2)

6 TC: ----was changed.

7 MJ: ----those ROE changed.

8 TC: So when I mention that it was retrained at the end, it was

9 retrained and clarified to tell them what the actual ROE is.

10 MJ: Hooah. Well as we know, the ROE are written by lawyers and

11 they must be interpreted.

12 TC: Yes, Ma'am.

13 MJ: All right, then what I intend to do is to accept as a

14 stipulation of fact, the facts set forth in the government motion in

15 limine one, and that the CFLCC Rules of Engagement remained the same

16 throughout the period, but that they were briefed and interpreted for

17 each mission.

18 All right, PFC Richmond, as I said before, a stipulation of

19 fact is not something that you can be forced to enter into, so you

20 should enter into it only if you believe that it is in your best

21 interest to do so.

22

017177

1 MJ: Now in this case, there is little dispute about the facts
2 of what happened on the 18th of February 2004 or what happened with
3 regard to specific facts on the 28th of February 2004, the government
4 is moving to keep the previous incident out of evidence.

5 Your defense counsel is arguing that it is relevant and
6 should be permitted to be brought into evidence and so I need to make
7 a determination as to whether I will allow counsel to inquire into
8 that previous incident.

9 Do you understand all that?

10 ACC: Yes, Ma'am.

11 MJ: All right. Is it your desire that I consider the facts as
12 stipulated rather than forcing the counsel to bring in witnesses to
13 establish those facts?

14 ACC: Can I have just a second, Ma'am?

15 MJ: Yes.

16 [The accused conferred with his counsel.]

17 ACC: Okay, I am all right with that, Ma'am.

18 MJ: Okay. Well now recognize too that it is solely for the
19 purposes of this motion. In other words, none of these facts will go
20 before the members in determining any issue tomorrow until one or the
21 other of the counsel were to bring in witnesses to testify to it.

22

1 ACC: Yes, Ma'am.

2 MJ: Do you understand all that?

3 ACC: Yes, Ma'am.

4 MJ: Okay, and counsel, I assume you are willing to stipulate to
5 those facts as well?

6 TC: Yes, Your Honor.

7 DC: Yes, Your Honor.

8 MJ: Very well. Does either side desire to present any other
9 evidence or do you want to argue on the motion?

10 TC: No other evidence from the government, Your Honor, request
11 argument.

12 MJ: Okay. Any evidence from the defense?

13 DC: No, Your Honor, except that there might be one other thing
14 that should be clarified before argument, which I think again is a
15 verbal stipulation, that the Sergeant ^{(b)(6)-2} [REDACTED] that is
16 identified in the February 18 incident is in fact the same individual
17 that is referred to with the 28 incident.

18 Obviously I don't think that there is an issue that there
19 are two out there but just to the fact that it is the same individual
20 and he is listed on the government's witness list, Your Honor.

21

017179

1 MJ: I will accept that proffer.

2 DC: Okay.

3 MJ: Government.

4 TC: Yes, Ma'am, the government moves to preclude the 18
5 February incident involving an IED engagement with civilians in 1-27
6 Infantry's area of operations.

7 Basis is relevance under R.C.M.--or M.R.E. 401. Your
8 Honor, the 18 February incident is not relevant to the case that is
9 at hand.

10 Looking at defense's proffer and actually their argument,
11 the defense describes the relevancy as being that the shooting
12 incident on 18 February is a catalyst for the ROE change and the fact
13 that the ROE changed and it is all relevant to the accused's state of
14 mind.

15 Your Honor, the government has no objection to ROE change
16 or clarification coming into evidence. It is the actual incident
17 that is not relevant, the Sergeant ^{(5)/6-2} [REDACTED] shooting someone, is not
18 relevant to the case at hand.

19 Understanding that while the catalyst is not relevant--is
20 not relevant, the fact that the ROE changed could be relevant though,
21 Your Honor.

017180

1 TC: Your Honor, yesterday I understood that the defense would
2 argue that it would be relevant under 608(c) as bias. Again, Your
3 Honor, the incident itself that Sergeant (b)(6)-2 shot a civilian, or
4 three civilians and that one of them was killed is not relevant in
5 and of itself.

6 Perhaps the fact, and I am moving on into a 403 argument,
7 if you find that that evidence is evidence of bias that is relevant
8 to this case, then 403 would apply. The actual shooting incident is
9 much too prejudicial when you can--when defense can accomplish their
10 same task by eliciting evidence that there was an investigation of an
11 incident and that Sergeant (b)(6)-2 was under investigation. You don't
12 have to say what for.

13 You just say that he was under investigation for a
14 firefight incident 10 days prior and therefore, according to the
15 defense argument, therefore the witness is biased, I guess, into
16 pleasing the government in helping the prosecution. (b)(6)-2

17 In any event, though, the fact that Sergeant (b)(6)-2 was
18 involved in an ROE violation or an alleged violation himself would be
19 very prejudicial to the government in this case and it would confuse
20 the members.

1 TC: It may cause them to want to know exactly what happened in
2 that case.

3 The inference, although I am sure the defense will not
4 raise it, but the inference that the panel could come to easily,
5 which would confuse them and prejudice the government, that inference
6 being that if Sergeant (b)(6)-2 shot a civilian and got away with it,
7 then why can't the accused in this case shoot a civilian and get away
8 with. Your Honor, that is not--that is too prejudicial and it is not
9 about justice.

10 MJ: Well, but can't I handle that in an instruction to the
11 panel. I mean, if you admit that the relevance is bias government,
12 then isn't it only bias because (b)(6)-2 shot civilians?

13 TC: Ma'am, the bias is----

14 MJ: Not that he is under investigation but that he shot
15 civilians.

16 TC: I don't see the relevance of how that would be bias.

17 MJ: That Sergeant (b)(6)-2 feels compelled to immediately report
18 and immediately assist in the government to show a difference between
19 the events of 28 February and the events of 18 February, is that not
20 right?

21

1 TC: Your Honor, I still think the same thing could be
2 accomplished if it was limited to that he was under investigation.
3 The fact that he shot someone would truly enflame the panel in--it
4 would be prejudice to this particular trial.

5 MJ: So you believe that the unfair prejudice substantially
6 outweighs the relevance?

7 TC: Yes, Ma'am. When the relevant portions of the bias
8 testimony or the bias evidence could be handled in a way where the
9 defense could make the argument without having to mention the actual
10 incident itself, the 18 February incident.

11 MJ: Is Sergeant [REDACTED] still under investigation?

12 TC: No, Ma'am, the 15-6 investigation was completed months ago.
13 The commanding general has delegated any action authority to the
14 brigade commander of the 2nd Brigade of the 25th Infantry Division
15 who has not taken action in the case. The facts are somewhat
16 different, Ma'am.

17 MJ: Okay.

18 TC: A different situation.

19 MJ: Okay.

20

017183

1 TC: And that is what the government wanted to avoid, bringing
2 the different facts to distinguish this particular incident from the
3 case----

4 MJ: Well I don't want a trial on what happened on the 18th of
5 February. I want a trial on what happened on the 28th of February so
6 we will ensure that that happens. But, I think I understand your
7 position. Defense?

8 DC: Your Honor, in many ways the defense agrees with Major
9 (b)(6)-2. We certainly don't intend to have a trial within a trial
10 or to litigate in any way the February 18th incident. Um--the
11 defense asks the court to hold the government to its strictest burden
12 when making a decision on this motion.

13 Even assuming that the threshold of relevancy is met, which
14 the defense certainly believes that it is and we will rely on our
15 brief for that, Your Honor, the government's position that the panel
16 would be confused by this testimony really shouldn't hold too much
17 water with the court.

18 It is an educated military panel with years of experience
19 that any kind of confusion that may arise can be remedied by either
20 an on the spot instruction, Your Honor, or either a carefully
21 tailored instruction further on down the line.

22

017184

1 DC: Any questions that the panel may have certainly would be
2 reviewed by Major ^{(S)/6-2} [REDACTED] and myself at the appropriate time and I
3 don't think that it is either party's intent to go down that road.
4 Certainly if that is the way things are going, the defense feels that
5 the court certainly has enough discretionary authority to control the
6 way that the proceedings are handled and to ensure that it is not a
7 trial within a trial.

8 To suggest that the panel would be enflamed by the
9 incident, Your Honor, is certainly contradictory to the government's
10 position of showing certain photos.

11 This is a panel on a murder case, Your Honor. They
12 certainly know that someone has been killed here so to say that they
13 would be enflamed simply by the knowledge that Sergeant ^{(S)/6-2} [REDACTED] had
14 killed one civilian 10 days earlier isn't really enough of an
15 argument to get by the 403 position, Your Honor.

16 Regarding 608(c), if Sergeant ^{(S)/6-2} [REDACTED] testifies, which the
17 defense believes that he will and the defense is on notice that he
18 will, the fact that this 18 February incident happened goes
19 specifically to bias, Your Honor. The defense isn't concerned as
20 much with any kind of reporting requirement with--you know a shot
21 went out. People heard it.

22

017185

1 DC: This is not something where the situation is going to be
2 hidden and that is not our position at all. What our position is, is
3 that at the time Sergeant (b)(6)(c) knew he was under investigation,
4 knew he was under investigation, and at that time his objective, his
5 bias, was to minimize his involvement in what happened with PFC
6 Richmond.

7 Again, Your Honor, our belief is that the testimony of
8 Sergeant (b)(6)(c) versus the statements that Private Richmond gave to
9 CID agents, to other various authority figures, come out differently
10 on some very key facts.

11 For example, Your Honor, of Sergeant (b)(6)(c)'s statements
12 thus far have consistently said that he told Private Richmond that
13 Mr. (b)(6)(c) said--he said, "He's good. Let's go." Private Richmond's
14 statements consistently say that he never heard Sergeant (b)(6)(c) say
15 that.

16 Now whether or not that statement was said certainly may be
17 at issue on the merits phase of this trial, Your Honor, and if
18 Private Richmond's statements are to be believed, Sergeant (b)(6)(c)
19 never said that. And so his bias, is to minimize his involvement.
20 If he didn't tell his Soldier, "This guy is good. Let's go."

21

017186

1 DC: Then some of the fault may be assessed to him. There are
2 other similar factual scenarios, Your Honor, and obviously only once
3 these witnesses testify or once Private Richmond's statements come in
4 will we truly be able to see the differences, but our position is
5 that there are enough significant differences that Sergeant [REDACTED]
6 certainly had bias against Private Richmond, bias against any Soldier
7 that was in that position.

8 It could have been Private Snuffy, Your Honor. It just
9 happened to be Private Richmond that day and that is who his bias is
10 going towards, to try and minimize his own involvement in the
11 incident.

12 MJ: So how is this going to come out? What questions do you
13 intend to ask Sergeant [REDACTED] (b)(6)-2

14 DC: Your Honor, it would certainly depend on his testimony, um,
15 the defense feels that it is within the scope to ask, "Were you under
16 investigation?" "Yes."

17 "Weren't you under investigation for shooting three Iraqi
18 civilians?" "Yes."

19 "On February 28th, that investigation was not yet
20 completed, correct?"

21

017187

1 DC: "And, you were the only subject really of that
2 investigation?" "Yes."

3 I think that probably those four or five questions, Your
4 Honor. Some variation on that would encompass enough to get the bias
5 from Sergeant [REDACTED] (b)(6)-2

6 MJ: Okay.

7 TC: Your Honor, may I----

8 DC: I wanted----

9 MJ: In a minute because I do want to figure whether you would
10 come back with additional questions based on that proffer. What I am
11 getting at, Captain [REDACTED] (b)(6)-2 is those questions certainly establish
12 the bias assuming that I ruled in your favor on that.

13 DC: Yes, Your Honor.

14 MJ: But if you note, the facts are certainly more detailed than
15 that. Three females civilians were shot from distances between 70
16 and 150 meters. One killed, two injured.

17 In other words, if I permit you to do it, then the limited
18 inquiry that you proffered meets the test, it meets the relevance, so
19 I am inclined to go into further specific details. Do you believe
20 that is required?

21

017188

1 DC: Your Honor, I want to say, yes, because I would love for
2 the panel to hear that it was a mother and her two her daughters,
3 Your Honor. Do I think that justice is served with that, Your Honor?
4 For Private Richmond, sure. But it is discretionary with the court,
5 Your Honor.

6 MJ: Okay.

7 DC: I would love to be able to do that, Your Honor. I mean if
8 the question was, "Weren't these innocent civilians?" You know, I
9 would expect inflammatory language from the government and that is
10 not personal with the trial counsel, Your Honor, that is just the way
11 the government usually presents its case, Your Honor.

12 MJ: In terms of the 28 February?

13 DC: Yes, Your Honor. So if inflammatory language is going to
14 come out that this was an innocent farmer in the field, you were how
15 far away and that--that's--I expect that, Your Honor.

16 I am certainly not trying to limit the government's ability
17 to present its case but, Your Honor, I think it is relevant anyway
18 and if the court chooses to limit the questions, that is certainly
19 fine, if it inhibits the defense's ability to present our case, we
20 feel comfortable coming back to let Your Honor know.

21

017189

1 MJ: All right. Anything else on that issue?

2 DC: Your Honor, the only other thing I wanted you to consider
3 is that it also seems kind of contradictory to the defense at this
4 point for the government to argue that the government is biased, that
5 the government that suffers prejudice when it is in fact the
6 government that has the burden or proof, Your Honor.

7 And, certainly the government is entitled to bring a motion
8 in limine at anytime, it just seems hard pressed for the defense to
9 find a reason why the government would be so prejudiced by this
10 information when it is really Private Richmond who is on trial, Your
11 Honor.

12 MJ: I understand that argument.

13 DC: Thank you.

14 MJ: Government, if I were to permit the defense to ask those
15 questions, how much further down the road are you going to take it on
16 redirect?

17 TC: Your Honor, I would--in the last version of the questions,
18 are we saying that he shot innocent civilians, or just shot
19 civilians?

20 MJ: I haven't made my ruling yet, but let's assume that it's a
21 series of four or five questions.

1 MJ: Now on the 28th of February, isn't it true that you were
2 under investigation? You were under investigation for shooting three
3 civilians in the town whatever, and on the 28th of February that
4 investigation was not yet completed but you knew that you were the
5 only subject of that investigation.

6 TC: Yes, Ma'am. I don't think I would ask any questions based
7 on that, however, as long we are--we are--I'm thinking Sergeant
8 (S)(6)-2 ████████ may not know that he was under investigation and he definitely
9 wasn't the subject of the investigation.

10 MJ: Well then he would answer appropriately and it will either
11 be in evidence or it won't be in evidence.

12 TC: Yes, Ma'am.

13 MJ: All right.

14 DC: Your Honor?

15 MJ: Yes.

16 DC: If I may add an additional point. I think what does
17 additionally go to the bias is that one of those people was killed.
18 That is the only additional fact that I would like the court to
19 consider in terms of questioning. Not just shot, but that one of the
20 three was killed. Thank you.

21

1 MJ: Okay. All right, let's turn to the second government motion
2 in limine.

3 DC: Your Honor, if the defense may have a minute to review
4 those facts with Private Richmond as I anticipate a similar inquiry
5 here.

6 MJ: Good idea.

7 DC: Thank you.

8 [The accused conferred with his counsel.]

9 MJ: Okay, take a look at the two paragraphs under paragraph C
10 in the defense response. It seems to me that that gives me enough
11 facts in order to decide the issue. Your only issue is whether or
12 not there was an alleged order to shoot all males fleeing the
13 village, right?

14 TC: It is also important that the victim in this case, [REDACTED]
15 (S)(b)(7) [REDACTED], was not fleeing the village. That is the point of the
16 relevance objection.

17 If we could take the first two paragraphs of the defense
18 argument and stipulate that the man--that the accused shot the
19 victim--it just--the alleged victim never attempted to flee the
20 village.
21

017192

(S)(b)-2

1 MJ: Are you willing to do that, Captain [REDACTED]

2 DC: Your Honor, I would want to know the government's
3 definition of fleeing.

4 MJ: Well that is the problem. I expect that both of you are
5 going to argue two different things on the definition of fleeing,
6 whether it is here or tomorrow.

7 DC: Your Honor, this may aid the court or aid the government in
8 clarifying, our position has not been, nor do I intend it to be that
9 Private Richmond was following orders when he followed Mr. [REDACTED] (b)(6)-2. If
10 that helps, I am not sure if that is the concern or what the concern
11 is but it is not our position to argue that, Your Honor, at this
12 time. We are saying that if it was said, he knew about it, it went
13 to his state of mind.

14 MJ: Okay, well take a look at the government list of facts. I
15 am just saying that I am not sure I need all the facts through the
16 actual incident in order to determine whether or not the order or the
17 briefing regarding ROE comes into evidence.

18 DC: I agree, Your Honor.

19 MJ: And so I am not even sure why I need to determine whether
20 Mr. [REDACTED] (S)(b)-4 was walking out of the village or even whether he was
21 unarmed.

1 ACC: All right, Your Honor. I am fine with that, Ma'am.

2 MJ: Okay, well I appreciate that PFC Richmond----

3 ACC: Oh, I am sorry.

4 MJ: I am not sure I am clear on where we are. All right, here

5 is what I would like to do counsel. Take out your copy of government

6 motion in limine two.

7 Start numbering your bullets. I want to consider one, two,

8 three, four, and five, in their entirety.

9 Six, I want to consider everything except the words, "who

10 obviously was not in the process of fleeing." So, I will cross that

11 out.

12 Seven and eight in their entirety.

13 Nine, everything except, "who had not run, fled, or posed

14 any threat at all."

15 Ten, I would add the word "had" between the words "accused"

16 and "the" in the second line.

17 And then 11, 12, 13, 14, and 15, I will consider.

18 I will not consider 16.

19 I think that will certainly give me more than enough facts

20 upon which to base this decision.

21

017194

1 MJ: All of those bullets without the portions that I have told
2 you to excise and paragraphs one and two of defense response section
3 C. You all, all right with that?
4 ACC: I am fine with that, Ma'am.
5 MJ: Counsel?
6 TC: Your Honor, that was basically the gist of the motion
7 because he was not fleeing, this particular ROE understanding is not
8 relevant.
9 MJ: Say that again.
10 TC: The government motion is to preclude the order to put all
11 the males that are attempting to flee the village. Since Mr. [REDACTED] (S)(6)-7
12 never showed any intent to flee, Your Honor, or never fled the
13 village, then that particular ROE is----
14 MJ: Right, I will let you argue that. I mean, I have left in
15 for example the fact that he walked out unarmed.. So you can
16 characterize it anyway that you want.
17 I am just saying that I am not going to consider that as a
18 fact. You can argue that to me and thus argue whether it is relevant
19 or not but I am just taking out the conclusions, if you will.
20 TC: Yes, Ma'am. I understand.

21

1 MJ: But with that caveat, you are okay with the rest of that,
2 with me considering the rest of those facts?
3 TC: Yes, Ma'am.
4 MJ: Defense?
5 DC: Yes, Your Honor.
6 MJ: So the same thing, PFC Richmond, I am going to consider
7 those facts as stipulated between the parties. That is an agreement
8 between the trial counsel, the defense counsel, and you, that these
9 facts are true for me to decide the motion in limine, all right?
10 ACC: Yes, Ma'am.
11 MJ: All right. Government, let's hear your argument then.
12 TC: Yes, Your Honor. It is a very simple and basic argument.
13 The ROE that Sergeant [REDACTED] perceived, the government is not
14 actually contending what (b)(6)-2 actually came from Captain (b)(6)-2 [REDACTED].
15 What Sergeant [REDACTED] perceived and briefed to his Soldiers
16 was that the company commander said that any males fleeing the (b)(6)-2
17 village during the raid were to be put down, or were to be shot.
18 The evidence in this case indicates, according to the
19 proffer, indicates that the victim, [REDACTED] walked out
20 of the village. (b)(6)-4
21

1 TC: He was a cow herder. He walked out with his cows, was
2 not fleeing the village, was walking out of the village and was
3 observed by the Soldiers for a period of time, approximately an hour
4 in a stationary location in a field outside the village.

5 Since that particular ROE perception does not apply in this
6 case, it is not relevant to any material fact that either side would
7 need to present for the panel to make findings, the relevant findings
8 in the case.

9 Also, Ma'am, the--although the government can probably
10 through examination get out the fact that Captain [REDACTED] may not
11 have actually said that but that's what Sergeant [REDACTED] (S)(G)-2 perceived,
12 what we are concerned about is the 403-type issue that the panel is
13 concerned with.

14 The company commander put out an ROE violation through his
15 ROE guidance because shooting any male fleeing the village is an
16 obvious ROE violation if that is complied with. (S)(G)-2

17 MJ: All right, do you intend to call Captain [REDACTED]?

18 TC: No, Ma'am.

19 MJ: So which part of 403 do you think is involved here?

20 TC: Ma'am?

21

017197

1 MJ: In other words, do you think--I will be honest with you, I
2 am not sure the panel is going to leap to the conclusion that that
3 order, if it was given by Captain ^{(S)(47)} [REDACTED] is even an automatic ROE
4 violation or a violation of the laws of war or anything else.

5 But even assuming that it is and they did jump to that
6 conclusion, do you think that they are going to be misled by that
7 conclusion, that it is going to confuse the issues of the case, or
8 that this is unfairly prejudicial?

9 TC: Your Honor, based on the same relevancy argument, I would
10 say it would confuse the issues in the case and it would mislead the
11 panel to perhaps place blame on the company leadership instead of
12 look at the actual issues of whether or not the facts that are going
13 to be alleged from both defense and government in this case, whether
14 or not they are true or not.

15 They will, Your Honor, be looking at something outside of
16 this case.

17 MJ: Okay. Defense, what is your position?

18 DC: Your Honor, similar to the government's previous motion,
19 the defense is unclear as to what prejudice the government would
20 actually suffer by the consideration of this evidence by the panel.

017198

1 DC: A highly educated military panel is certainly not going to
2 be confused by the simple fact that this ROE was put out. Any
3 concerns of the government or the court as to whether this was a
4 lawful order or not or a violation of ROE can be clarified by the
5 instructions, Your Honor.

6 I think that we have enough trust and faith in the panel
7 that they are not going to be kind of confused, or mislead, or
8 prejudiced by this information. What is important, Your Honor, as we
9 mentioned in our brief is that it does go to the accused's state of
10 mind.

11 Ultimately the defense anticipates the court to give the
12 panel an instruction as to the accused's state of mind, one that
13 probably similarly follows that one outlined in DA Pam 27-9, the
14 Military Judge's Benchbook, Your Honor.

15 Part of what should be considered in that state of mind is
16 what Private Richmond knew and what Private Richmond had been
17 briefed.

18 So regardless of whether Captain [REDACTED] said it or did
19 not say it, the fact that Sergeant (b)(6)-(7) [REDACTED] briefed it to Private
20 Richmond and the other Soldiers going on the mission is what is key,
21 Your Honor.

22

017199

1 DC: That, and that certainly goes to the state of mind which is
2 going to go to the state of mind which is going to go to the third
3 element of the offense for which he is charged unlawful. The
4 government of course has the burden of proof on that and so to
5 exclude evidence that might benefit Private Richmond certainly would
6 be an abuse of discretion of the court.

7 The other issue, Your Honor, or the other reason why it
8 meets the relevance threshold and overcomes any 403 objection is that
9 the government has put the defense on notice that it intends to offer
10 a statement of Private Richmond that is included at bullet seven,
11 Your Honor. The accused asked Sergeant (S)(b)(7) if he could shoot the
12 shepherd. Sergeant (S)(b)(7) told the accused, "No."

13 (S)(b)(7) Introducing the ROE that had been briefed by Sergeant
14 the night prior certainly is in conjunction with that, Your
15 Honor. If the government intends to offer the fact that Private
16 Richmond asked this, the fact that he had been briefed to shoot all
17 males fleeing the village certainly is going to clarify why he is
18 going to ask should I shoot this person who is walking away from the
19 village, possibly fleeing the village, leaving the village.

20 So that again, Your Honor, if their intent is to introduce
21 those statements of Private Richmond then the relevancy objection
22 simply does not fly when they are intending to offer that.

23

017200

1 DC: This helps to clarify not only Private Richmond's state of
2 mind at the time, but the statement that was made that the government
3 does intend to introduce, Your Honor.

4 MJ: Do you intend to proffer evidence defense what Captain
5 (S)(b)-2 [REDACTED] actually told the folks he was briefing the night before,
6 shoot all males leaving the village?

7 DC: Yes, Your Honor. I intend to get that information on
8 cross-examination of Sergeant (S)(b)-2 [REDACTED]

9 MJ: I understand you are going to ask him, "It is your
10 understanding after the briefing that you had authorization to shoot
11 all males fleeing the village?"

12 DC: Yes, Your Honor.

13 MJ: I see a distinction between that and saying, Captain
14 (S)(b)-2 [REDACTED] clearly stated----

15 DC: Oh, absolutely, Your Honor. The defense intends to ask
16 who--that it was in fact Captain [REDACTED] who gave the briefing that
17 night and that it was Captain (S)(b)-2 [REDACTED] that put out that
18 information. Absolutely, Your Honor.

19 And again, it is not to say that Private Richmond was
20 following orders but if information comes from an O3 commander of any
21 company versus talking to your buddy or somebody who--oh I heard this
22 rumor, I heard that rumor but----

23

1 MJ: We are not communicating.

2 DC: Yes, Your Honor.

3 MJ: It is like that old game, telephone, you know what I mean?

4 Where one person says something to another, they whisper in another's

5 ear, they whisper in another's and by the time it gets down to even

6 the third or fourth person it is completely different from how it

7 started.

8 DC: Yes, Your Honor.

9 MJ: So I guess what I am asking you is that in your

10 investigation of other people who were at this briefing, are you

11 satisfied that that is absolutely something that Captain (S)(K) L-2

12 actually said, or do you believe that it is possible that Sergeant

13 (S)(K) L-2 walked out of the briefing believing that that was what he

14 said?

15 DC: Your Honor, I am satisfied that that is something that

16 Captain [REDACTED] actually said.

17 (S)(K) L-2 MJ: And that it was passed on to your client through Sergeant

18 [REDACTED]

19 DC: Yes, Your Honor.

20 MJ: Okay, anything else from either side?

21

017202

1 DC: No, Your Honor.

2 TC: No, Your Honor.

3 MJ: All right, I understand the issues there then. Are there
4 any other motions to be heard?

5 DC: No, Your Honor.

6 MJ: Very well, let's go ahead and take PFC Richmond's plea
7 then. And I think that is probably the only other thing we need to
8 do today, isn't it?

9 DC: Yes, Your Honor, there may be a stipulation of fact that we
10 discussed in an 802 session yesterday regarding the testimony to
11 identify who the dead Iraqi is. That has not been hashed out, Your
12 Honor. If it is possible that we take that tomorrow morning before
13 the proceedings begin?

14 MJ: All right, my intent is to give you my findings this
15 evening but not go back on the record until tomorrow morning at
16 eight, all right? So, we can certainly do that stipulation of fact
17 at that time.

18 DC: Yes, Your Honor.

19 MJ: All right. PFC Richmond, counsel, please rise.

20 [The accused and his counsel did as directed.]

21

1 ADC: Ma'am?

2 MJ: Yes?

3 [The accused and his counsel resumed their seats.]

4 ADC: Could I have one moment to confer with Captain [REDACTED]
(S)(b)-2

5 before we enter the plea?

6 MJ: Certainly.

7 [Long pause.]

8 DC: Your Honor, by way of motion in limine, the defense objects

9 to the government showing all of the photographs that have been

10 admitted during its opening statement as those in fact being unduly

11 prejudicial and inflammatory to the panel, Your Honor.

12 Again, as I indicated initially, the government has

13 certainly laid the foundation for their admissibility, however to

14 offer them, all of them, in the opening statement when it is really

15 not contested that Mr. [REDACTED] was shot.
(S)(b)-4

16 Your Honor that--and that he was shot in the back of the

17 head--really Your Honor, that Private Richmond shot him is just too

18 inflammatory for the panel and unduly prejudicial against the accused

19 right off the bat, Your Honor, so we would like to raise that before

20 the court before we conclude this evening.

21

1 TC: Your Honor, if I may, the government intends to offer less
2 than five pictures. I believe that it is three pictures of the Iraqi
3 and one picture of PFC Richmond.

4 MJ: All right. That motion in limine is denied. You can use
5 those four pictures.

6 PFC Richmond, counsel, please rise.

7 [The accused and his counsel did as directed.]

8 MJ: Private First Class Edward L. Richmond Jr., how do you
9 plead? Your defense counsel will speak for you.

10 DC: Your Honor:

11 **To the Charge and Specification**

12 **The accused pleads:**

Not Guilty.

13 MJ: Thank you. Please be seated.

14 [The accused and his counsel did as directed.]

15 MJ: All right counsel, as I said we will start up tomorrow
16 morning and I will give you my finding officially on the record but I
17 will give hard copies when ever I get them done this evening.

18 The other things that I will want to hear about tomorrow
19 morning are the stipulation of fact regarding the death of Mr. [REDACTED]
20 identifying him as the person who was killed. (g)(1)-4

21

1 MJ: Government if you are going to ask me to take judicial
2 notice, you need to have the ROE and have cleared it through the
3 defense before you give it to me and government, I still need a copy
4 of your voir dire so we can go over, on the record, your voir dire
5 tomorrow morning, all right?

6 TC: Yes, Ma'am.

7 MJ: Court is in recess.

8 [The session recessed at 1623, 3 August 2004.]

9 [The session was called to order at 0805, 4 August 2004.]

10 MJ: This Article 39(a) session is called to order. All parties
11 present when the court recessed last evening are again present.

12 Over the course of the evening I completed my findings on
13 the various motions that we litigated yesterday and provided copies
14 to counsel. I realize it was a little late when the last one was
15 done.

16 Any questions on my findings?

17 TC: No, Your Honor.

18 DC: No, Your Honor.

19 MJ: All right. They have been marked by the court reporter.
20 The findings on the motion to suppress are Appellate Exhibit X.
21

1 MJ: The findings on Article 13, or restriction tantamount to
2 confinement are Appellate Exhibit XI.

3 The findings on government motion in limine one are
4 Appellate Exhibit XII.

5 The findings on government motion in limine two are
6 mislabeled and I have changed it on mine, but where it says, "alleged
7 order by Alpha Company Commander to shoot males fleeing the village,
8 that has been marked as Appellate Exhibit XIII.

9 Now I note that at the end of that that I did suggest to
10 counsel that they consider appropriate instruction language to the
11 extent that they think that is necessary and I will of course take
12 that into consideration before deciding on what the instructions on
13 the law will be.

14 And Appellate Exhibit XIV, the court reporter has marked as
15 the flyer in this case. Any objection to the flyer, Captain

16 [REDACTED] b6-2
17 DC: No, Your Honor.

18 MJ: Prosecution Exhibit 8 has been marked as a stipulation of
19 fact. It is a one-line stipulation that states that the name of the
20 Iraqi man shot and killed in the case, this case, was [REDACTED]

21 [REDACTED] (S) 64
22

1 MJ: Do you have a copy of this PFC Richmond?
2 ACC: Yes, Ma'am.
3 MJ: All right, is that your signature above your signature
4 block there in the middle?
5 ACC: Yes, Ma'am.
6 MJ: Did you read through this document thoroughly before you
7 signed it?
8 DC: Your Honor, he does not have a copy in front of him, but he
9 reviewed it about 10 minutes ago.
10 MJ: All right. At any rate, did you sign this [holding up
11 Prosecution Exhibit 8 for identification] document?
12 ACC: Yes, Ma'am.
13 MJ: And I see that it is not dated but we will consider it done
14 today.
15 A stipulation of fact is an agreement, as I told you
16 yesterday, it is an agreement between the trial counsel, the defense
17 counsel, and you that this is a fact which can be considered by the
18 members in making a determination in this case.
19 Do you understand that?
20 ACC: Yes, Ma'am.

21

1 MJ: Okay, when counsel for both sides and you agreed with that,
2 the contents of this writing, parties are bound by the stipulation
3 and the stipulated matters are facts in evidence to be considered
4 along with all the other evidence in the case.

5 Now you have an absolute right to refuse to stipulate to
6 the contents of this document so you should enter into it only if you
7 believe that it is in your best interest to do so.

8 Do you understand that?

9 ACC: Yes, Ma'am.

10 MJ: Knowing what I have told you and what your counsel have
11 told you, is it your desire to voluntarily enter into this
12 stipulation?

13 ACC: Yes, Ma'am.

14 MJ: And do counsel agree with this stipulation?

15 TC: Yes, Your Honor.

16 MJ: Defense?

17 DC: Yes, Your Honor.

18 MJ: Very well, Prosecution Exhibit 8 is received into evidence
19 as Prosecution Exhibit 8 and will be read to the court members at the
20 appropriate time.

21

1 MJ: Now in an 802 session held in court just a few moments ago
2 I did ask the government counsel on whether they had made a decision
3 on asking for judicial notice of the CFLCC ROE in this case and I
4 have been told that copies have been made, however, as a tactical
5 matter, may determine not to introduce that or ask for that to be
6 judicially noticed.

7 So, what we will do is just tackle that at the time. If
8 you believe that you want to use it, then we will have a 39(a) on
9 that, all right?

10 TC: Yes, Your Honor.

11 MJ: And then finally, I did receive the proposed voir dire from
12 counsel. I haven't scribbled on these too much so I will have these
13 marked as appellate exhibits.

14 Starting with the government's proposed voir dire. No
15 issues. It is only four questions. You can ask those.

16 As to the defense voir dire, I note that many of your
17 questions are questions that the court will ask anyway, so I keep
18 that in mind as we go through.

19 Page four, question number 29 is a dangerous question
20 because it is an "or" question, so you could get a response that is
21 yes to the first part, but no to the second or vice versa, no to the
22 first, but yes to the second.

23

017210

1 MJ: So, I would recommend that you reword that or chop it into
2 two, okay? I don't like it when the panel members look at us like
3 deer in the headlights, okay?

4 And page five, questions 41 and 42 are somewhat misleading
5 statements of the law. Why don't you take a look at the instruction
6 on defense of another and figure out if you want me, at that point,
7 to instruct on that, and then ask some questions that you deem
8 appropriate and I will take a look at the right now as well, but that
9 might be a better way to handle those two questions.

10 ADC: I agree with that, Ma'am. I think that would be a good way
11 to handle that.

12 MJ: Otherwise, I have no issues with your proposed voir dire.

13 Counsel, if you would approach please, I have copies of--do
14 you remember yesterday I suggested that I may have appropriate
15 language to instruct regarding the polygraph to the extent that it
16 may come into evidence. So, take a look at those and have them
17 marked as an appellate exhibit as well.

18 [Counsel for both sides did as directed.]

19 MJ: It is a variation on the voluntariness instruction that is
20 at 4-1.

21

1 MJ: So, if that becomes an issue in this case, and I anticipate
2 that it will be ^{given} ~~giving~~ that the statement is going to come in. Then,
3 that would be my proposed instruction and I am open to any
4 suggestions on tweaking it.

5 Okay the defense proposed voir dire is Appellate Exhibit
6 XV. The government proposed voir dire is Appellate Exhibit XVI and
7 the proposed instruction regarding the polygraph slash voluntariness
8 of the statement is Appellate Exhibit XVII.

9 Is there anything else that we need to take up now?

10 TC: Your Honor, one of the first government witnesses, Sergeant
11 ^{(S)(b)-2} ~~_____~~ I plan to ask him if it would help him to describe what
12 happened to--to perform a demonstration. In that demonstration the
13 government intends to use as demonstrative aids two M4 rifles with
14 scopes and a set of zip cuffs.

15 I will, once I get these M4s, what I plan to do is take out
16 the bolts and have them marked as prosecution exhibits for
17 identification, also having the flex-cuff strip marked as an exhibit
18 for identification.

19 At that point, Ma'am, I would request that the rifles, as
20 prosecution exhibits, be allowed--that a photograph would be allowed
21 to be substituted for the record.

22

1 MJ: All right. A digital photograph can be substituted. All
2 right.

3 DC: Your Honor, the defense would just request an opportunity
4 to examine those prior to being utilized, having not had seen them
5 yet. And this is the first the defense is hearing of this proposed
6 use of the zip cuffs or flex-cuffs and we object to that kind of
7 demonstration being done with those cuffs.

8 It is simply too unduly prejudicial and really requires the
9 members of the panel to then put themselves in the shoes of the
10 victim which certainly should not be permitted. So, to allow some
11 third party to be flex-cuffed, it's just too unduly prejudicial, Your
12 Honor.

13 MJ: And yet, that is what happened in this case, right?

14 DC: Ultimately Mr. [REDACTED] was, Your Honor.

15 MJ: Okay. (S)(b)-7

16 DC: However, to actually do that is too prejudicial to this
17 panel.

18 MJ: Okay.

19 DC: To say, put yourselves in the place of this person.
20 Additionally, Your Honor, it seems that it would require several
21 other individuals and I am just not sure how that is not going to
22 create confusion for the panel.

23

017213

1 MJ: Okay.

2 DC: Or who these individuals will be, Your----

3 MJ: Well I am satisfied that we will be able to correctly be
4 able to identify the actions for the record and find it to be very
5 relevant to the facts and circumstances of what happened in this
6 case.

7 Therefore, your objection on 403 grounds is overruled. I
8 would encourage you all to get together before trial, in the next
9 half hour or so, to take a look at the weapons. There may be time,
10 depending on how long it takes to seat the panel, between seating the
11 panel and opening statements as well. But, given that it is the
12 first government witness then let's try to get that taken care of as
13 quickly as possible.

14 DC: Your Honor, the defense would request the government
15 identify any other individuals who are not witnesses in this case who
16 will be utilized for this demonstration.

17 MJ: What do you intend----

18 DC: Only in that if those folks have read the packet or read
19 the statement, the people who are in fact acting it out, other than
20 Sergeant ^{(s)(b)-2} [REDACTED] may have a preconceived notion of how they are
21 supposed to act or where they are supposed to stand.

22

017214

1 DC: So if anybody that is part of this demonstration has
2 already received other evidence in the case or were present for
3 testimony in the case, Your Honor, those persons should not be
4 permitted to act it out.

5 MJ: Who do you intend to use?

6 TC: Your Honor, to play the role of Mr. (S)(b)(2) a Soldier from
7 the JAG office here who I assume doesn't know very much about the
8 case. I plan on having Captain (S)(b)(2) who is my subordinate, play
9 the part of PFC Richmond. I can change that.

10 MJ: With Sergeant (S)(b)(2) playing his own part?

11 TC: Yes, Ma'am. What I intended on doing with Sergeant (S)(b)(2)
12 who would testify as to what he saw PFC Richmond do and Captain (S)(b)(2)
13 (S)(b)(2) would follow the direction of Sergeant (S)(b)(2).

14 MJ: Well and that is the only permissible means of doing a
15 demonstration, is to have the testimony from the witness describing,
16 not to have the demonstrative people doing anything other than what
17 they are told.

18 Yes, Captain (S)(b)(2)
19 DC: Your Honor, Captain (S)(b)(2) is the second chair to Major
20 (S)(b)(2) at the Article 32 hearing in this case.

21

017215

1 DC: He has reviewed the packet, interviewed merit and
2 sentencing witnesses and additionally was listed as a possible merits
3 witness on this case. We object to him being in any part of this
4 role-playing incident.

5 MJ: All right, well I am satisfied that Captain [REDACTED] will be
6 able to follow the directions of Sergeant [REDACTED] (S)(b)-2 but she has got a
7 point, Major [REDACTED] (S)(b)-2, and if you've got somebody else that you can
8 use that I recommend you substituting.

9 I don't find the fact that he knows the facts and
10 circumstances of the case to be per se disqualifying.

11 DC: Your Honor, he was at one point an assistant trial counsel
12 on this case. He knows all the facts of the case and is able to
13 facilitate, you know, Sergeant [REDACTED] demonstration, whatever that
14 may be, Your Honor. (S)(b)-2

15 I mean certainly if Major [REDACTED] planned this course of
16 action, there could have been other Soldiers that he could have said,
17 "You will be conflicted from this."

18 Or, he can find other individuals to do that, but to have
19 the assistant trial counsel act as the accused in the case, Your
20 Honor, it is highly irregular.

21

1 TC: Your Honor, counsel perform orals and demonstrations all
2 the time in courts. Captain (b)(6)-2 is not an assistant trial
3 counsel. Even if he was and he was sitting right here, I could have
4 him be a part of the demonstration.

5 MJ: And I trust, Captain (b)(6)-2, that you would object if you
6 see something that Captain (b)(6)-2 is doing other than what he is
7 instructed by Sergeant (b)(6)-2

8 So, as I said, I don't find him per se to be disqualified
9 merely because he is an attorney or an attorney who has had close
10 relationship with the case.

11 DC: If the court would just note our objection, Your Honor. It
12 puts the defense, in I feel, a prejudicial position, to have to make
13 those objections in front of a seated panel when there--and I know
14 that Captain (b)(6)-2 knows more than what the court knows and that is
15 that it is an uncomfortable position for the defense, Your Honor.

16 MJ: Well----

17 DC: And in fact, it may prejudice PFC Richmond so to have his
18 counsel then isolate a panel by making objections where I feel
19 something is inappropriate rather than just remedy the problem and
20 ensure that it doesn't happen to begin with.

21

1 DC: Certainly I understand the court's position, Your Honor,
2 but we would like our objection noted for the record because
3 obviously a reenactment will have some weight with the panel.

4 MJ: Well, all right. It is your call Major ^{(S)(b)(7)} [REDACTED]. If you
5 don't want that issue on appeal then you find a new person. If you
6 do, then that is fine.

7 TC: Yes, Ma'am.

8 MJ: I still don't see that he is disqualified.

9 Captain ^{(S)(b)(7)} [REDACTED] have you taken a look at the packets that
10 are seated in front of each of the court members?

11 DC: I have, Your Honor, I have looked at each of them and they
12 are fine. No objection by the defense.

13 MJ: Okay. And Major ^{(S)(b)(7)} [REDACTED], do they contain appropriate
14 forms for them to ask questions?

15 TC: Yes, Your Honor.

16 MJ: Any issues with selection of the panel members in this
17 case?

18 DC: No, Your Honor.

19 MJ: Anything else?

20 DC: No, Your Honor.

21

017218

1 TC: Yes, Your Honor. Before we--there are a couple of issues
2 on a few of the panel members that we may wish to probably bring to
3 light right now.

4 MJ: All right. (S)(b)-2

5 TC: First of all, Colonel [REDACTED] he is the acting chief of
6 staff for the division.

7 MJ: All right.

8 TC: And looking through----

9 MJ: What was his previous duty position?

10 TC: He was the division engineer, Ma'am.

11 MJ: All right.

12 TC: A month or so ago the chief of staff PCSd and Colonel
13 (S)(b)-2 [REDACTED] became the acting chief of staff.

14 MJ: Any other issues?


15 TC: Yes, Ma'am, reading the questionnaires of the panel
16 members, Master Sergeant (S)(b)-2 [REDACTED] has a--divulged that he has a field
17 grade Article 15 from 1986 for a positive urinalysis and a DUI in
18 1988. I am not sure if that was disposed of in the court system or
19 not?

20 MJ: Okay. Have you had a chance to look at the questionnaires?
21

017219

1 DC: Absolutely, Your Honor.

2 MJ: Okay. All right well as to those, both of those issues,
3 having divulged that now, certainly you are able to save those for
4 individual voir dire on both of those members to the extent that you
5 want to further inquiry^e as to those matters.

6 Anything else?  (b)(6)-2

7 TC: No, Ma'am.

8 DC: No, Your Honor.

9 MJ: Court is in recess.

10 [The session adjourned at 0822, 4 August 2004.]

11 [END OF PAGE]

12

[The court-martial was called to order at 0902, 4 August 2004.]

MJ: Court is called to order.

TC: The court is convened by Court-Martial Convening Order Number 3, Headquarters, 1st Infantry Division, dated 10 May 2004, as amended by Court-Martial Convening Order Number 5, same Headquarters, dated 30 July 2004, copies of which have been furnished to each member of the court.

The accused and the following persons detailed to this court-martial are present:

LIEUTENANT COLONEL [REDACTED], MILITARY JUDGE;

MAJOR [REDACTED], TRIAL COUNSEL;

CAPTAIN [REDACTED], DEFENSE COUNSEL;

CAPTAIN [REDACTED] ASSISTANT DEFENSE COUNSEL;

COLONEL [REDACTED]

COLONEL [REDACTED]

COLONEL [REDACTED]

LIEUTENANT COLONEL [REDACTED]

LIEUTENANT COLONEL [REDACTED]

MAJOR [REDACTED]

COMMAND SERGEANT MAJOR [REDACTED]

(S)(6)-2

017221

1 COMMAND SERGEANT MAJOR [REDACTED]
2 MASTER SERGEANT [REDACTED],
3 SERGEANT FIRST CLASS [REDACTED]
4 SERGEANT FIRST CLASS [REDACTED], and
5 SERGEANT FIRST CLASS [REDACTED] MEMBERS.

(S)/14-2

6 The prosecution is ready to proceed with the trial in the
7 case of United States against Private First Class Edward L. Richmond,
8 Jr.

9 MJ: The members of the court will now be sworn. All persons in
10 the court, please rise.

11 [All persons in the court did as directed, and the members were
12 sworn.]

13 MJ: Please be seated.

14 [All persons did as directed.]

15 MJ: The court is assembled.

16 Members of the court, it is appropriate that I give you
17 some preliminary instructions. My duty as the military judge is to
18 ensure that this trial is conducted in a fair, orderly, and impartial
19 manner, according to the law. I preside over open sessions, rule
20 upon objections, and instruct you on the law applicable to this case.

1 MJ: You are required to follow my instructions on the law and
2 may not consult any other source as to the law pertaining to this
3 case unless it is admitted into evidence. This rule applies
4 throughout the trial including closed-session deliberations and
5 periods or recess and adjournment. Any questions you have of me
6 should be asked in open court.

7 As court members, it is your duty to hear the evidence and
8 to determine whether the accused is guilty or not guilty of the
9 Charge and if you find him guilty, to adjudge an appropriate
10 sentence.

11 Under the law, the accused is presumed to be innocent of
12 the Charge. The government has the burden of proving the accused's
13 guilt by legal and competent evidence beyond a reasonable doubt. A
14 "reasonable doubt" is an honest consciousness doubt suggested by the
15 material evidence or the lack of it in the case. It is an honest
16 misgiving generated by insufficiency of proof of guilt.

17 Proof beyond a reasonable doubt means proof to an
18 evidentiary certainty, although not necessarily to an absolute or
19 mathematical certainty. The proof must exclude every fair and
20 reasonable hypothesis of the evidence except that of guilt.

21

1 MJ: The fact that charges have been preferred against the
2 accused and are referred to this court for trial does not permit any
3 inference of guilt. You must determine whether the accused is guilty
4 or not guilty based solely upon the evidence presented here in court
5 and upon the instructions I will give you.

6 Because you cannot properly make that determination until
7 you have heard all of the evidence and received the instructions, it
8 is of vital importance that you keep an open mind until all the
9 evidence has been presented and the instructions have been given to
10 you.

11 I will instruct you fully before you begin your
12 deliberations. In so doing, I may repeat some of the instructions
13 that I may give you now or possibly during the trial. Bear in mind
14 that all of my instructions are designed to help you perform your
15 duties as court members.

16 The final determination as to the weight of the evidence
17 and the credibility of the witnesses in this case rests solely upon
18 you. You have the duty to determine the believability of the
19 witnesses. In performing this duty, you must consider each
20 witnesses' intelligence and ability to observe and accurately
21 remember, in addition to the witnesses' sincerity and conduct in
22 court, friendships, prejudices, and character for truthfulness.

1 MJ: Consider also the extent to which each witness is either
2 supported or contradicted by other evidence, the relationship that
3 each witness may have with either side, and how each witness might be
4 affected by the verdict.

5 In weighing a discrepancy by a witness or between
6 witnesses, you should consider whether it resulted from an innocent
7 mistake or a deliberate lie.

8 Taking all these matters into account, you should then
9 consider the probability of each witnesses' testimony and the
10 inclination of the witness to tell the truth.

11 The believability of each witnesses testimony should be
12 your guide in evaluating testimony rather than the number of
13 witnesses called.

14 Counsel soon will be given an opportunity to ask you
15 questions and exercise challenges. With regard to challenges, if you
16 know of any matter that you feel might affect your impartiality to
17 sit as a court member, you must disclose that matter when asked to do
18 so.

19 You are reminded that any statement you make, should be
20 made in general terms so as not to disqualify other members who hear
21 the statement.

22

1 MJ: Some of the grounds for challenge would be if you were the
2 accuser in this case, if you had investigated any offense charged, if
3 you had formed or expressed an opinion as to the guilt or innocence
4 of the accused, as to any enlisted Soldier, that you belong to the
5 same company-sized unit of the accused, or any matter that may affect
6 your impartiality.

7 To determine if any grounds for challenge exist, counsel
8 for both sides are given an opportunity to question you. These
9 questions are not intended to embarrass you. They are not an attack
10 upon your integrity. They are asked merely to determine whether a
11 basis for challenge exists.

12 It is no adverse reflection upon a court member to be
13 excused from a particular case. You may be questioned either
14 individuality or collectively, but in either event, you should
15 indicate an individual response to the question asked. Unless I
16 indicate otherwise, you are required to answer all questions.

17 You must keep an open mind throughout this trial. You must
18 impartially hear the evidence and the instructions on the law, and
19 only when you are in your closed-session deliberations may you
20 properly make a determination as to whether the accused is guilty or
21 not guilty or as to an appropriate sentence if the accused is found
22 guilty.

23

1 With regard to sentencing, should that become necessary,
2 you may not have a preconceived idea or formula as to either the type
3 or amount of punishment that should be imposed if the accused were to
4 be found guilty.

5 Counsel are given an opportunity to question witnesses in
6 this case. When counsel are finished, if you feel that there are
7 substantial questions that should be asked, you will be given an
8 opportunity to do so.

9 The way we handle that is to write out the question and to
10 sign legibly at the bottom. There are forms in your packet for that
11 purpose.

12 This method gives counsel for both sides and me an
13 opportunity to review the questions before they are asked since your
14 questions, like the questions of counsel, are subject to objection.
15 I will conduct any needed examination.

16 There are a couple of things I would like you keep in mind
17 concerning the questioning of witnesses. First, you can not attempt
18 to either help the government or the defense.

19 Second, counsel have interviewed the witnesses and know
20 more about the case that you or I do. Very often they do not ask
21 what appear to us to be an obvious question because they are aware
22 that this particular witness has no knowledge on the subject.

23

1 MJ: Rules of evidence control what can be received into
2 evidence. As I indicated, questions of witnesses are subject to
3 objection. During the trial when I sustain an objection, disregard
4 the question and the answer. If I overrule an objection, you may
5 consider both the question and the answer.

6 During any recess or adjournment, you may not discuss the
7 case with anyone, not even amongst yourself. You must not listen to
8 or read any account of this trial or consult any source, written or
9 otherwise, as to matters involved in the case.

10 You must hold your discussion of the case until you are in
11 your closed-session deliberations so that all of the panel members
12 have the benefit of your discussion.

13 Do not purposely visit the scene of any incident in The
14 Specification or involved in this trial. You must also avoid contact
15 with witnesses or potential witnesses in this case.

16 If anyone attempts to discuss the case in your presence,
17 during any recess or adjournment, you must immediately tell them to
18 stop and report the occurrence to me at the next session. I may not
19 repeat these matters to you before every break or recess, but please
20 keep them in mind throughout the trial.

21

1 MJ: We will try to estimate the time needed for recesses or
2 hearings outside of your presence. Frequently their duration is
3 extended by consideration of new issues that arise during the
4 hearings. Your patience and understanding regarding these matters
5 will contribute greatly to an atmosphere consistent with the fair
6 administration of justice.

7 While you are in your closed-session deliberations only the
8 members will be present. You must remain together and you may not
9 allow any unauthorized intrusion into your deliberations.

10 Each of you has an equal voice and vote with the other
11 members in discussing and deciding all issues submitted to you,
12 however, in addition to the duties of other members, the senior
13 member will act as your presiding officer during your closed-session
14 deliberations and will speak for the court when announcing the
15 results.

16 This general order of events can be expected at this court-
17 martial: Questioning of members, challenges and excusals, opening
18 statements by counsel, presentation of evidence, substantive
19 instructions on the law to you, closing argument by counsel,
20 procedural instructions on voting, your deliberations and
21 announcement of the findings.

22

1 MJ: If the accused is convicted of any offense, there will also
2 be sentencing proceedings.

3 The appearance and demeanor of all parties to the trial
4 should reflect the seriousness with which this trial is viewed.
5 Careful attention to all that occurs during the trial is required of
6 all parties.

7 We have two air conditioners in this courtroom but it is a
8 very large room. If you feel yourself getting sleepy or nodding off,
9 please raise your hand and tell me to take a break. We will get some
10 coffee or water or whatever else. It is vitally important that you
11 remain alert and observant to all that occurs in open court.

12 Each of you may take notes if you desire and use them to
13 refresh your memory during deliberations but they may not be read to
14 or shown to any of the other court members.

15 At the time of any recess or adjournment, for example this
16 evening, you may leave your notes in the courtroom and we will secure
17 them overnight.

18 Any questions on those general preliminary matters?

19 Okay I know Colonel Spurrier has sat on previous courts.
20 Members of the panel, I really need you to go up and down with your
21 head or left to right with your head, so that I can accurately
22 reflect on the record what your response is, all right?

23

1 [Affirmative response from all members.]

2 MJ: All right, no questions.

3 All right, what I would like for you to do now is to open
4 your packets and take a look at the flyer, which lists the offense in
5 this case, and make sure that your name and unit is accurately
6 reflected on at least one of the court-martial convening orders,
7 please.

8 [The members did as directed.]

9 MJ: Are there any corrections to be made to the convening
10 orders?

11 [Negative response by all members.]

12 MJ: Apparently not.

13 All right trial counsel, please announce the general nature
14 of the Charge in this case.

15 TC: The general nature of the Charge in this case is one
16 specification of unpremeditated murder in violation of Article 118,
17 Uniform Code of Military Justice.

18 The Charge was preferred by Captain (S)(b)-2
19 forwarded with recommendations as to disposition by Lieutenant
20 Colonel (S)(b)-2 and Colonel (S)(b)-2, and investigated by
21 Major (S)(b)-2
22

1 TC: The records of this case disclose no grounds for challenge.
2 If any member of the court is aware of any matter which he or she
3 believes may be a ground for challenge against them by either side,
4 such matter should now be stated.

5 [Negative response by all members.]

6 MJ: Apparently not.

7 All right, members of the panel, what will happen now is I
8 will ask you a whole bunch of general questions to begin with and
9 then the trial counsel and defense counsel will have an opportunity
10 to question you as well.

11 All right, does anyone on the panel know the accused,
12 Private First Class Richmond?

13 [Negative response by all members.]

14 MJ: Apparently Not.

15 Does anyone know Mr. [REDACTED], the person named
16 in the Specification? (S)G-7

17 [Negative response by all members.]

18 MJ: Negative.

19 Having seen the accused and having read the Charge and its
20 Specification, does anyone feel that you can not give the accused a
21 fair trial for any reason?

22

1 [Negative response by all members.]
2 MJ: Negative response.
3 Does anyone have any prior knowledge of the facts or events
4 in this case?
5 [Negative response by all members.]
6 MJ: Negative response.
7 Has anyone or any member of your family ever been charged
8 with an offense similar to this charge? Now, I would say to include
9 murder, or assault, or involuntary manslaughter, or negligent
10 homicide.
11 [Negative response by all members.]
12 MJ: Negative response.
13 Has anyone or any member of your family or anyone close to
14 you personally ever been the victim of an offense such as this?
15 [Negative response by all members.]
16 MJ: Negative response.
17 How many of you are serving as court members for the first
18 time in a trial by court-martial?
19 Okay I have got a positive response from Sergeant First
20 Class [REDACTED], Master Sergeant [REDACTED] Command Sergeant [REDACTED]
21 Lieutenant Colonel [REDACTED] the whole back row, and Colonel [REDACTED].
22

(5)(6)-2

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1 MJ: All right, well as to Colonel (S)(b)-2 [REDACTED] and
2 Colonel (S)(b)-2 [REDACTED], can you put aside anything you may have heard in
3 previous proceedings and decide this case based solely upon the
4 evidence and the instructions as to the applicable law?

5 Affirmative response.

6 The accused has pled not guilty to the Charge and its
7 Specification and he is presumed to be innocent until his guilt is
8 established by legal and competent evidence beyond a reasonable
9 doubt. Does anyone disagree with this rule of law?

10 [Negative response by all members.]

11 MJ: Negative response.

12 Can each of you apply this rule of law and vote for a
13 finding of not guilty unless you are convinced beyond a reasonable
14 doubt that the accused is guilty?

15 [Affirmative response by all members.]

16 MJ: Affirmative response.

17 You are all basically familiar with the military justice
18 system and you know that the accused has been charged, his charges
19 have been forwarded to the convening authority, and have been
20 referred to this trial.

21

1 MJ: None of this warrants any inference of guilt. Can each of
2 you follow this instruction and not infer that the accused is guilty
3 of anything merely because the charges have been referred to this
4 trial?

5 [Affirmative response by all members.]

6 MJ: Affirmative response.

7 On the other hand, can each of you vote for a finding of
8 guilty if you are convinced that under the law the accused's guilt
9 has been proved by legal and competent evidence beyond a reasonable
10 doubt?

11 [Affirmative response by all members.]

12 MJ: Affirmative response.

13 Does each member understand that the burden of proof to
14 establish the accused's guilt rests solely upon the prosecution and
15 the burden never shifts to the defense to establish the accused's
16 innocence?

17 [Affirmative response by all members.]

18 MJ: Affirmative response.

19 Does each member understand therefore that the defense has
20 no obligation to present any evidence or disprove the elements of the
21 offenses?

22

1 [Affirmative response by all members.]
2 MJ: Affirmative response.
3 Does any member on the panel have any legal training or
4 experience other than that generally received by Soldiers of your
5 rank or position?
6 [Negative response by all members.]
7 MJ: Nobody has ever had a business law course or anything like
8 that?
9 I have got a positive response from Colonel (S)/GZ
10 What, Sir?
11 PRES: Yes. I had undergrad stuff but it was at the military
12 academy so I assumed it was commensurate with my rank. I also had a
13 business law class while I was studying for my masters.
14 MJ: Okay, when did you get your masters, Sir?
15 PRES: I got my masters in 1992, Ma'am.
16 MJ: In 1992?
17 PRES: In '92.
18 MJ: And then at the military academy you probably had some
19 constitutional law or whatever was required?
20

1 PRES: Right.
2 MJ: Okay.
3 PRES: Right.
4 MJ: All right.
5 MEMBER [LTC [REDACTED]: I had constitutional law as well,
6 Ma'am.
7 MJ: Okay, that was from Lieutenant Colonel [REDACTED]
8 MEMBER [COL [REDACTED]: I had the same.
9 MJ: Colonel [REDACTED]
10 MEMBER [COL [REDACTED]: And I had the same as well.
11 MJ: And Colonel [REDACTED] I am sorry.
12 MEMBER [COL [REDACTED] I had the same at West Point--classes
13 as well.
14 MJ: Got it. Now in the back I saw some heads nodding back
15 there as well.
16 MEMBER [MSG [REDACTED]: I had a business law class.
17 MJ: Business law from Master Sergeant [REDACTED] Okay and when was
18 that?
19 MEMBER [MSG [REDACTED] Uh, around 1995.
20 MJ: Okay, anybody else?
21

1 MEMBER [LTC (S)(b)(7)]: I had contract law. (S)(b)(7)
2 MJ: Okay, contract law is Lieutenant Colonel (S)(b)(7). Okay and
3 when was that?
4 MEMBER [LTC (S)(b)(7)]: Oh, that was--was 19--19----
5 MJ: A while ago, okay.
6 Okay, has anyone had any specialized law enforcement
7 training to include duties as a military police officer, off-duty
8 security guard, civilian police officer, or comparable duties other
9 than the general law enforcement duties common to military personnel
10 of your rank and position? Any prior 95-series in the group?
11 [Negative response by all members.]
12 MJ: Apparently not.
13 I have previously advised you that it is your duty as court
14 members to weigh the evidence and to resolve contrary questions of
15 fact. In so doing, if the evidence is in conflict, you will
16 necessarily be required to give more weight to some evidence than to
17 other evidence. The weight, if any, to be given to all of the
18 evidence in this case is solely within your discretion. So it is
19 neither required nor expected that you will give equal weight to all
20 the evidence.
21

1 MJ: However, it is expected that you will use the same
2 standards in weighing and evaluating all the evidence and the
3 testimony of each witness, and that you will not give more or less
4 weight to the testimony of a particular witness merely because of
5 that witness' status, position, or station in life.

6 Will each of you use the same standards in weighing and
7 evaluating the testimony of each witness and not give more or less
8 weight to the testimony of a particular witness solely because of
9 that witness' position or status?

10 [Affirmative response by all members.]

11 MJ: Affirmative response.

12 Is any member of the court in the rating chain, supervisory
13 chain, or chain of command of any other member?

14 Colonel [REDACTED] (S)(61-2

15 MEMBER [LTC [REDACTED] I am in--Sergeant [REDACTED] (S)(61-2 is in
16 my----(inaudible)

17 MJ: Okay. Are you his reviewer, Sir?

18 MEMBER [LTC [REDACTED] Yes, I am.

19 MJ: Okay. (S)(61-2

20 MEMBER [LTC [REDACTED] I am his reviewer.

21

1 MJ: Okay, and that was that Lieutenant Colonel [REDACTED] is the
2 reviewer of Sergeant First Class [REDACTED]

3 I saw some other positive response. Colonel [REDACTED]

4 MEMBER [COL [REDACTED] Sergeant First Class [REDACTED] is my
5 reenlistment NCO, brigade level.

6 MJ: And do you know, Sir, are you his reviewer then?

7 MEMBER [COL [REDACTED]: I am.

8 MJ: Okay, that was from Colonel [REDACTED]

9 Sir.

10 PRES: Colonel [REDACTED], I am the reviewer for both

11 Sergeant First Class [REDACTED] and Master Sergeant [REDACTED]

12 MJ: All right. Any others?

13 MEMBER [COL [REDACTED] I am the intermediate rater
14 for Colonel [REDACTED]

15 MJ: Okay. Sir, you are chief of staff for the division?

16 MEMBER [COL [REDACTED] Was, I was temporarily.

17 MJ: Okay, so what do you do now?

18 MEMBER [COL [REDACTED] I am the Engineer Brigade
19 Commander.

20 MJ: DIVENG, okay.

21

1 MJ: And Lieutenant Colonel [REDACTED] what is your duty position
2 then?
3 MEMBER [LTC [REDACTED]] I am the Design Engineer for
4 264th Engineer Group.
5 MJ: Any other command or supervisor relationships?
6 Yeah?
7 MEMBER [MAJOR [REDACTED]] Command Sergeant Major [REDACTED]
8 and I are in the same battalion. He is the sergeant major and I am
9 the XO of that battalion.
10 MJ: Got it. What battalion?
11 MEMBER [MAJOR [REDACTED]] Of 121 Signal.
12 MJ: All right.
13 As to each of the junior Soldiers, and that would be
14 Sergeant First Class [REDACTED] Sergeant First Class [REDACTED]
15 Lieutenant Colonel [REDACTED] Command Sergeant Major [REDACTED], and Master
16 Sergeant [REDACTED] will you feel inhibited or restrained in any way in
17 performing your duties as a court member, including the free
18 expression of your views during deliberations because another member
19 holds a position of authority over you?
20 [Negative response from questioned members.]

21

(S)(b)-2
1 MJ: Negative response.

2 And as to each of the seniors, and that would be Colonel

3 [REDACTED] Colonel [REDACTED] Colonel [REDACTED] and Major

4 [REDACTED] will you be embarrassed or restrained in any way in performing
5 your duties as a court member if a member of whom you hold a position
6 of authority should disagree with you?

7 [Negative response from questioned members.]

8 MJ: Negative.

9 Has anyone had any dealings with the parties to the trial
10 including me or counsel which might affect your performance of your
11 duty as a court member in any way?

12 And with that, I mentioned to counsel before trial, I have
13 met Colonel (S)(b)-2 [REDACTED] before because he came in to be the 701st Main
14 Support Battalion Commander in 1998 when we were PCSing out. My
15 husband worked at 701st. I think we overlapped by a week. So we
16 have no other relationship other than that. We have met a couple of
17 times.

18 Is there any relationship with counsel that we need to know
19 about?

20 [Negative response from all members.]

1 MJ: Apparently not.

2 Does anyone know anything either of a personal or
3 professional nature which would cause you to be unable to give your
4 full attention to these proceedings throughout the trial?

5 With that in mind, I expect that we will have a full day
6 today that would likely go to--I am not sure there is a close of
7 business in a deployed environment but we won't recess at 1700, I'll
8 put it that way.

9 I expect a full day today, probably a full day tomorrow,
10 and it could possibly go into Friday but I am not sure.

11 Anything that we need to know about?

12 MEMBER [COL ██████████] I have one event at 1700 on
13 Thursday that I need to participate in if possible.

14 MJ: All right, what is that, Colonel ██████████?

15 MEMBER [COL ██████████]: (S)(G)-2 It is a video teleconference of
16 all the senior engineers around the world. Just some important
17 issues to be discussed.

18 MJ: Is the VTC located in the palace, Sir.

19 MEMBER [COL ██████████] It is here.

20 MJ: It is here?

1 MEMBER [COL [REDACTED]: Yes.
2 MJ: Okay. So, in other words, we could recess?
3 MEMBER [COL [REDACTED]: Right.
4 MJ: You could do that?
5 MEMBER [COL [REDACTED]: Right.
6 MJ: And then return. Do you anticipate that being a couple of
7 hours, Sir?
8 MEMBER [COL [REDACTED]: No more than 2 hours.
9 MJ: All right, and I saw a hand in the back. Yes?
10 MEMBER [CSM [REDACTED]: One other question you were at and
11 I was thinking about and I think you said if a family member was ever
12 charged with a crime or something like that.
13 MJ: Right.
14 MEMBER [CSM [REDACTED]: Right, I had a family member that
15 was charged with a crime.
16 MJ: Okay, I appreciate that. That was from Command Sergeant
17 Major [REDACTED] What will happen Command Sergeant Major is that we
18 will probably call you back on individual voir dire and ask you
19 questions about that, all right?
20 MEMBER [CSM [REDACTED]: All right.
21

1 MJ: Thanks.

2 But no other issues of a personal or professional issue
3 that would cause you not to be able to pay full attention?

4 [Negative response from all members.]

5 MJ: Apparently not.

6 It is a ground for challenge against you if you have any
7 predisposition towards the imposition of a particular punishment
8 based solely upon the nature of the crime for which the accused is to
9 be sentenced if found guilty.

10 Does any member, having read the Charge and Specification
11 believe that you would be compelled to vote for any particular
12 punishment if the accused is found guilty, solely because of the
13 nature of the charge?

14 [Negative response from all members.]

15 MJ: Negative response.

16 If sentencing proceedings are you will be instructed in
17 detail before you begin your deliberations. I will instruct you on
18 the full range of punishments from no punishment up to the maximum
19 punishment authorized by the Uniform Code of Military Justice. You
20 should consider all forms of punishment within that range.

21

1 MJ: "Consider" doesn't necessarily mean that you would vote for
2 that particular punishment. "Consider" means that you think about
3 and make a choice in your own mind one way or the other as to whether
4 that is an appropriate punishment.

5 Each member must keep an open mind and neither make a
6 choice nor foreclose from considering any possible sentence until the
7 closed session for deliberations in voting on a sentence.

8 Can each of you follow this instruction?

9 [Affirmative response from all members.]

10 MJ: Affirmative response.

11 Can each of you be fair, impartial, and open-minded in your
12 consideration of an appropriate sentence if called to do so in this
13 case?

14 [Affirmative response from all members.]

15 MJ: Affirmative response.

16 Can each of you reach a decision on a sentence if required
17 to do so on an individual basis in this particular case and not
18 solely upon the nature of the offense to which the accused may be
19 convicted?

20 [Affirmative response from all members.]

21

1 MJ: Affirmative response.

2 Very well. Trial counsel, do you have any questions for
3 the panel as a whole?

4 TC: Yes, Your Honor.

5 MJ: Please proceed.

6 TC: Good Morning. My name is Major (S)(b)-2 I am the
7 Task Force Judge Advocate for the 2nd BCT of the 25th Infantry
8 Division, the Tropic Lightning Division. My BCT is attached to the
9 1st Infantry Division.

10 I represent the United States in this court-martial and I
11 have just three or four questions of you, and if you could, just as
12 you did for the military judge, please signify your answer by a yes
13 or no nod or raising your hand if it is a yes, or if you have a
14 question.

15 This is a case about a Soldier being charged with murdering
16 an Iraqi. The first question is, does anyone have any ill feelings
17 towards Iraqis in general?

18 [Negative response from all members.]

19 TC: Negative responses.

20 In your minds, can an Iraqi be a murder victim?

21

1 [Affirmative response from all members.]
2 TC: Positive responses from all members.
3 Is the death of an innocent Iraqi any different from the
4 death of an innocent person from any other nationality?
5 [Negative response from all members.]
6 TC: Negative response from the members.
7 If I prove it beyond a reasonable doubt, will you be able
8 to find an American Soldier guilty of murdering an Iraqi?
9 [Affirmative response from all members.]
10 TC: Positive response from all members.
11 Also, one other question, and I don't know if the military
12 judge asked this. Has anyone been a witness previously in a previous
13 court-martial?
14 [Negative response from all members.]
15 TC: Negative responses. Okay, thank you very much.
16 MJ: Okay, Major [REDACTED], Sir, before you sit down. We have to
17 turn that off. I think, try control, F8. [NOTE: A blank screen powerpoint
18 projection intended for use during opening statements was turned off.]
19 TC: Yes, Ma'am. (b)(6)-2
20 MJ: Captain [REDACTED], any questions, or Captain [REDACTED] any (b)(6)-2
21 questions of the panel as a whole?

1 ADC: Yes, Ma'am.

2 MJ: Please proceed.

3 ADC: Good morning Colonel [REDACTED], members of the panel. My name
4 is Captain [REDACTED] and I am the assistant defense counsel in this
5 case. Along with the lead counsel, Captain [REDACTED] we
6 will be representing PEC Richmond today at this trial.

7 MJ: Captain [REDACTED] you need to speak up. I can barely hear you
8 which----

9 ADC: Sorry.

10 MJ: ----means that they can probably not hear you as well.

11 ADC: I am sorry, can everyone hear me okay?

12 [Affirmative response from all members.]

13 ADC: I would ask, if you could, if you could raise your hand to
14 indicate an affirmative or a yes response to my questions. Thank
15 you.

16 Now first, uh--I would like to direct a question to Colonel
17 [REDACTED] Colonel [REDACTED] and Colonel [REDACTED] Gentlemen, you all
18 indicated that you have previously served on courts-martial, is that
19 correct?

20 [Affirmative response from questioned members.]

21 ADC: Thank you.

22

017249

1 ADC: I would just like to ask, were any of those courts-martial
2 that you sat on involving a violent crime?
3 [Negative response from questioned members.]
4 ADC: Negative response from all members. Thank you gentlemen.
5 Now when the judge--when the military judge was questioning
6 you, she told you about the standard of proof in a court-martial.
7 She told you that the burden is on the government to prove his guilt
8 beyond a reasonable doubt. Do any of you believe that this standard
9 is wrong?
10 [Negative response from all members.]
11 ADC: Affirmative [sic] response from all members.
12 Do any of you believe that the defense should have to prove
13 innocence in a court-martial?
14 [Negative response from all members.]
15 ADC: Affirmative [sic] response from all members.
16 Now also, in this case, the government will have the first
17 opportunity to present evidence. That means that you will not hear
18 any evidence from the defense until later on in the proceeding. Can
19 you all agree to keep an open mind until you have heard all of the
20 evidence in the case?
21 [Affirmative response from all members.]
22

017250

1 ADC: Affirmative response from all members.

2 Also, I would like to ask you now if any of you have had

3 any dealings with certain individuals in the Office of the Staff

4 Judge Advocate here in the 11D?

5 First, have any of you had any significant dealings with

6 Lieutenant Colonel [REDACTED] the Staff Judge Advocate.

7 PRES: That depends on what you mean when you say that.

8 ADC: That is a positive response from Colonel [REDACTED] Colonel

9 [REDACTED] and Colonel [REDACTED]

10 Colonel [REDACTED] Sir, if you could just tell me----

11 PRES: Yeah, I think you need to define what you mean by

12 "significant." I think all three of us, as brigade commanders,

13 routinely deal with the Division Staff Judge Advocate.

14 ADC: Is that a fair and accurate report Colonel [REDACTED] and

15 Colonel [REDACTED]

16 [Affirmative response from questioned members.]

17 ADC: Thank you.

18 Does the fact that--I am directing this question to you

19 three gentlemen now. Does the fact that Lieutenant Colonel [REDACTED] is

20 the SJA and is the boss essentially of Major [REDACTED] does that

21 influence your opinion in this case in any way?

22

017251

1 [Negative response from questioned members.]

2 ADC: Negative response from Colonel [REDACTED] Colonel [REDACTED] and
3 Colonel [REDACTED].

4 And then next, I would ask the same question about
5 Lieutenant Colone [REDACTED] the Deputy Staff Judge Advocate.

6 [Negative response from questioned members.]

7 ADC: Negative response.

8 And lastly, does anyone on the panel know Major [REDACTED]
9 [REDACTED] He is the former Chief of Justice for IID?

10 Affirmative response from Colonel [REDACTED] Anyone else?

11 Negative response from all else.

12 Sir, could you tell me what your dealings with Major [REDACTED]
13 were?

14 MEMBER [COL [REDACTED]] Mostly misdirected emails.

15 ADC: Very well. And, I assume that will not affect your opinion
16 in this case?

17 [Negative response from Colonel [REDACTED]]

18 ADC: Actually, I should ask, seriously, did you ever get a
19 misdirected email about this case?

20 MEMBER [COL [REDACTED]] No.

21

017252

1 ADC: Thank you, Sir.

2 And this is for all panel members, as a regular part of
3 your duties, do you any of you usually view the MP blotter that is
4 put out by, obviously, the provost marshal?

5 Affirmative response from Lieutenant Colonel [REDACTED]
6 Colonel [REDACTED] and is that an affirmative from Colonel [REDACTED] (b)(6)-2

7 MEMBER [COL (b)(6)-2 [REDACTED]] Yes, but it is sent to us usually
8 just when you have an infraction that involves your unit.

9 ADC: Colonel [REDACTED] did I see your hand up--I am sorry, is there
10 an affirmative response from anyone else? (b)(6)-2

11 MEMBER [COL [REDACTED]] I review the blotter for central
12 region but I do not review the blotter from here.

13 ADC: Does anyone usually see the significant incident--or the
14 serious incident reports at the division level?

15 [Negative response from all members.]

16 ADC: Okay, and again, you have all indicated that you have no
17 previous knowledge of the case so given whatever some of you may have
18 seen in the blotters, can I still assume that no one has knowledge of
19 this case?

(S)(b)(7)
1 MEMBER [COL ██████]:

I'll say that I am aware that it

2 happened. I mean, everyone is aware it that happened. It was--they
3 have the updates and incidents that were reported and things of that
4 nature. I don't know if--I knew that this happened but beyond that,
5 that is it.

6 ADC: How many of you were aware that an American Soldier had
7 shot an Iraqi national around the end of February 2004?

8 Okay that is an affirmative response from Command Sergeant
9 Major ██████ Major ██████ Command Sergeant Major ██████ Master
10 Sergeant ██████ Colonel ██████, Colonel ██████ and Colonel ██████

11 Okay, thank you.

(S)(b)(7)-2

12 Do any of you feel you know more about the case other than
13 that--those basic facts?

14 [Negative response from all members.]

15 ADC: Negative. Does anyone feel that whatever you may have
16 heard will impact in your ability to render a fair decision in this
17 case?

18 [Negative response from all members.]

19 ADC: Okay, that was a negative response from all members.

017254

1 ADC: Now, during the trial the military judge will instruct
2 you--let me go back up--during the trial you may hear objections from
3 either side to certain pieces of evidence, either being offered or
4 coming in. Would you agree that each side is entitled to have the
5 rules of evidence enforced so that only proper matters are put before
6 you?

7 [Affirmative response from all members.]

8 ADC: Okay was that from Sergeant [REDACTED] and--affirmative
9 response from all members. (b)(6)-2

10 Would any of you hold it against either side if you
11 believed they had tried to prevent evidence from being presented to
12 you?

13 [Negative response from all members.]

14 ADC: Negative from all members.

15 Okay, now I am going to switch tracks for a little bit.
16 Would everyone agree that a statement made under stress might be
17 unreliable? Okay, please raise your hand if you agree with that
18 statement.

19 [Affirmative response from all members.]

20 ADC: Colonel (b)(6)-2 [REDACTED] is that--okay, thank you. Affirmative
21 response from all members.

22

1 ADC: Does everyone agree that sometimes people sign documents
2 without reading them carefully?
3 [Affirmative response from all members.]
4 ADC: Affirmative response from all members.
5 Do you agree that some words in the English language can
6 have different meanings?
7 [Affirmative response from all members.]
8 ADC: Affirmative response from all members.
9 Do you agree that a word may mean one thing to one person
10 but have a different meaning to someone else?
11 [Affirmative response from all members.]
12 ADC: Affirmative response from all members.
13 Do you agree that there may be circumstances surrounding an
14 interrogation that could cause the subject of the interrogation to
15 get confused?
16 [Affirmative response from all members.]
17 ADC: Affirmative response from all members.
18 Would you agree that a person's age, experience, and
19 education might be relevant to how well they would understand the
20 questions that are asked?

21

1 [Affirmative response from all members.]
2 ADC: Affirmative response from all members.
3 Would you agree that these factors would also affect how
4 well they could handle the stress of being interrogated?
5 [Affirmative response from all members.]
6 ADC: Affirmative response from all members.
7 This case involves an individual who was shot in the head.
8 You are likely to see photographs of the body. Do you agree that it
9 is natural to have an emotional reaction to these kind of
10 photographs?
11 [Affirmative response from all members.]
12 ADC: Affirmative response from all members.
13 Do you agree that an emotional reaction can have an impact
14 on your ability to rationally analyze the evidence in the case?
15 [Negative response from all members.]
16 ADC: Negative response from all members.
17 Do you all agree to minimize as much as possible, whatever
18 the--do you all agree to minimize as much as you can whatever
19 emotional reaction you have so that you can rationally weigh the
20 evidence?
21

1 [Affirmative response from all members.]

2 ADC: Affirmative response from all members.

3 Do you agree that seeing photos of a dead body do not
4 necessarily prove anything about the circumstances of the case?

5 [Affirmative response from all members.]

6 ADC: Affirmative response from all members.

7 Now the defense in this case is going to be defense of
8 another, namely, that PFC Richmond felt he was acting in defense of
9 another Soldier.

10 Ma'am, at this time I would ask that you give the
11 instruction on that defense now, please.

12 MJ: Members of the panel, I do expect that the evidence in this
13 case will raise the issue of whether the accused acted in defense of
14 another.

15 A person may use force in defense of another only if that
16 other person could have lawfully used such in defense of himself
17 under the same circumstances.

18 For the defense of another to exist, the accused must have
19 had a reasonable belief that death or grievous bodily harm was about
20 to be inflicted on the person defended.

21

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1 MJ: And, the accused must have actually believed that the force
2 he used was necessary to protect that person.

3 In other words, the defense of another has two parts.
4 First, the accused must have had a reasonable belief that death or
5 grievous bodily harm was about to be inflicted on another. The test
6 here is whether under the same facts and circumstances a reasonably
7 prudent person faced with the same situation would believe that death
8 or grievous bodily harm was about to be inflicted.

9 Second, the accused must have actually believed that the
10 amount of force that he used was necessary to protect against death
11 or grievous bodily harm.

12 To determine the accused's actual belief as to the amount
13 of force necessary, you must view the situation through the eyes of
14 the accused in addition to what was known to the accused at the time,
15 the accused's age, intelligence, and emotional control are all
16 important factors to consider in determining his actual belief as to
17 the amount of force necessary to protect the other person.

18 The burden is on the prosecution to establish the guilt of
19 the accused. Unless you are satisfied beyond a reasonable doubt that
20 the accused did not act in defense of another, you must acquit the
21 accused of the offense.

22

1 MJ: Please proceed.

2 ADC: Thank you, Your Honor.

3 Do any of you--would any of you have any difficulty

4 applying that legal standard to the case?

5 [Negative response from all members.]

6 ADC: Negative response from all members.

7 Knowing that this case involves an alleged murder, do you

8 all feel that you can give PFC Richmond the same fair trial that you

9 could for any less serious offense?

10 [Affirmative response from all members.]

11 ADC: Affirmative response.

12 This case may involve evidence about the rules of

13 engagement that were given to PFC Richmond before the shooting. Do

14 you agree that Soldiers do not always understand the ROE?

15 [Affirmative response from all members.]

16 ADC: Affirmative response.

17 Do you agree that changes in the ROE can confuse a young

18 Soldier?

19 [Affirmative response from all members.]

20 ADC: Affirmative response from all members.

21

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1 ADC: Do you agree that Soldiers have to make life or death
2 decisions on the battlefield?
3 [Affirmative response from all members.]
4 ADC: Affirmative response from all members.
5 Do you agree that they often have to make these decisions
6 immediately with very little time for reflection?
7 [Affirmative response from all members.]
8 ADC: Affirmative response.
9 Do you agree that they must often make these decisions
10 based on incomplete information?
11 [Affirmative response from all members.]
12 ADC: Affirmative response from all members.
13 And do you agree that a snap decision based on incomplete
14 information can turn out to be wrong in hindsight?
15 [Affirmative response from all members.]
16 ADC: Affirmative response from all members.
17 Do you all agree that even an honest person can have an
18 imperfect memory of an event?
19 [Affirmative response from all members.]
20 ADC: Affirmative response from all members.
21

1 ADC: In general, do you think witnesses called by the government
2 have more credibility than witnesses called by the defense?
3 [Negative response from all members.]
4 ADC: Negative response from all members.
5 Do you any of you think that defense witnesses have more
6 credibility than the government witnesses?
7 [Negative response from all members.]
8 ADC: Negative response.
9 Is there anything which I have omitted which any of you
10 feel the court should know?
11 [Negative response from all members.]
12 ADC: Negative response from all members.
13 Thank you. That is all, Ma'am.
14 MJ: Okay members of the panel, before I release you and we may
15 call some of you back but government, do you have a list of your
16 witnesses so we can see if any of the members know any of your
17 witnesses.
18 TC: Yes, Your Honor. To read them off?
19 MJ: Yeah, just read the names. Members of the panel, if you
20 know any of these witnesses, please just let me know.
21

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1 TC: First Lieutenant [REDACTED]
2 [Negative response from all members.]
3 TC: Negative response.
4 Sergeant [REDACTED]?
5 [Negative response from all members.]
6 TC: Negative response.
7 Specialist [REDACTED]
8 [Negative response from all members.]
9 TC: Negative response.
10 Specialist [REDACTED]
11 [Negative response from all members.]
12 TC: Negative response.
13 Specialist [REDACTED]
14 [Negative response from all members.]
15 TC: Negative response.
16 Private First Class [REDACTED]
17 [Negative response from all members.]
18 TC: Negative response.
19 Special Agent [REDACTED]
20 [Negative response from all members.]
21

(b)(6)-2

1 TC: Negative responses.
2 Special Agent [REDACTED]
3 [Negative response from all members.]
4 TC: Special Agent [REDACTED]
5 [Negative response from all members.]
6 TC: Special Agent [REDACTED]
7 [Negative response from all members.]
8 TC: Negative responses.
9 MJ: Okay, thank you.
10 Okay, Colonel [REDACTED] and members of the panel, please
11 return to the deliberation room. Some of you may be called back for
12 individual questioning.
13 [The court-martial recessed at 0955, 4 August 2004.]
14 [END OF PAGE]
15

GIA-2

1 [The Article 39(a) session was called to order at 0955, 4 August
2 2004.]

3 MJ: The members of the panel have departed the courtroom. All
4 other members are present.

5 Government, any requests for individual voir dire?

6 TC: Yes, Your Honor. The government requests individual voir
7 dire for Command Sergeant Major [REDACTED]

8 MJ: Anyone else? (b)(6)-2

9 TC: No, Your Honor.

10 MJ: Defense, any requests for individual voir dire?

11 ADC: Ma'am, may I have a moment?

12 MJ: You may.

13 [Long pause.]

14 MJ: Court is in recess.

15 [The session recessed at 0955, 4 August 2004.]

16 [The session was called to order at 0956, 4 August 2004.]

17 MJ: Court is called to order.

18 All parties when the court recessed are again present.

19 Please be seated.

20 [All parties did as directed.]

21

1 MJ: Okay, defense, do you have any requests for individual voir
2 dire?

3 ADC: Yes, Ma'am and there is one Ma'am, that we would ask the
4 court to do.

5 MJ: Okay.

6 ADC: Rather than have us ask. Major (S)(b)-2 Ma'am, I believe when
7 he was questioned he indicated that he has not had any legal courses
8 before. On his panel questionnaire it said he was a criminal justice
9 major. I just wouldn't want him to feel that defense had something
10 with----

11 MJ: Okay.

12 ADC: But I would like to clarify that with him.

13 MJ: Sure, I can ask that. Okay, anybody else?

14 ADC: Yes, Ma'am. Command Sergeant Major (S)(b)-2 and Master
15 Sergeant (S)(b)-2 I believe that both indicated that they had not been
16 witnesses before but their questionnaires indicated that they had so
17 I would like to clarify that.

18 I am not terribly concerned about it, to be honest, Ma'am,
19 but I just want to make sure.

20 MJ: Sure. I will tell you what, why don't you just let me ask
21 those questions as well.

22

1 ADC: Yes, Ma'am.

2 MJ: In reviewing your questionnaire I noted that you had been a
3 witness. Of course when asked earlier, I thought you indicated that
4 you had not been. Can you talk to us about that? All right?

5 ADC: All right. Actually, Ma'am, this is the one that to us
6 might be a little awkward.

7 MJ: Yes.

8 ADC: We would like to call him and the reason is, I guess we
9 could proffer that we have heard of him making hostile comments to
10 TDS in the past. Just based on that I want to make sure that he
11 hasn't any inappropriate----

12 MJ: Okay, what were the comments? Do you know?

13 ADC: It was something along the lines of, "I don't want a TDS
14 office any where near my brigade." That is not verbatim, Ma'am, but
15 it was something to that effect. "I don't want those criminals
16 around here."

17 MJ: Okay.

18 ADC: Something along those lines.

19 MJ: Okay, referring to clients or referring to the attorneys or
20 to the----

21

1 ADC: Well either way, we probably aren't comfortable with it,
2 Ma'am.

3 MJ: Okay. Do you know who he made the comments to?

4 DC: Ma'am, if I may?

5 MJ: Sure.

6 DC: Colonel [REDACTED] is alleged to have made these comments or
7 feelings in February of this year when the 1ID was coming in to
8 replace the 4ID. Colonel [REDACTED] was setting up his DISCOM
9 Headquarters on FOB Speicher, Your Honor, and normally the JAG Office
10 is located in the same headquarters building.

11 In discussions with Captain [REDACTED], the Chief of
12 Military Justice, now, who was at [REDACTED] at the time, he did not
13 want to provide for Trial Defense Services as had been provided
14 before. He said, "I don't want those criminals coming through my
15 building." And he didn't want them co-located anywhere with the JAG
16 Office, Your Honor.

17 MJ: Okay, let me ask you. Well first of all I see a
18 distinction between a JAG Office and a TDS Office. I know sometimes
19 they are separated, even in garrison. Is the JAG Office in Colonel
20 [REDACTED] Headquarters building?

21

1 DC: It is not, Ma'am. It was with 4ID and the current JAG
2 Office and the current TDS Offices for 1ID were going to fall in on
3 the prior locations and when they were falling in on the prior
4 locations, Colonel (b)(6)-2 said, "Uh huh, get them out." They are not
5 currently in the Headquarters building at DISCOM.

6 MJ: And there is a TDS attorney at Camp Speicher?

7 DC: There are two, Your Honor, yes.

8 MJ: All right, and are they co-located with JAG Office?

9 DC: They are not anymore, Your Honor. They are in a separate
10 building away from the JAG Office and the DISCOM Headquarters, Your
11 Honor.

12 MJ: Okay, so what you are telling me here is that the trial
13 counsel assigned to the DISCOM is co-located in the Headquarters
14 building but the TDS counsel is in another location?

15 DC: Yes, Your Honor.

16 MJ: Okay. Do you want me to conduct that?

17 ADC: Actually, Ma'am, that above all else.

18 MJ: Okay, absolutely. What else?

19 ADC: And then Sergeant (b)(6)-2

20 MJ: Okay, what is the basis for Sergeant (b)(6)-2 did we get
21 anything written down from his questionnaire?
22

1 ADC: Well actually, Ma'am, I would like to just ask you--you
2 might have asked him. When you were questioning the members about
3 the various chain of command relationships and rating relationships
4 and that kind of thing. Captain--I didn't notice, but we may believe
5 that you may have left Sergeant [REDACTED] off the list when you said to
6 subordinates----

7 MJ: Right I don't have--is he rated or have a supervisory
8 relationship with anyone?

9 ADC: Yes, Ma'am. Colonel [REDACTED] is his reviewer.

10 MJ: All right.

11 ADC: And that is the only reason that we would ask for him,
12 Ma'am.

13 MJ: Yeah I did not write it down so I probably did not
14 specifically address him.

15 ADC: That is all we are implying. And we would ask for Command
16 Sergeant Major [REDACTED] as well, but the government already requested
17 him.

18 MJ: Okay. All right, please ask Colonel [REDACTED] to return to the
19 courtroom.

20 [COL [REDACTED] entered the courtroom and was seated.]

21

1 MJ: Colonel [REDACTED] has reentered the courtroom. All other
2 members are absent. (S)(b)(2)

3 **INDIVIDUAL VOIR DIRE OF COLONEL [REDACTED]**

4 **Questions by the military judge:**

5 Q. Sir, it is my understanding that you arrived sometime in
6 February or March of this year? Is that right? In Iraq?

7 A. February.

8 Q. And as----

9 A. Oh, in Iraq. February in Kuwait. March 2nd in Iraq.

10 Q. Got it. And is the DISCOM Headquarters located on FOB
11 Speicher?

12 A. It is.

13 Q. Is the trial counsel that advises you co-located in your
14 building, Sir?

15 A. It is.

16 Q. Are the TDS offices co-located in your building?

17 A. They were initially but we moved them out.

18 Q. Okay and so they are at a different location?

19 A. Yes.

20 ,

1 Q. Sir, there has been some information that you may have made
2 comments something to the effect of, "I don't want those TDS guys in
3 my building." Or, "I don't want criminals coming through my
4 building."

5 A. I am sure, in a joking manner, "I want those lawyers--I
6 don't want the folks that are accused of things coming into the
7 Division Rear Headquarters."

8 Q. Okay, why?

9 A. Just, I just didn't think it was appropriate for folks to
10 come into the Division Rear Headquarters that needed to see Trial
11 Defense.

12 Q. For their benefit or your benefit?

13 A. Both.

14 Q. What I am trying to get at, Sir, is do you hold any ill-
15 will toward either Trial Defense----

16 A. No, I don't.

17 Q. ----Service or their clients?

18 A. No, I don't.

19 Q. Okay, because clearly, they are performing a critical role
20 in----

21 A. Sure.

22

1 Q. ----this military justice system.
2 A. Sure.
3 Q. Do you agree with that?
4 A. I do.
5 Q. Okay, do you believe that your comments or feeling about
6 folks that are accused of crimes will cause you to lean toward the
7 government without even hearing any evidence?
8 A. No, not at all.
9 Q. Are you satisfied in your own mind that you can keep an
10 open mind and listen to all the evidence and the instructions on the
11 law and make a determination whether the government has met its heavy
12 burden of proof?
13 A. I am.
14 Q. If you were the accused in this case, would you be
15 comfortable having someone with your mindset sitting on this panel?
16 A. I would.
17 MJ: Counsel, any questions?
18 TC: No, Ma'am.
19 MJ: Defense.
20 DC: No, Ma'am.
21

1 MJ: Very well. Sir, if you would return to the deliberation
2 room and send in Major [REDACTED] (b)(6)-2

3 MEMBER [COL [REDACTED]] Okay.

4 MJ: Thanks.

5 [Colonel [REDACTED] withdrew from the courtroom, and Major [REDACTED] entered
6 the courtroom and was seated.]

7 MJ: Major [REDACTED] has reentered the courtroom. All other members
8 are absent.

9 **INDIVIDUAL VOIR DIRE OF MAJOR [REDACTED]**

10 **Questions by the military judge:**

11 Q. Major [REDACTED] in reviewing your court-member questionnaire, I
12 think you indicated that you had an undergraduate major in criminal
13 justice, is that right?

14 A. Yes, Ma'am.

15 Q. Can you tell me what you studied for that major?

16 A. It was law enforcement. [REDACTED]

17 Q. Law enforcement.

18 A. That was the title of it.

19 Q. Where did you get that degree?

20 A. Stephen F. Austin State University, East Texas.

1 Q. And what year?

2 A. I graduated in '89, from '85 to '89.

3 Q. I guess I am wondering why when I asked if anyone had had

4 any legal training, you didn't raise that.

5 A. It is not legal training in the sense of a courtroom. I

6 thought that was what the question was about.

7 Q. Okay. So you draw a distinction between the study that you

8 did and courses that would clearly be designed for a lawyer?

9 A. Yes, Ma'am.

10 Q. All right, nevertheless, in your studies of criminal

11 justice, I assume that you studied such things as Miranda rights and

12 requirements for law enforcement personnel?

13 A. Yes, Ma'am. I really--I thought the question was geared

14 more towards law classes. My college, you have a program for lawyers

15 and you have a program for----

16 Q. Prelaw?

17 A. Yes, Ma'am.

18 Q. Type courses?

19 A. Yes, Ma'am.

20

1 Q. Okay, well nevertheless, clearly the law applies to all
2 citizens but law enforcement personnel in particular are required to
3 have not as much legal training as the lawyers in this courtroom but
4 a pretty significant amount of legal training. Would you agree with
5 that?

6 A. Yes, Ma'am.

7 Q. All right. The important thing is that you can't
8 substitute your legal training to the extent that you had it in your
9 criminal justice major for what happens in open court or the
10 instructions as I give them. Do you understand that?

11 A. Yes, Ma'am.

12 Q. Do you think that even though you were a major in criminal
13 justice in undergraduate, that you would be able to view the evidence
14 and follow the law in this case solely as it happens in open court?

15 A. Yes, Ma'am. Just--if I could say?

16 Q. Sure.

17 A. That was in '89. I have been a signal officer ever since.
18 I haven't done anything with it.

19 Q. Good point.

20 A. So I haven't done anything with it.

21 Q. Good point. So you didn't go into the military police?

22 A. No, Ma'am.

23 Q. Were you ROTC?

1 A. Yes, Ma'am.

2 Q. And you chose the signal field?

3 A. It chose me, Ma'am.

4 Q. It chose you?

5 A. Yes, Ma'am.

6 Q. All right.

7 A. Yes, Ma'am.

8 MJ: Any questions, counsel?

9 TC: No, Your Honor.

10 DC: Defense?

11 ADC: Yes, Ma'am.

12 **Questions by the assistant defense counsel:**

13 Q. Just a quick question. During this course of your

14 undergraduate studies in criminal justice, did you ever do any kind

15 of internship or anything like that?

16 A. No.

17 Q. Okay so you have never worked at a police department or

18 anything----

19 A. No.

20 Q. Or a prosecutor's office?

21 A. No.

22

1 Q. Or a defender's office?

2 A. No.

3 ADC: Okay, thank you, Sir.

4 MJ: All right Major [REDACTED] (S)(b)-2 if you would return to the
5 deliberation room please and send in Command Sergeant Major [REDACTED]
6 please?

7 MEMBER [MAJ [REDACTED]]: Yes, Ma'am.

8 [Major [REDACTED] (S)(b)-2 withdrew from the courtroom, and Command Sergeant Major
9 [REDACTED] entered the courtroom and was seated.]

10 MJ: Command Sergeant Major [REDACTED] has reentered the courtroom.
11 All other members are absent.

12 **INDIVIDUAL VOIR DIRE OF COMMAND SERGEANT MAJOR [REDACTED]**

13 **Questions by the military judge:**

14 Q. Sergeant Major, you indicated earlier that you did have a
15 family member that was charged with a crime.

16 A. Yes, Ma'am.

17 Q. Can you tell me what that was about?

18 A. Yes, Ma'am. I had in I think '81 or '83 my brother was--
19 and another gentleman they were playing with a weapon and as they
20 were playing the weapon accidentally--well the weapon discharged and
21 the guy got killed and he was charged with a crime.

22

1 A. But, with all the witnesses and stuff that was around there
2 and they were grab button and stupid and they were and he has found
3 as a--not a--I mean it was an accidental death instead of a
4 intentionally killing somebody, but he was charged with it.

5 Q. So did he actually go to court?

6 A. Yes, he did.

7 Q. We have in the military what is called "negligent homicide"
8 which is that it was not intentional but that someone died.

9 A. Right.

10 Q. And that it was due to the negligence of the person who did
11 that.

12 A. Right.

13 Q. Is that what your brother was----

14 A. No, it was not--he did not----

15 Q. He was found not guilty?

16 A. He was found not guilty, but really it was an accidental
17 death.

18 Q. Okay and well an accident can be a complete defense so that
19 is probably what happened.

20 A. Right.

21 Q. Now where was he charged, what court?

22 A. Ooh.

23

1 Q. Was it a state court or a federal court?

2 A. No but it was a state--it was in Charlestown, South
3 Carolina, Ma'am.

4 Q. Okay.

5 A. Correction, Berkley County, South Carolina I think. I was
6 in Germany at the time and I didn't go home so I don't know that much
7 about it.

8 Q. Was this a younger brother or----

9 A. Older brother, Ma'am.

10 Q. Older?

11 A. Yes, Ma'am.

12 Q. Have you talked to your brother about the facts and
13 circumstances?

14 A. No, Ma'am. We didn't--Ma'am, I was in Germany. By the
15 time I got out of Germany, got back to the states, it was like long
16 over with and we didn't really talk much about it.

17 Q. What I am trying to get at Sergeant Major, is do you think
18 you will draw parallels between your brother's situation and possibly
19 PFC Richmond's situation in this case?

20 A. Ma'am, I--no Ma'am, because I didn't really know that much
21 about my brother's situation to--in a--when it happened, you know,
22 there was so many people there at the time.

23

1 A. The--and personnel that the family had knew and it was a
2 friend of his. It wasn't just a group of guys in an argument or
3 fight or anything. They were all of his buddies and he had bought a
4 new weapon and he brought it out to show the guys and all was playing
5 and laughing and from one thing led to another and some how the
6 weapon went off and the guy got shot.

7 And we--my family believe, and being as I was in Germany
8 and stuff, they told me it was an accident and I had no reason to
9 doubt it.

10 Q. Okay, now are you close with your brother?

11 A. Wow. I would say no. I have been in the Army 27 years,
12 Ma'am. I left home 27 years ago and I haven't been back----

13 Q. As close as any other Soldier who has----

14 A. Yes, Ma'am, so.

15 Q. All right.

16 A. When we see one another we get along real good now, it is
17 no friction between us it is just that I know most of my Soldiers a
18 lot better than I know my brothers.

19 Q. All right. I think in your mind you see the facts and
20 circumstances of that case as significantly different than these
21 maybe?

22 A. I think so. I just don't see the parallel, Ma'am.

23

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1 Q. All right well what I am trying to get at though is I want
2 you to, if you are chosen to or selected to sit as a court member
3 today, then you are required to base your decision in this case
4 solely upon any evidence that comes out in open court today and
5 tomorrow and the instructions on the law as I give them to you.

6 Now even though this is in your background, that your
7 brother was accused of homicide and found not guilty of homicide, do
8 you believe that that in your background is in anyway going to impact
9 upon your ability remain fair and impartial in this case?

10 A. Ma'am, I don't believe that it would bother me at all,
11 Ma'am. I think I could be able to look at this case as a totally
12 separate matter.

13 Q. If you were PFC Richmond, would you be comfortable having
14 someone with that--with having you on this court-martial?

15 A. I think it would be, Ma'am.

16 Q. Are you convinced that you could continue to be fair and
17 impartial?

18 A. I think so, Ma'am.

19 MJ: All right. Government, any questions?

20 TC: Yes, Your Honor.

21

1 **Questions by the trial counsel:**

2 Q. Good morning Sergeant Major.

3 A. Good morning.

4 Q. Sergeant Major, I missed a couple of the answers when I
5 asked the question about whether or not the panel members had been a
6 witness in a previous court-martial.

7 My indication from your questionnaire and I looked it and
8 that you were a witness in a previous court-martial.

9 A. Yes, Sir, and I did say mine went up a yes----

10 Q. Okay and like I said, I missed it. Sorry about that.

11 A. A Soldier that was charged of larceny that worked for me
12 and I was a character witness, Sir. And they just called me and
13 asked me what type of worker was he. I wasn't--it wasn't that I knew
14 anything about the incident. I was a character witness to say what
15 kind of guy he was working for me.

16 TC: Understood. Thank you.

17 MJ: Defense, any questions?

18 ADC: No, Ma'am.

19 MJ: All right Sergeant Major, please return to the deliberation
20 room and send in Command Sergeant Major [REDACTED]

21 (S)/61-2

(5)(6)-2

1 [Command Sergeant Major [REDACTED] withdrew from the courtroom, and
2 Command Sergeant Major [REDACTED] entered the courtroom and was seated.]
3 MJ: Command Sergeant Major [REDACTED] has reentered the courtroom.
4 All other members are absent.

5 **INDIVIDUAL VOIR DIRE OF COMMAND SERGEANT [REDACTED]**

6 **Questions by the military judge:**

7 Q. Sergeant Major, in reviewing your questionnaire, your
8 court-member questionnaire, you indicated that you had been a witness
9 in a prior court-martial, is that right?

10 A. That is correct, Ma'am.

11 Q. Can you tell me what that was?

12 A. One of my Soldiers actually gave another Soldier extra
13 money one time and he used me a character witness during his
14 sentencing.

15 Q. All right so you testified on behalf of the accused in that
16 case.

17 A. Yes, Ma'am.

18 Q. I didn't catch it. Did you answer affirmatively when I
19 asked you that earlier?

20 A. I might not have because I was not thinking about that case
21 in particular. I know that I put it on my questionnaire now that you
22 mention it.

23

1 Q. Okay.

2 A. But I don't remember whether I was----

3 Q. Okay it was an oversight on your----

4 A. It was an oversight on my part.

5 MJ: Okay government, any questions?

6 TC: No, Your Honor.

7 MJ: Defense, any questions?

8 ADC: No, Your Honor.

9 MJ: Very well. Thank you Sergeant Major. If you would return

10 to the deliberation room please, and send in Master Sergeant [REDACTED]

11 Thank you. (S)(b)-2

12 [Command Sergeant Major [REDACTED] withdrew from the courtroom, and

13 Master Sergeant [REDACTED] entered the courtroom and was seated.]

14 MJ: Master Sergeant [REDACTED] has reentered the courtroom. All

15 other members are absent.

16 **INDIVIDUAL VOIR DIRE OF MASTER SERGEANT [REDACTED]**

17 **Questions by the military judge:**

18 Q. Master Sergeant [REDACTED] in reviewing your questionnaire, I

19 noticed that you had been a witness in a prior court-martial. Is

20 that right?

21 A. No, I hadn't.

22

1 Q. You have never been a witness in any prior court-martial
2 then?
3 A. No, Ma'am.
4 Q. Okay, any questions based----
5 A. I was a character witness I guess. Does that----
6 Q. Yeah that counts.
7 A. That counts?
8 Q. Yeah.
9 A. Oh, okay yes I have.
10 Q. Okay basically witnesses can either be witnesses to a
11 crime, or they can be victims, or they can be an accused. Anyone who
12 testifies in a court-martial so----
13 A. Yes, Ma'am.
14 Q. As I understand it then you were called as a character
15 witness on behalf of the accused in a case?
16 A. Of the Soldier.
17 Q. Is that somebody that worked for you?
18 A. Yes, Ma'am.
19 Q. What was the charge, do you remember?
20 A. It was possession of a controlled substance.
21

1 Q. Okay, was the accused found guilty?
2 A. Yes, Ma'am.
3 Q. Did you testify on the sentencing proceedings then, or
4 what?
5 A. No, it was just as his character witness, just as to the
6 person's character.
7 Q. Before he was found guilty?
8 A. Yes, Ma'am.
9 Q. Now I guess it is just no besides then as to when the
10 defense was asking the question about----
11 A. Yes, Ma'am. I--must not have thought about it.
12 Q. Just didn't think about it?
13 A. Yes, I must not have.
14 MJ: All right. Government, any questions?
15 TC: No, Your Honor.
16 MJ: Defense, any questions?
17 ADC: Yes, Ma'am.
18 **Questions by the assistant defense counsel:**
19 Q. Morning, Master Sergeant.
20 A. Good morning, Sir.
21

1 Q. I think that what came out during group voir dire is that
2 you work under Colonel [REDACTED] (5)(6)-2
3 A. Yes, Sir.
4 Q. Okay and in what capacity do you work under him?
5 A. I am the Brigade Commo Chief, Communications Chief for the
6 Brigade. I do automations for the brigade tactical.
7 Q. And so he is your reviewer?
8 A. Yes, Sir.
9 Q. Okay and because of him being your Commander, do you think
10 that will affect your----
11 A. No, Sir.
12 Q. ----decision at all?
13 A. No, Sir.
14 Q. Do you think you will be swayed by whatever his opinion is
15 at all?
16 A. No, Sir.
17 ADC: Thank you, Master Sergeant.
18 **Questions by the military judge:**
19 Q. Are you convinced that you will be able to speak your piece
20 in the deliberation room?
21 A. Yes, yes, Ma'am.
22

1 MJ: All right. Any other questions, counsel?

2 TC: No, Your Honor.

3 ADC: No, Ma'am.

4 MJ: Very well. Master Sergeant (S)(b)(2), if you would return to

5 the deliberation room please and send in Sergeant First Class

6 (S)(b)(2)

7 [Master Sergeant (S)(b)(2) withdrew from the courtroom, and Sergeant First

8 Class (S)(b)(2) entered the courtroom and was seated.]

9 MJ: Sergeant First Class (S)(b)(2) has returned to the courtroom.

10 All of the other members are absent.

11 **INDIVIDUAL VOIR DIRE OF SERGEANT FIRST CLASS (S)(b)(2)**

12 **Questions by the military judge:**

13 Q. Sergeant (S)(b)(2) earlier you indicated or Colonel (S)(b)(2) I

14 think indicated that he is your reviewer?

15 A. Yes, Ma'am.

16 Q. Apparently I left your name out when I was talking about

17 the junior Soldiers whether they would feel inhibited in anyway in

18 expressing their opinion because their reviewer or rater was also in

19 the deliberation room. So I wanted to ensure--will you feel

20 inhibited in anyway in expressing your opinion?

21 A. No, Ma'am.

22

1 Q. All right and that is true even if you disagree with
2 Colonel [REDACTED] (S)(b)-2
3 A. That is true, Ma'am.
4 Q. Are you--how long have you been in the military now
5 Sergeant?
6 A. I have been in for 11 years, now.
7 Q. For 11 years. I assume that you didn't get to be an E7 in
8 11 years by being shy about expressing your opinion, is that right
9 then?
10 A. No, Ma'am.
11 Q. Are you convinced that in the deliberation room where you
12 vote has the same weight as Colonel [REDACTED] you will be able to
13 freely express your opinion? (S)(b)-2
14 A. Yes, Ma'am.
15 MJ: Any questions, Government?
16 TC: No, Your Honor.
17 MJ: Defense?
18 ADC: No, Ma'am. (S)(b)-2
19 MJ: Very well. Sergeant First Class [REDACTED] if you would
20 return to the deliberation room please.
21

(S)(b)-2

1 [Sergeant First Class ██████████ withdrew from the courtroom.]

2 MJ: Are there any other requests for individual voir dire?

3 ADC: Yes, Ma'am. If I apologize, I should have thought of this
4 earlier and I will frankly admit that.

5 All or most of the panel members indicated that they had
6 heard something about this case. Frankly, Ma'am, I would like to
7 question every one of them about what they know, in the absence of
8 the others because I don't want one person's knowledge or hearsay to
9 pollute somebody else. And I do apologize, I do know that is a great
10 oversight and----

(S)(b)-2

11 MJ: Yeah, Captain ██████████ That should have been brought to my
12 attention because half----

13 ADC: I know, Ma'am.

14 MJ: ----of the guys that we just talked to said that they knew
15 something about the case.

16 ADC: I know, Ma'am. I will take the hit for that. That was a
17 big oversight I admit.

18 MJ: All right.

19 Bailiff, call Colonel ██████████ please.

(S)(b)-2

20 [Colonel ██████████ entered the courtroom and was seated.]

21

1 MJ: Colonel [REDACTED] has returned to the courtroom. All other
2 members are absent. (b)(6)-2

3 **INDIVIDUAL VOIR DIRE OF COLONEL [REDACTED]**

4 **Questions by the military judge:**

5 Q. Sir, you had indicated that you knew that this had happened
6 or had heard that it had happened. Is that right?

7 A. That is correct.

8 Q. Can you tell me what you remember?

9 A. Just seeing an article, I believe, that just said that
10 there was a Soldier from Hawaii that had been accused of killing an
11 Iraqi national and that there was a court-martial scheduled for the
12 first week of August.

13 Q. Where was that article? Was it the Stars and Stripes?

14 A. I believe it was in the Early Bird.

15 Q. The Early Bird, okay. So did you get it by email then or
16 by----

17 A. Yes.

18 Q. Now you said that you believed it was a Soldier from
19 Hawaii, is that right?

20 A. That is correct.

21

1 Q. Accused of killing an Iraqi?
2 A. National.
3 Q. National----
4 A. A local Iraqi national is I think what it said, the
5 language that was used.
6 Q. Do you remember whether that person was a Soldier, a
7 militant, a noncombatant, or----
8 A. No, it didn't specify. It didn't specify anything further
9 than that. I assumed it was a civilian based on the description.
10 Q. Did the--was it a detailed article?
11 A. No.
12 Q. Did the article indicate the facts and circumstances
13 surrounding the killing?
14 A. No.
15 Q. So all you really knew was that a Soldier was accused of
16 killing an Iraqi and that the court-martial was scheduled for the
17 beginning of August?
18 A. Right, and that the Soldier was from Hawaii.
19

1 Q. Okay. So if you are a court member in this court-martial,
2 you obviously would be required to make a decision in this case based
3 solely on the evidence in open court and on the instructions on the
4 law as I give them to you.

5 Are you convinced that you would be able to set aside that
6 limited amount of information that you had before because that is not
7 evidence? I mean, we may see evidence of the article and we may not.
8 But, clearly that is not appropriately used in making a determination
9 in anything. Do you understand that?

10 A. Absolutely.

11 Q. Are you convinced that you would be able to do that?

12 A. Yes.

13 MJ: Government, any questions?

14 TC: No, Your Honor.

15 MJ: Defense, any questions?

16 ADC: Yes, Ma'am.

17 MJ: Please.

18 **Questions by the assistant defense counsel:**

19 Q. Good morning, Sir.

20 A. Morning.

21

1 Q. Just a couple quick questions, Sir. First, you indicated
2 that your only knowledge of the case came from seeing an article? So
3 no one has talked to you about it?

4 A. Correct.

5 Q. Okay, next I would just like to know, do you have any
6 recollection of hearing anything about the case involving whether the
7 victim was wearing flexi cuffs or not?

8 A. No.

9 Q. Okay.

10 A. That is the first I have heard of it.

11 Q. You hadn't heard one thing any way or the other?

12 A. No, that is the first I have heard of it.

13 ADC: Thank you.

14 MJ: Sir, if you would return to the deliberation room and ask
15 Colonel [REDACTED] to return.

16 PRES: I will.

17 [Colonel [REDACTED] withdrew from the courtroom.]

18 MJ: Counsel while we are waiting, my notes show that Colonel

19 [REDACTED] Colonel [REDACTED] Colonel [REDACTED], Major [REDACTED], Command Sergeant

20 Major [REDACTED] Command Sergeant Major [REDACTED] and Master Sergeant

21 [REDACTED] Is that what you had?

22

(b)(6) 2

1 ADC: That I have with regard to?

2 MJ: This issue? Yes?

3 ADC: I thought almost all of them said yes to that, I am sorry.

4 TC: Your Honor, my recollection are the O6 colonels.

5 MJ: Right.

6 TC: The two sergeants major, Major [REDACTED] and Master Sergeant

7 [REDACTED] (S)(b)(2) _____

8 MJ: That is exactly right. Those are the only ones that

9 indicated an affirmative response.

10 ADC: I was taking notes, Ma'am, I am sorry.

11 [Colonel [REDACTED] entered the courtroom and was seated.]

12 MJ: Please be seated.

13 [All parties did as directed.]

14 MJ: Sir, I apologize. We should have asked you these questions

15 earlier when we had you in, but----

16 MEMBER [COL [REDACTED]] Okay.

17 MJ: ----in the (S)(b)(2) interest of making sure this is a fair trial, we

18 have called you back.

19 MEMBER [COL [REDACTED]] Okay.

20

1 INDIVIDUAL VOIR DIRE OF COLONEL [REDACTED]

2 Questions by the military judge:

3 Q. You indicated that you knew that this had happened. Can
4 you tell me what the basis of your knowledge was?

5 A. I had heard about it in--I have one of the forward support
6 battalions that is at Kirkuk. The 2-25th and I heard about it I
7 think in conversation up there one day. None of the specifics, just
8 that the incident happened.

9 Then I saw some references in the paper and then this last
10 week I think is when I actually saw that there was an article in the
11 Stars and Stripes and that is probably the extent of my knowledge in
12 the case.

13 Q. Okay. You said that there was an article in the Stars and
14 Stripes?

15 A. This past week, I think there was, that the trial was set
16 to start. It didn't really have any details.

17 Q. Yeah, I didn't see the article. Do you recall what it
18 said?

19 A. No, just that a Soldier from the 25th and that--no real
20 details of the case, just that he was accused of murdering an Iraqi.

1 Q. When you say "25th" you mean 25th Infantry?

2 A. Yes.

3 Q. Did the article indicate or do you recall whether the Iraqi

4 killed was a Soldier, a militant, or a civilian, or a----

5 A. It did say a civilian I believe.

6 Q. A civilian, okay. And, did it give you any of the details

7 about the facts and circumstances of how that shooting occurred?

8 A. It did not.

9 Q. In your conversations with either the FSB Commander or

10 others in Kirkuk, did they give you any facts and circumstances of

11 how it happened?

12 A. They did not know. If they did, they did not tell me.

13 Q. The accused is assigned to 1-27 Infantry, so frankly I

14 don't know whether they were referring to this case or not in the

15 article. You are pretty convinced that it was an article about a

16 Soldier from 25th Infantry?

17 A. Yes. The Stars and Stripes?

18 Q. Right.

19 A. Yes.

20 Q. So it may not have even been in relation to this trial?

21 A. It may not. I just assumed that it was I guess.

22

017298

1 Q. Sir, as I told you before the--if you are selected as a
2 court member on this court-martial you are required to make your
3 decision based solely on the evidence as it comes out in court and of
4 course on the instructions on the law and applying that law to the
5 facts.

6 A. Right.

7 Q. Now whatever you heard in conversations prior to today or
8 read in the newspapers is not evidence. Do you understand that?

9 A. Correct.

10 Q. Are you convinced that you can set aside the prior limited
11 knowledge that you have, whether it is about this case or not, and
12 base your decision solely upon the evidence as it comes out in court
13 and the law as I give it to you?

14 A. Yes.

15 MJ: Counsel, any questions?

16 TC: No, Your Honor.

17 MJ: Defense?

18 ADC: Yes, Ma'am.

19 MJ: Please.

20 ADC: Thank you.

21

1 **Questions by the assistant defense counsel:**

2 Q. Sir, from what you have heard about the case, do you recall
3 if there were any details mentioned about whether the alleged victim
4 was being detained in anyway?

5 A. I think that the article, I believe, mentioned that it was
6 during a detention, I believe. There's been several I think that I
7 have read and I don't know if this was the one last week that talked
8 about detention but I believe--I think it was.

9 Q. Sir, do you recall if it mentioned anything about whether
10 the detainee was bound or flexi-cuffed or if there was anything of
11 that nature?

12 A. Again, I think I have read several articles. I don't know
13 if this last one, the one I am referring to, I don't think it
14 mentioned that it was a bound individual. I recall an article in the
15 last several months where someone was bound that was killed but I
16 don't think this was this past week that mentioned that. I don't
17 relate that incident with this, with someone being bound.

18 Q. Okay, so you have heard of an incident----

19 A. Yes.

20 Q. Where someone was bound?

21 A. Yes.

22 Q. And----

017300

1 A. I read it in one of the articles on either the Early Bird
2 or in the Stars and Stripes.

3 Q. But you have no idea if that has anything to----

4 A. Correct.

5 Q. ----do with this incident or not?

6 A. Correct.

7 Q. So you don't associate this with that?

8 A. No.

9 ADC: Thank you, Sir.

10 MJ: Okay Colonel (5)(6)-2 [REDACTED] you may return to the deliberation
11 room. We may call additional other people but I want to talk to
12 counsel first. All right?

13 MEMBER [COL [REDACTED]] Okay.

14 [COL [REDACTED] withdrew from the courtroom.]

15 MJ: Colonel [REDACTED] has departed the courtroom. All other
16 members are absent. Please be seated.

17 [All parties did as directed.]

18 MJ: Counsel, was there pretrial publicity in this case, and if
19 so, do you know what it consisted of?

20 ADC: Yes, Ma'am. There were several Stars and Stripes articles
21 and----

22

017301

1 MJ: More than two?

2 ADC: Not sure how many, Ma'am.

3 MJ: Okay, did you see government? Are you aware of these and
4 when did they occur and do you have copies?

5 TC: Your Honor, I don't believe I have copies of everything,
6 but there have been I would say a good half dozen articles throughout
7 the internationally--that are available on the internet. I do recall
8 seeing one short article in the Stars and Stripes more than 2 weeks
9 ago and several state side papers, a Honolulu advertiser paper and
10 that is----

11 MJ: Okay do you know, is PFC Richmond from Hawaii? Is that
12 were the connection is coming from?

13 ADC: His unit is, Ma'am.

14 TC: The 25th.

15 ADC: His home station is Hawaii.

16 MJ: Got it and he is just now attached to HHC, 1-27?

17 TC: Yes, Ma'am, HHC, 1-27 is in 25th ID.

18 MJ: Okay, I assumed it was a 1st ID unit, all right.

19 TC: We are attached, Ma'am.

20 ADC: Yes, Ma'am.

21

017302

1 MJ: All right, this short article that appeared in Stars and
2 Stripes a couple weeks ago, do you recall if it had details?

3 TC: I believe it did, Your Honor, mention of the flex-cuff
4 issue.

5 ADC: Ma'am, there were--we believe that there were three
6 articles in Stars and Stripes that varied in detail and there was an
7 Army Times article as well which I don't believe was particularly
8 detailed.

9 MJ: I haven't seen any of them.

10 TC: Your Honor, I have a May 15th article from the Stars and
11 Stripes we would like to have marked.

12 MJ: All right counsel, there is always a danger when there is
13 pretrial publicity that the court members may prejudge a case based
14 on what they have read, so I guess we will just continue along with
15 the line that we have been to just see how much they remember or if
16 they have formed an opinion.

17 TC: The article has been marked Appellate Exhibit XVIII.

18 MJ: Thanks. Okay well I don't see anything mentioned in this
19 particular article of flex-cuffs though it does say that, "Richmond
20 is accused of shooting the man February 28th while members of his
21 platoon attempted to arrest him during a roundup of suspected
22 terrorists in al-Hawijah, a city southwest of Kirkuk."
23

017303

1 MJ: All right, and that is Appellate Exhibit XVIII.

2 All right well it apparently also appeared in the Early
3 Bird, at least according to Colonel [REDACTED], and I know that senior
4 folks may receive that by email daily. (b)(6)2

5 All right then, bailiff, would you call Colonel [REDACTED]
6 please.

7 [COL [REDACTED] entered the courtroom and was seated.]

8 MJ: Please be seated.

9 [All parties did as directed.]

10 MJ: Colonel [REDACTED] has returned to the courtroom. All other
11 members are absent.

12 **INDIVIDUAL VOIR DIRE OF COLONEL [REDACTED]**

13 **Questions by the military judge:**

14 Q. Sir, during the group voir dire you indicated that you had
15 heard that this had happened, is that right?

16 A. Right.

17 Q. Can you tell me what you had heard?

18 A. If I remember correctly, we heard that--well I heard, and I
19 can't remember who it was from, it was just general discussion
20 amongst senior members of the division that an incident had happened
21 where a Soldier engaged a detainee with a weapon.

22
017304

1 A. The circumstances were something that Soldiers were
2 guarding some detainees and in an enclosed area of some sort and a
3 detainee was--made some kind of lunge at somebody and felt threatened
4 and the Soldier fired and killed the detainee. That is about the
5 extent of it.

6 Q. Okay. And this conversation that you were having among
7 seniors, was that conversation that took place here in Tikrit?

8 A. I think it was still down in--it may have still been down--
9 I can't remember the timing of it. It may have still been--because
10 we didn't drive North here until the 1st or 2nd of March and I think
11 this happened back in February and I can't recall----

12 Q. So you could have been down in Kuwait?

13 A. We would have been down in Kuwait.

14 Q. You said that you recall that it was a detainee that was
15 shot, is that right?

16 A. That is correct, yes.

17 Q. Do you recall any specifics about how that person was
18 detained?

19 A. I don't know if it was a detention facility or if it was
20 after a raid. I really don't know what the circumstances were.

21

017305

1 Q. Okay, fair enough.

2 A. There was, I think that somebody said that the detainee's

3 hands were--were having zip-strips on his hands.

4 Q. Okay.

5 A. That is about it.

6 Q. Do you know if the hands were in front or in back?

7 A. I don't know.

8 Q. Okay. Apparently there have been some articles referencing

9 the events that are the subject of this court-martial.

10 A. Uh huh.

11 Q. Have you read any of those articles?

12 A. No, I have not.

13 Q. Beyond the conversation that you had back in the beginning

14 of March, have you had any other updates on either this case or the

15 events that occurred on 28 February?

16 A. No, not at all. We knew that a court-martial was coming

17 but beyond that----

18 Q. Right.

19 A. ----nothing.

20

1 Q. Based on your conversation did you form any opinion as to
2 whether the Soldier involved acted correctly or did not act
3 correctly?

4 A. No. I have been involved in too many courts-martial to
5 have those kinds of thoughts.

6 Q. Okay. Well that is exactly right. If you are a member in
7 this court-martial then you will be required to make a decision
8 solely upon the evidence as presented in open court.

9 A. Uh huh.

10 Q. And applying the law as I give it to you to those facts in
11 evidence.

12 A. Uh huh.

13 Q. Do you understand that?

14 A. Oh yeah. Of course, Your Honor.

15 Q. Are you satisfied that you will be able to set aside your
16 discussion from a few months ago and base your decision solely upon
17 the evidence and law as I give it to you?

18 A. Of course.

19 MJ: Any questions, government?

20 TC: No, Your Honor.

21

1 MJ: Defense, any questions?

2 ADC: Yes, Ma'am, one quick one.

3 MJ: Sure.

4 **Questions by the assistant defense counsel:**

5 Q. Sir, you stated that you have been in far too many courts-

6 martial to have thoughts like that.

7 A. Right.

8 Q. What exactly did you mean by that?

9 A. Well I am an engineer, all right, so I like to think

10 logically and rationally and look at everything and examine

11 everything that is put in front of me. I don't get emotional or

12 irrational or illogical about these sorts of things.

13 So, I understand that words fly around about something that

14 happened or didn't happen and I just put that aside. It is not part

15 of my character to include those sorts of things in any decision

16 making process that I go through personally.

17 Q. Okay, and so you understand that things you hear could be

18 very inaccurate?

19 A. That is correct.

20 Q. So you just base your decision on what you hear in the

21 courtroom?

22 A. Right.

23

017308

1 ADC: Thank you, Sir.

2 MJ: Very well. Sir, if you would return to the deliberation
3 room and send in Major [REDACTED] again? (b)(6) 1-2

4 MEMBER [COL [REDACTED]: Major [REDACTED] certainly.

5 [Colonel [REDACTED] withdrew from the courtroom, and Major Self entered
6 the courtroom and was seated.]

7 MJ: Please be seated.

8 [All parties did as directed.]

9 MJ: Major [REDACTED] has returned to the courtroom. All other
10 members are absent.

11 **INDIVIDUAL VOIR DIRE OF MAJOR [REDACTED]**

12 **Questions by the military judge:**

13 Q. Major, we should have asked you these questions earlier but
14 it is an oversight that we did not.

15 You indicated that you knew the events that are subject of
16 this court-martial happened. Do you recall that?

17 A. Say again, Ma'am.

18 Q. Do you remember answering "Yes" that you had heard that
19 this happened?

20 A. Yes, Ma'am.

21

017309

1 Q. How did you hear it? Did you read something, did you talk
2 to somebody or what?

3 A. I used to work on the division staff and it just happened,
4 Ma'am.

5 Q. Okay.

6 A. That is about the extent of it.

7 Q. Well what was your job on the division staff?

8 A. I was Deputy G6.

9 Q. Were you involved in anyway in----

10 A. No.

11 Q. ----either the publicity of this----

12 A. No, Ma'am.

13 Q. ----case, no?

14 A. No, Ma'am.

15 Q. What if anything do you remember about the facts?

16 A. I just know that it happened. That is the extent of it,
17 Ma'am.

18 Q. That what happened? That an Iraqi was killed----

19 A. Yes, Ma'am.

20 Q. ----by a Soldier?

21 A. Yes, Ma'am.

22

1 Q. Do you know any fact and circumstances about how the
2 shooting happened?

3 A. No, Ma'am.

4 Q. And you are pretty convinced that your knowledge comes from
5 having worked at division staff?

6 A. Yes, Ma'am.

7 Q. Do you recall reading any articles about this?

8 A. No, Ma'am. It was probably briefed at the--I had to go to
9 the updates at both the morning and the evening. It was probably
10 briefed at one of the updates. I had to make sure the radios worked
11 and the PA system worked and all that stuff.

12 Q. Right. It sounds to me like your knowledge is pretty vague
13 and is passing.


14 A. Yes, Ma'am.

15 Q. Is that right?

16 A. Yes, Ma'am.

17 Q. Is that fair?

18 A. Yes, Ma'am.

19 Q. All right, the reason I am asking the questions again Major
20  (S)(b)(2)

21 A. Yes, Ma'am.

22

017311

1 Q. ----is because I want you to base your decision, if you are
2 a court member in this case solely upon the evidence as it comes out
3 in open trial and on the law as I give it to you.

4 Can you set aside whatever you knew before you walked in
5 here today and----

6 A. Yes, Ma'am.

7 Q. ----agree to make your decision solely on what happens in
8 court?

9 A. Absolutely. Yes, Ma'am.

10 MJ: Government, any questions?

11 TC: No, Your Honor.

12 MJ: Defense, any questions?

13 ADC: Yes, Ma'am.

14 MJ: Sure.

15 **Questions by the assistant defense counsel:**

16 Q. Sir, if I could just----

17 A. Sure.

18 Q. ----clarify a little bit. I understand that you say what
19 you heard was fairly vague.

20 A. Yes.

21

017312

1 Q. Did you hear anything at all about whether the detainee--or
2 about whether the Iraqi national may or may not have been doing at
3 the time? Did you hear anything about whether he was being detained
4 in some fashion or another?

5 A. No.

6 ADC: Thank you, Sir. (S)(b)2

7 MJ: All right Major [REDACTED] if you would return to the
8 deliberation room again and send in Sergeant Major [REDACTED] again for
9 us?

10 MEMBER [MAJ [REDACTED]]: Yes, Ma'am.

11 [Major [REDACTED] withdrew from the courtroom, and Command Sergeant Major
12 [REDACTED] entered the courtroom and was seated.]

13 MJ: Please be seated.

14 [All parties did as directed.]

15 MJ: Command Sergeant Major [REDACTED] as reentered the courtroom
16 and all other members are absent.

17 **INDIVIDUAL VOIR DIRE OF COMMAND SERGEANT MAJOR [REDACTED]**

18 **Questions by the military judge:**

19 Q. Sergeant Major----

20 A. Yes, Ma'am.

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1 Q. ----we should have asked you these questions before but it
2 was an oversight on our part.

3 You indicated that you had heard that this had happened, is
4 that right?

5 A. Yes, Ma'am.

6 Q. Do you remember how you heard that this had happened?

7 A. It was on the--if I am not making a mistake it was in the--
8 I get the SIPR report that shows serious incidents.

9 Q. Okay.

10 A. And on it it was saying that an American Soldier had shot--
11 I can't remember the exact verbiage but it was that an American
12 Soldier had shot and killed an Iraqi on guard duty. I think it was
13 on guard duty if I am not making a mistake.

14 Q. Do you remember whether the report gave you a status of the
15 Iraqi citizen?

16 A. Status of the Iraqi?

17 Q. In other words, was he a Soldier, a militant, a civilian or
18 a----

19 A. No they said they were on guard duty so I would have
20 assumed that it would have been one of the Iraqi workers that work on
21 guard duty along with our Soldier.

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