

COURT-MARTIAL RECORD

NAME RICHMOND, EDWARD L. PFC

SSN [REDACTED]

ACTIONS CODED:

ASSIGNED TO: 2

INITIAL _____

PANEL _____

ACCA _____

EXAM. DIV. _____

FINAL _____

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VOL V **OF** VII **VOL(S)**

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JALS-CC FORM 24, 1, OCTOBER 2000

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V of VII

VOL ~~1~~ of ~~7~~
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V of VII

VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

RICHMOND, Edward L.,
Jr.

(NAME: Last, First Middle Initial)

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

(b)(6)-(c) OF
[REDACTED]

(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

2005 JUN 10 A 7:00

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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.

DD FORM 490, MAY 2000

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FRONT COVER

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017316

1 Q. Okay.

2 A. Ma'am, I didn't pay that much attention to it.

3 Q. No, that is fine.

4 A. Yeah.

5 Q. We are tapping old brain cells, I understand.

6 A. Yeah.

7 Q. Apparently there have been some articles about the events
8 that occurred that are the subject of this court-martial. Have you
9 read any of those articles?

10 A. No, Ma'am.

11 Q. This SIR, this report that you got, would it have been
12 around the time that this happened, the 28th of February, end of
13 February or early March?

14 A. I would say around that time, Ma'am.

15 Q. Around that time?

16 A. Nobody heard about it that a Soldier shot an Iraqi. It was
17 not long after we got here, Ma'am.

18 Q. And when did you get here?

19 A. We got here the first part of March, Ma'am.

20 Q. And are you stationed here at FOB Danger?

21 A. FOB Danger, Ma'am.

22

1 Q. Do you recall whether you knew anything about whether the
2 Iraqi person was being detained at all?

3 A. No, Ma'am. Like I said, it was my assumption that they
4 were on guard.

5 Q. Doing what?

6 A. They were doing guard duty. And it could have been an
7 assumption on my part that if they are on guard duty then one of the
8 workers is not an insurgent type worker guy, Ma'am.

9 Q. Okay, well was that the extent of your knowledge, that one
10 report that you read months ago?

11 A. That is the extent of my knowledge, Ma'am.

12 Q. All right, the reason I ask you these questions Sergeant
13 Major is again, if you stay as a court member then you must base your
14 decisions in this case solely upon the evidence as it is presented in
15 open court and on the law as I give it to you to apply it to the
16 evidence that find.

17 A. Yes, Ma'am.

18 Q. Do you understand that?

19 A. Yes, Ma'am.

20 Q. Do you believe that you will be able to set aside the
21 limited knowledge that you have?

22 A. Yes, Ma'am.

23

1 Q. Knowledge you have from before and base your decision
2 solely upon what you hear in open court?

3 A. Yes, Ma'am. I believe I can do that.

4 Q. Okay because whatever you heard before is not evidence.

5 A. Right, Ma'am.

6 Q. You understand that right?

7 A. Right, Ma'am.

8 Q. And you may or may not see this report that was made. I
9 doubt it, frankly, because what we want to have at this court-martial
10 is evidence presented from people who were there and that know the
11 accused, right?

12 A. Right, Ma'am.

13 Q. Do you have any hesitation at all about your ability to be
14 fair and impartial and base your decision solely upon the evidence as
15 proved in open court?

16 A. Ma'am, I have no hesitation at all, Ma'am.

17 MJ: All right. Government, do you have any questions?

18 TC: No, Ma'am.

19 MJ: Defense, do you have any questions?

20 ADC: No, Ma'am.

21

1 MJ: All right Sergeant Major, what I would like for you to do
2 is to return to the deliberation room and again send in Command
3 Sergeant Major [REDACTED].

4 [Command Sergeant Major [REDACTED] withdrew from the courtroom, and
5 Command Sergeant Major [REDACTED] entered the courtroom and was seated.]

6 MJ: Please be seated.

7 [All parties did as directed.]

8 MJ: Command Sergeant Major [REDACTED] has reentered the courtroom.
9 All other members are absent.

10 **INDIVIDUAL VOIR DIRE OF COMMAND SERGEANT [REDACTED]**

11 **Questions by the military judge:**

12 Q. Sergeant Major, we should have asked you these questions
13 before but we forgot to.

14 Earlier you stated that you knew that the events that are
15 the subject of this court-martial had happened. Do you recall that?

16 A. Yes, Ma'am.

17 Q. What is the basis of your knowledge?

18 A. Just the SIPR report that showed that there was an incident
19 such as this. No real details or anything to that nature. Just that
20 it happened, Ma'am.

21

1 Q. Okay, but you remember reading a SIPR report probably
2 shortly after it happened?

3 A. Yes, Ma'am.

4 Q. And were you already here in Iraq or?

5 A. I was already in Iraq, yes, Ma'am.

6 Q. Where are you stationed, Sergeant Major?

7 A. I am here on FOB Danger, Ma'am.

8 Q. To the best of your recollection, what did that SIPR report
9 say?

10 A. Just that an IZ was killed by a Soldier. Not necessarily
11 did they mention the Soldier's name or anything of that nature.

12 Q. When you say, "IZ" what are you referring to?

13 A. Iraqi civilian, Ma'am.

14 Q. There has apparently been some articles in the Stars and
15 Stripes or Army Times or otherwise referencing the events of this
16 court-martial. Have you read any of those articles?

17 A. No, Ma'am. We very seldomly get the Army Times and I don't
18 regularly read it, no, Ma'am.

19 Q. Other than that one SIPR report that you had gotten,
20 probably at the beginning of March, have you had any discussions with
21 anyone?

22 A. No, Ma'am.

23

1 Q. Or any other information about this?

2 A. No, Ma'am, not to my recollection, Ma'am.

3 Q. Do you recall whether the SIPR report said anything about
4 whether the Iraqi civilian was being detained in any way?

5 A. Ma'am, I really don't remember all the details of the--all
6 I do remember is, as I stated, that an IZ was killed by a Soldier.
7 It didn't mention the Soldier's name. It didn't really have any real
8 details in the SIPR.

9 Q. Okay, well it sounds like it may have been related to this
10 event, on the other hand it may not have been. The critical thing,
11 Command Sergeant Major, is that if you are a court member, then you
12 are required to base your decisions in this case solely upon the
13 evidence as it comes out in open court and upon the instructions on
14 the law as I give them to you.

15 Are you convinced that you would be able to set aside the
16 knowledge that you have from the SIPR report and base your decision
17 solely on the evidence as it comes out?

18 A. Oh, yes, Ma'am, most definitely.

19 Q. Okay because you understand the SIPR report is not
20 evidence.

21 A. Yes, Ma'am.

22

1 Q. Unless one of the parties puts it into evidence.

2 A. Yes, Ma'am. I know that it just reports incidents as they
3 occur not necessarily as any definitive information that is on there.
4 Only that there is an incident that has occurred.

5 Q. Well and that is a good point. They are not always
6 absolutely accurate, are they?

7 A. Yes, Ma'am.

8 Q. All right, so are you satisfied or do you have any
9 hesitation at all about your ability to be fair and impartial and
10 base your decision solely on the evidence and the law as I give it to
11 you?

12 A. No, Ma'am, I do not.

13 MJ: Government, any questions?

14 TC: No, Your Honor.

15 MJ: Defense, any questions?

16 ADC: No, Ma'am.

17 MJ: Okay Command Sergeant Major, if you would return to the
18 deliberation room and please bring in Master Sergeant [REDACTED] or ask him
19 to come in?

20 MEMBER [CSM [REDACTED]] Yes, Ma'am.

21 (S)(6)-2

1 [Command Sergeant Major ██████████ withdrew from the courtroom, and
2 Master Sergeant ██████████ (S)(b)-2 entered the courtroom and was seated.]

3 MJ: Please be seated.

4 [All parties did as directed.]

5 MJ: Master Sergeant ██████████ has returned to the courtroom. All
6 other members are absent. (S)(b)-2

7 **INDIVIDUAL VOIR DIRE OF MASTER SERGEANT ██████████**

8 **Questions by the military judge:**

9 Q. Sergeant ██████████ we should have asked you this before and I
10 apologize for not doing so.

11 You had indicated earlier that you knew that this had
12 happened. Do you recall that?

13 A. I knew that----

14 Q. The events of this court-martial?

15 A. Yes, Ma'am.

16 Q. What is the basis for your knowledge?

17 A. I had read about it in the paper----

18 Q. Okay.

19 A. ----and you know, it seemed like that the time I had to be
20 here for this court-martial coincided with the date in the paper.

21

1 Q. So when you say the paper, are you talking about the Stars
2 and Stripes?

3 A. The Stars and Stripes, yes, Ma'am.

4 Q. Do you remember what the article said?

5 A. It----

6 Q. First of all, how long ago was it?

7 A. It was just real brief, just about the charges.

8 Q. How long ago was it, ballpark?

9 A. Maybe 3 or 4 days ago.

10 Q. Do you remember what it said?

11 A. It just stated the charges pretty much. I really didn't
12 read too much into it.

13 Q. Just that a Soldier was----

14 A. It had the Soldier's name in it and you know, what the
15 charges were.

16 Q. Okay, so you knew that a Soldier was charged with murder of
17 an Iraqi citizen?

18 A. Yes, Ma'am.

19 Q. Apparently it must have said that the trial was going to be
20 in the beginning of August or something like that?

21 A. Yes, it said I think the 3rd of August in Tikrit.
22

1 Q. So you put two and two together that you were asked to sit
2 as a court member?

3 A. Yes, I thought it would be a possibility since I was told
4 to be here for trial at the same time.

5 Q. Now do you recall whether the article said anything about
6 whether the Iraqi citizen that was killed was a Soldier, or a
7 militant, or a civilian, or a----

8 A. It had his name but it didn't--I can't remember--I can't
9 recall if it specified what he----

10 Q. What his status was?

11 A. Right.

12 Q. Okay, and did the article specify whether the Iraqi person
13 was being detained at the time?

14 A. I can't recall.

15 Q. It sounds to me, Master Sergeant, like your recollection is
16 pretty vague and sketchy.

17 A. Pretty vague. It really didn't have that much information
18 in the article.

19 Q. All right, do you understand that whatever you read in the
20 article is not evidence in this court-martial?

21 A. Yes, Ma'am. I understand that.

22

017326

1 Q. All right, the government is required to present evidence
2 in an attempt to try and prove beyond a reasonable doubt that the
3 accused committed a crime in this case. Okay, do you understand
4 that?

5 A. Yes, Ma'am.

6 Q. Now are you convinced, if asked to be a court member, will
7 you be able to base your decision in this case solely upon the
8 evidence as it is presented in trial and upon the instructions on the
9 law as I give them to you?

10 A. Yes, Ma'am.

11 Q. So are you convinced that you can set aside whatever you
12 read in the article in the newspaper and not consider that in making
13 your determination?

14 A. Yes, Ma'am.

15 Q. Do you have any hesitation in your ability to be fair and
16 impartial in that regard?

17 A. No, Ma'am.

18 MJ: Government, any questions?

19 TC: No, Your Honor.

20 MJ: Defense, any questions?

21

1 ADC: No, Ma'am.

2 MJ: All right, Master Sergeant [REDACTED] if you would return to the
3 deliberation room, please.

4 [MSG [REDACTED] (b)(6)-2 withdrew from the courtroom.]

5 MJ: All right, any other requests for individual voir dire?

6 ADC: No, Ma'am.

7 MJ: All right. Court is in recess.

8 [The session recessed at 1108, 4 August 2004.]

9 [The session was called to order at 1112, 4 August 2004.]

10 MJ: Court is called to order. All parties present when the
11 court recessed are again present. The members of the court are
12 absent.

13 Government, do you have any challenges for cause?

14 TC: Yes, Your Honor.

15 The government challenges Command Sergeant Major [REDACTED] for
16 the following reasons: (b)(6)-2

17 He adequately described on the record that his brother was
18 charged with the crime, some type of homicide crime involving a
19 firearm. Although it happened in 1981 to 1983 and Sergeant Major
20 [REDACTED] (b)(6)-2 was outside of the country at the time, it is still his
21 brother.

22

1 TC: His brother apparently was involved in the shooting of
2 another individual and the defense in the case was an accident.
3 Apparently his brother was acquitted.

4 Regardless of what Command Sergeant Major [REDACTED] would be
5 able to say or would be able to try to do in the case, having a
6 family member charged with murder has to affect the person in the way
7 they look at the law and whether or not an accident can occur, an
8 accident may end up being a defense in this case.

9 The government is not sure but clearly the Sergeant Major
10 will hear different defenses in the case and because he is so--his
11 own brother was charged and tried for the offense, it may cast too
12 much doubt in the panel member's mind.

13 Additionally, Your Honor, although I don't----

14 MJ: Well lets--oh are you still talking about [REDACTED]

15 TC: Yes, Ma'am.

16 MJ: Okay.

17 TC: Additionally, although I don't brings them over the top for
18 any of the three that stated that they weren't witnesses in a court-
19 martial, and then later on individual voir dire did state that they
20 were witnesses in a court-martial. I think that that adds to the
21 argument or for the challenge of Command Sergeant Major [REDACTED]

22

(b)(6)-2
017329

1 TC: The apparent contradiction on whether or not they were
2 witnesses in a court-martial with Sergeant Major [REDACTED] Sergeant
3 Major [REDACTED], and Master Sergeant (S) (G)-2 [REDACTED] it doesn't appear to the
4 government that they were intentionally lying. It was that either
5 that they were not listening or they didn't fully understand. For
6 the----

7 MJ: I think they found a distinction between a character
8 witness and versus a substantive witness, but okay.

9 TC: Yes, Your Honor.

10 MJ: Okay.

11 TC: But that in addition to the fact that Sergeant Major
12 (S) (G)-2 [REDACTED] brother was an accused or a defendant in a criminal murder
13 trial would have bearing on whatever he sees during this court.

14 MJ: Defense, any objection?

15 ADC: Yes, Ma'am. The defense does not believe there is
16 sufficient reason to strike him for cause for the following reasons,
17 Ma'am:

18 First of all, he stated that more or less he is not really
19 all that close to his brother. Although he certainly knows that this
20 happened to his brother, he does not know a tremendous amount of
21 detail about it.

22

1 ADC: The incident occurred over 20 years ago so it was a long
2 time ago. The Sergeant Major himself doesn't see any parallels
3 between the situations.

4 And last, Ma'am, the defense in this case, on our part, is
5 not the same as his brother's defense in that case. Our defense is
6 not one of accident. And, so on that basis we are not going to be
7 arguing the same thing that apparently got his brother acquitted so
8 we don't believe that the situations are all that necessarily
9 identical.

10 We don't believe that the Sergeant Major should be
11 disqualified due to that.

12 MJ: Any other challenges for cause, Government?

13 TC: No, Your Honor.

14 MJ: All right. That challenge for cause is granted. I too am
15 concerned about a couple of things. One that he agrees to the fact
16 this his brother was charged with killing somebody with a firearm
17 until late in the game well after I had asked the question about if
18 anybody had a family member who is charged with a crime similar to
19 this. I find that it was very similar in that it was a discharge of
20 a weapon that killed someone.

21

1 MJ: There are dissimilarities I agree, however, I believe the
2 case for his challenge was made and in light of liberal granting of
3 challenges for cause, this challenge for cause should be granted.

4 Defense, any challenges for cause?

5 ADC: Yes, Ma'am. The defense would like to challenge Colonel

6 [REDACTED]

7 (S)(A)-2 Ma'am, though we are cognizant of his responses to the
8 rehabilitative questions concerning whether he could be fair in this
9 case and whether he has any bias against defense or against defense
10 clients. Nevertheless, his commentary that he admitted that he
11 doesn't want TDS in his office raises considerable concern in the
12 defense's mind.

13 We do think that he is biased against the defense in the
14 general sense. So, we would challenge him primarily on that basis,
15 Ma'am.

16 MJ: Okay, any objection.

17 TC: Yes, Your Honor. The government believes that Colonel
18 [REDACTED] fully rehabilitated himself, has no bias against trial defense
19 (S)(A)-2 service, believes that they are a necessary and vital part of the
20 military and the justice system and that he has been fully
21 rehabilitated.

22

017332

1 MJ: Well I do recall him saying that. On the other hand he
2 agreed that he didn't want them in his building, both for his benefit
3 and for TDS' benefit. And again, in light of liberal granting for
4 challenges for cause, that challenge for cause is granted.

5 Anything else, Defense?

6 ADC: No more challenges for cause, Ma'am.

7 MJ: Very well. Government, any peremptory challenge?

8 TC: One moment, Your Honor.

9 [Long pause.]

10 TC: No, Your Honor.

11 MJ: Defense, any peremptory challenge?

12 ADC: Just one moment, Your Honor.

13 [Long pause.]

14 ADC: No, Ma'am.

15 MJ: Very well. Court is in recess.

16 [The session recessed at 1120, 4 August 2004.]

17 [The session was called to order at 1122, 4 August 2004.]

18 MJ: Court is called to order. All parties present when the
19 court recessed are again present. The bailiff is getting Colonel

20 [REDACTED] and Command Sergeant Major [REDACTED]

21 (L)(b)-2

017333

1 [COL ██████ and CSM ██████ entered the courtroom.]

2 MJ: Colonel ██████ and Command Sergeant Major ██████ have
3 entered the courtroom. All other members are absent.

4 Sir, Command Sergeant Major ██████, thank you very much for
5 your attendance at this court-martial. You are excused and may
6 return to your duties, all right?

7 MEMBER [CSM ██████]: Thank you, Ma'am.

8 MJ: Thank you.

9 [COL ██████ and CSM ██████ the challenged members, withdrew from the
10 courtroom.]

11 MJ: Would you recall the other members please.

12 [The session adjourned at 1125, 4 August 2004.]

13 [END OF PAGE]

14

017334

1 [The court-martial was called to order at 1125, 4 August 2004.]

2 MJ: The members of the panel have reentered the courtroom with
3 the exception of Colonel ^{(S)(G)-2} [REDACTED] and Command Sergeant Major [REDACTED]

4 Members, you are the members that will hear the evidence
5 and decide the issues in this case. We need to shuffle the seats a
6 little bit to give you a little bit more room and what I would like
7 to do is recess you all for chow and return at 1300 when we will
8 start with opening statements and presentation of evidence. All
9 right? You are released.

10 Court is in recess.

11 [The court-martial recessed at 1126, 4 August 2004.]

12 [END OF PAGE]

13

1 [The Article 39(a) session was called to order at 1300, 4 August
2 2004.]

3 MJ: This Article 39(a) session is called to order. All parties
4 when the court recessed are again present. The members are absent.

5 Defense?

6 ADC: Yes, Ma'am. Earlier, Ma'am, I understand that you
7 basically ruled that the government could use the demonstrative
8 evidence or should I say, the re-enactors.

9 There is just a couple more points that I would like to
10 raise on the record concerning that.

11 MJ: Okay.

12 ADC: Essentially, Ma'am, the defense feels that the reenactment
13 has the potential to be very prejudicial and unduly so with regards
14 to its probative value under 403.

15 MJ: Okay.

16 ADC: Our concern--our two specific concerns, Ma'am, which I
17 would like to note. The bottom line of concern is that the overall
18 demonstration will not be substantially similar enough to the
19 conditions under which the actual event occurred to be probative of
20 how it did in fact happen.

21

1 ADC: The two concerns that I have specifically are one, that the
2 incident itself, when it actually occurred, occurred on uneven
3 ground, uneven terrain, essentially farm land or a field which
4 included in a berm that was anywhere from six to ten inches high,
5 Ma'am.

6 Some of the actors in this event were more or less standing
7 on that berm. I think that has a great impact on frankly just on
8 their balance, just the way they would walk, step, things of that
9 nature. And, that has a great impact on how this scenario unfolds,
10 Ma'am.

11 The second point, Ma'am, is that the victim in this case
12 was wearing some sort of headscarf or bandana. This is somewhat
13 contingent on the evidence but it may come out that that bandana
14 played a role in obscuring PFC Richmond's view of his--of the
15 victim's arms and hands in the event.

16 So those are two specific factors that we would be very
17 concerned about in, you know, in terms of misleading the members in
18 how it happened and them not really getting an accurate idea of how
19 things might have viewed to PFC Richmond, which I think is an element
20 to the benchbook instruction that you are likely to give.

21

1 ADC: So, I just wanted to raise those points on the record,
2 Ma'am. Essentially move to reconsider our objection, with those
3 additional bases, but we do respect the court's earlier judgment,
4 Ma'am.

5 MJ: Well right----

6 ADC: I simply wanted to note that.

7 MJ: And I see this as that as a motion to reconsider and that
8 is fine.

9 ADC: Yes, Ma'am.

10 MJ: Government, do you have a response.

11 TC: Yes, Your Honor.

12 MJ: Go ahead.

13 TC: The key test is whether or not it aids the witness in his
14 testimony in explaining what the witness--what he saw on the day of
15 the event.

16 The government position is that this will aid the witness
17 in explaining what happened. The problems that the defense counsel
18 has raised, those make the demonstration subject to cross-
19 examination. The defense can handle whatever issues they have with
20 the demonstration through cross-examination.

21

1 TC: Or, Your Honor, if they wish to, they do not have to, they
2 can present their own demonstration.

3 MJ: Well they don't have to do that though, do they?

4 TC: They do not.

5 MJ: They don't have to present any evidence.

6 TC: They don't have to do anything, Ma'am.

7 MJ: This demonstration is going to be done with Sergeant

8 (S)(b)-7 [REDACTED] is that right? With his testimony?

9 TC: Yes, Your Honor.

10 MJ: And will Sergeant (S)(b)-7 [REDACTED] say that a demonstration would
11 help him in describing what happened that day?

12 TC: Yes, Ma'am.

13 MJ: All right. I specifically find that a demonstration is
14 relevant under the definitions of Military Rule of Evidence 401 and
15 402 and that its probative value is significant.

16 That is the understanding, the events of 28 February is
17 critical for a determination of the members in deciding the issues in
18 this case.

19 Having said that, it is my opinion and finding that the
20 probative value is not substantially outweighed by the danger of
21 unfair prejudice, confusion of the issues, or misleading the members,
22 or by considerations of undue delay, waste of time and needless
23 presentation of cumulative evidence.

1 MJ: Now, I say that government. I assume this is not going to
2 take 4 hours to repeatedly go over the demonstration.

3 TC: No, Your Honor.

4 MJ: Roger. So, as to the two specific issues that you have
5 raised Captain ^{(b)(7)} [REDACTED] you will of course be permitted to raise those
6 issues during cross-examination to ensure that the members understand
7 that we are not in a field.

8 ADC: Yes, Ma'am.

9 MJ: We are not under a combat situation. We are not recreating
10 the demonstration exactly in the format that it occurred on the 28th
11 of February.

12 ADC: Yes, Ma'am.

13 MJ: As to the headscarf, to the extent that you believe that is
14 critical, then you are certainly able to add that to the
15 demonstration during your cross-examination if you desire and point
16 out to the members how that may impact the accused's view of what was
17 occurring during that day, all right?

18 ADC: Yes, Ma'am. Thank you.

19 MJ: Any other issues we need to handle before we call the
20 members?

21

1 TC: No, Your Honor.

2 MJ: Defense?

3 ADC: No, Ma'am.

4 MJ: All right. Call the members, please.

5 [The session adjourned at 1308, 4 August 2004.]

6 [END OF PAGE]

7

1 [The court-martial was called to order at 1308, 4 August 2004.]

2 MJ: Court is called to order. All parties present when the
3 court recessed are again present. The members are also present.

4 Members of the panel, at an earlier session the accused
5 entered a plea of Not Guilty to this Charge and Specification.

6 You are now going to hear opening statement by counsel.
7 You are advised that opening statements are not evidence. Rather
8 they are what the counsel believe the evidence will show in this
9 case.

10 Proceed, Trial Counsel.

11 TC: Colonel ^{(b)(6)-2} [REDACTED] Members of the panel, powerful America
12 sends its powerful military to Iraq to liberate Iraq and is
13 successful.

14 One of the beneficiaries of this liberation was a young
15 Iraqi by the name of ^{(b)(6)-4} [REDACTED] Your Mr. [REDACTED] was a free
16 man and he had a good job. His job was as a cow herder, herding
17 cows, which the military normally sees.

18 You see these sheep herders and cow herders in this
19 country. It is not much of a job, but it is a living and it appears
20 that this herding cows is an honest living.

21

(S)(b)-2
1 MJ: But Mr. [REDACTED] on the 28th of February was about to begin
2 his job in the daylight hours. He was in the village of Taal Al Jal
3 in the area of operations for 1-27 Infantry Regiment out of--which is
4 part of the 25th Infantry Division's 2nd BCT.

(S)(b)-4
5 Mr. [REDACTED], on the morning of the 28th, right around
6 daybreak, walked outside the village. He walked with his cows (S)(b)-4
7 outside of the village. The cows were walking and so was Mr. [REDACTED]
8 He was basically following the cows.

9 They walked out of the village with his cows and they went
10 into this large field outside the village. He walked to about 100 to
11 200 meters outside of the village and he started to do his job. He
12 was watching his cows.

(S)(b)-4
13 Mr. [REDACTED] had no weapons on him. He was--it was a little
14 chilly because it was February and he was wearing a green and gold
15 sweat suit, some cheap looking shoes and a tattered looking jacket
16 and a scarf like the scarves that you see Iraqis wear.

17 As he was out there watching his cows, he noticed in the
18 distance just a couple hundred meters away in another direction that
19 there were American Soldiers out there. There were a couple of
20 American Soldiers out there. Apparently they were doing something
21 and Mr. [REDACTED] was going about his own business.

22 (S)(b)-4

1 TC: He was just watching his cows and not doing anything
2 suspicious at all. About 8:30 in the morning Mr. [REDACTED] noticed that
3 two Soldiers were walking towards him. Two American Soldiers wearing
4 Kevlar helmets, wearing their body armor, wearing--and carrying
5 weapons, carrying M4 rifles.

6 As they approached, Mr. [REDACTED] understood that they were
7 walking towards him with the intent of talking to him. Mr. [REDACTED]
8 then watched them walk toward him and as the two Soldiers approached,
9 one Soldier said something, but it was English and Mr. [REDACTED] didn't
10 understand it and the Soldier raised his arms.

11 Mr. [REDACTED] once the Soldiers raised his arms, in a
12 reflexive action, raised his arms as well. The first Soldier then
13 put his arms down and Mr. [REDACTED] put his arms down as well.

14 The Soldier said something else that made him a little
15 angry and he raised his arms again. Mr. [REDACTED] then raised his arms
16 to his side making a T shape and kept his arms out to the side.

17 Now this first Soldier was walking directly towards Mr.
18 [REDACTED]. Mr. [REDACTED] watched both of them walk towards him. One of the
19 Soldiers had his weapon, his M4 rifle, at the ready. The other
20 Soldier was at a low ready, or he just had it slung.

21

(b)(7)(D)
4

017344

1 TC: Soldiers can sling their M4s basically along their body
2 armor where they can use their hands and that is what this first
3 Soldier was doing.

4 Mr. [REDACTED] is--in one of the Soldier's hands in the white
5 flexi-cuffs that is used to detain Iraqi detainees. Mr. [REDACTED] just
6 watched him. He still had his hands up. As the first Soldier, the
7 one that he initially had spoken to walked over to him to stand in
8 front of Mr. [REDACTED] Mr. [REDACTED] just stood there.

9 Meanwhile, the second Soldier moved over beside Mr. [REDACTED]
10 about 1 to 2 meters away, still at the ready with his weapon. This
11 caused them to be facing each other, the first Soldier and Mr. [REDACTED]
12 The first Soldier took one of his hands and did a light pat down very
13 quickly of Mr. [REDACTED]. And at that point, the first soldier turned
14 Mr. [REDACTED] around and did the same thing, a light pat down to his
15 back.

16 At this point the first Soldier had his weapon slung so he
17 could use both hands so when the first Soldier took his hands and put
18 them on top of the arms of Mr. [REDACTED] and moved him down. Mr. [REDACTED]
19 who didn't resist with his arms or legs or shoulders--he resisted a
20 little with his arms. He was realizing that he was going to be
21 detained.

22

(S)(b)(4)

(S)(b)-4
1 TC: The Soldier, who was much bigger, much taller, much
2 heavier, easily overpowered Mr. [REDACTED] and placed the--placed [REDACTED]
3 [REDACTED] arms behind him in preparation of the flex-cuffs.

4 Mr. [REDACTED] was still a little upset that he was going to be
5 detained so he struggled a little bit with his hands and arms. He
6 kept the same place with his feet and didn't try to run or anything.
7 He was just trying to not allow the first Soldier to put the flex-
8 cuffs on.

9 At this point the first Soldier was having difficulty
10 placing the flex-cuffs on. He had the right flex-cuff and he had
11 already made a loop to place around both wrists of Mr. [REDACTED] behind
12 his back, however, Mr. [REDACTED] (S)(b)-4 was not really cooperating with what the
13 first Soldier was wanting to do.

14 At this point the first Soldier decided that he was going
15 to use his security to help him and he told his security, the second
16 Soldier, to raise your weapon.

17 The Soldier complied. He was told to raise his weapon to
18 the high ready, and you will hear testimony about what exactly the
19 high ready is. Soldier raises his weapon to the high ready and
20 points his weapon to Mr. [REDACTED] He points it towards his chest.

21

(S)(b-7)

1 TC: This caught Mr. [REDACTED] attention. He shifts on his feet
2 for a few seconds and grabs both of his wrists probably using the
3 cuffs of the jacket or the shirt of Mr. [REDACTED] He grabbed him, put
4 the flexi cuffs on Mr. [REDACTED] behind his back, and raised, with one
5 hand on him, and raised Mr. [REDACTED] arms back up behind him while at
6 the same time he zipped the flexi cuffs tight, zipping them real,
7 real tight.

8 At that point he let go--the first Soldier let go of the
9 bounded arms of Mr. [REDACTED] and let them go back down to his back and
10 he had detained the individual with the flex-cuffs. The first
11 Soldier then grabbed Mr. [REDACTED] left arm and patted him on the back,
12 just once and looked back to his right to see that the second
13 Soldier, who at that point was at the high ready, was looking over
14 the M68 scope, the first Soldier saw the full face of the second
15 Soldier and said, "He's good. Let's go"

16 Meanwhile, he is turning Mr. [REDACTED] and he recalls Mr. [REDACTED]
17 looking at him just for a brief second, and then they were starting
18 to walk forward. And although the ground is uneven, they are walking
19 forward. Mr. [REDACTED] walks two steps and a head on round impacted and
20 goes through the back of his head. Mr. [REDACTED] is now dead.

21

(S)(b-7)

() ()

b(2)-4

1 TC: Mr. [REDACTED] then falls to his knees and then he falls to his
2 back, dead before he reaches the ground probably.

3 This first Soldier, whose ears are deafening because of the
4 sound of the shot, didn't exactly know where it came from but it was
5 a loud shot that he heard.

6 He turns around and looks at the second Soldier and the
7 second Soldier is already has his weapon down and the second Soldier
8 said, "He jumped at you." Or, "He came at you." It was something to
9 that effect.

10 And the second Soldier was Private First Class Richmond,
11 the accused in this case. Private First Class Richmond is a member
12 of 1-27 Infantry and the mortars platoon.

13 Prior to leaving Hawaii and coming to Iraq, he had told
14 several other Soldiers that he was going to get an Iraqi, that he was
15 going to kill an Iraqi. Now a lot of Soldiers do that, but Richmond
16 seemed a little more serious than others.

17 On the morning of the 28th, PFC Richmond was part of a
18 mission that I have just described. It was actually a raid inside of
19 this village and PFC Richmond's mortar platoon or mortar squad was to
20 conduct a tactical control point and to cordon outside of the village
21 a couple hundred meters away.

22

017348

1 TC: PFC Richmond was part of this mission. He was decked out
2 in the full compliment of infantry combat gear. He had a knife, he
3 had a mask, and his job was to be part of the TCP.

4 Before PFC Richmond actually went out into this field, one
5 Soldier asking, "Can I shoot that guy?" Or, "Can I shoot him. There
6 is an Iraqi leaving the village. Can I shoot him?" Some thought he
7 was joking when he said, "Can I shoot him?" But it was an hour a
8 later when Mr. [REDACTED], just tending his cows, when PFC Richmond
9 brought down. (b)(6)(b)(7)(C)

10 The government's position is that PFC Richmond watched him
11 the entire time of this detention. Watched the flexi cuffs being put
12 on and once the Iraqi started walking away, he may have stumbled, but
13 he did not lunge, he did try to attack, he did not make any attacking
14 moves towards the first Soldier, who is Sergeant [REDACTED], who you will
15 hear from today. PFC Richmond just wanting to kill an Iraqi, and he
16 accomplished that. (b)(6)(b)(7)(C)

17 At the end of this trial the government is going to ask
18 that you, the members of the panel, to find PFC Richmond guilty of
19 unpremeditated murder.

20 Thank you.

21

1 MJ: Just a minute defense. May I see Prosecution Exhibit 7,
2 please.

3 [The reporter handed the military judge Prosecution Exhibit 7.]

4 MJ: For the record, during his opening statement the Trial
5 Counsel used Prosecution Exhibit 7, 1 of 10, 8 of 10, and 10 of 10,
6 during his opening statement.

7 Defense, do you have an opening statement now or do you
8 wish to reserve?

9 DC: At this time, Your Honor.

10 MJ: Very well, please proceed.

11 DC: This is not a murder case. This was not a murder. Tragic
12 and unfortunate, yes. But it was a killing in a time of combat.
13 Private Richmond shot Mr. [REDACTED] and Mr. [REDACTED] is dead, but this was
14 not a murder. (S)(b)-4

15 Colonel [REDACTED] (S)(b)-2, members of the panel, hindsight,
16 unfortunately, is always 20-20. The government will present evidence
17 and facts to you all during the course of this court-martial. And
18 while all those facts are important, those are the facts that are
19 presented to the court today, on August 4th, 2004. What the defense
20 would like the members of the panel to consider is what PFC Richmond
21 knew at that time on the 28th of February.

22

017350

1 DC: What was going though Private Richmond's state of mind?
2 What did he know before the 20-20 hindsight? Defense asks you to
3 consider that because at the conclusion of this court-martial the
4 military judge will instruct you that you will need to find PFC
5 Richmond guilty beyond a reasonable doubt.

6 One of the elements of the offense of which he is charged
7 is that this killing was unlawful. In looking at the lawfulness of
8 the killing, you are tasked to consider what Private Richmond's state
9 of mind was. What was going on in his 20-year old infantryman's
10 head.

11 He had only been in the country of Iraq for 3 weeks. He
12 had only been in the Army for approximately 24 months. During that
13 time, preparing with his comrades back at Schofield Barracks to come
14 over here for this mission.

15 So what did Private Richmond know? Like any Soldier he had
16 been briefed on the rules of engagement and the rules for the use of
17 force. He had been briefed back in Hawaii with his squad while a
18 member of the mortars platoon and he also received a briefing once he
19 arrived up in Kirkuk up at FOB Warrior and once he arrived at FOB
20 McHenry.

21

1 DC: In addition to the standing ROE that the Soldiers had been
2 briefed previously for wartime missions, they were also briefed
3 before each mission.

4 Sometime between the 18th of February 2004 and the 28th of
5 February 2004 when Mr. ^{(S)4-4} [REDACTED] was actually shot, the rules of
6 engagement for the mortars platoon changed significantly. They were
7 changed. They were clarified. They were ratified.

8 The one thing this unit did not change was Private
9 Richmond's right to defend himself or to defend one of his comrades
10 who was in danger or who was in trouble and they had been briefed on
11 that. They had been briefed on the rules for the use of force.

12 On the 27th of February Private Richmond was selected to go
13 on a mission for the next day, the 28th of February. After a full
14 day of work Private Richmond and some of the other members of his
15 squad were hauled in to see Sergeant ^{(S)6-2} [REDACTED], E5 Sergeant [REDACTED]

16 Sergeant [REDACTED] had come from the briefing about this Alpha
17 Company mission the next day. Now this specific group of mortars was
18 attached to Alpha Company to support their mission. Sergeant [REDACTED]
19 briefed the Soldiers, including PFC Richmond, that this was a high
20 priority mission. They were asked to get some high value targets.

21

1 DC: They were going to go on a raid of the village and their
2 mission was going to detain four to six Iraqi individuals who were
3 identified on high value target lists. That is what the Soldiers
4 were briefed.

5 So they knew it was a high value mission. They received
6 this briefing at approximately 2230 that evening. The SP time for
7 the mission was to start at 0345 the next day.

8 All that is important, what was the most important, was
9 that Sergeant ^{(b)(6)-4} [REDACTED] attended a briefing by the Alpha Company
10 Commander Captain [REDACTED] Sergeant [REDACTED] came back to brief the
11 Soldiers and what told them differed quite deceptively from what the
12 ROE was on the 28th of February. But Sergeant [REDACTED] told Private
13 Richmond and the other Soldiers that were going on this mission was
14 that they would shoot anyone fleeing the village.

15 That is what they were told. That was the information that
16 was put out. The witnesses that the government will call will tell
17 you that that was unusual and that that surprised them. Specialist
18 ^{(b)(6)-2} [REDACTED] and Specialist [REDACTED] will tell you that that part of the
19 ROE was very different from anything that they may have heard or been
20 briefed before.

21

017353

1 DC: But, since this had come down from higher and because it
2 had come down from Sergeant (b)(6)-2 they didn't question it. They
3 noted it, but they didn't question it. They are junior enlisted
4 Soldiers tasked with doing a mission. So that is what they knew that
5 day.

6 Private Richmond went to bed. He and his comrades got a
7 couple of hours of sleep and Specialist (b)(6)-2 and Specialist
8 (b)(6)-2 will tell you that. Requesting that they be there at 0345,
9 the hit their SP time to head out to the village.

10 Their job that day, specifically the mortars platoon, the
11 mortars squad, was to set up traffic control points at the northern
12 and southern parts of the village.

13 The government witnesses will also tell you that what their
14 mission was, was to stop anybody from entering the village, anybody.
15 And to stop anybody from exiting the village. That Alpha Company
16 needed them to set up these TCPs so that their mission wasn't
17 interpreted and that they could get the folks that they were
18 attempting to apprehend that day.

19 So that is what the Soldiers did. As the mission was going
20 on in the town the members of Private Richmond's squad, including
21 Private Richmond and Sergeant (b)(6)-2 were setting up the traffic
22 control point.
23

1 DC: They saw a farmer leaving the village. They saw him
2 leaving the village as the raid was going on in the village. He was
3 walking from the village going out to the field.

4 Private Richmond asked Sergeant ⁽⁵⁷⁾⁴⁻² [REDACTED], "Hey Sergeant, can
5 I shoot that guy. That guy, do you want me to shoot?" Private
6 Richmond asked that because the Soldiers had been briefed to shoot
7 all males that were fleeing the village.

8 He did the right thing. He sought clarification from his
9 NCO and he was told, "No." No problem, move on.

10 During the raid, the Soldiers were out at the traffic
11 control point as they were tasked to do. And, what they can hear
12 from inside the village is gunfire. They can hear the shouting, in
13 English and in Arabic. They can hear the doors being crashed in and
14 they can hear screaming, and its all coming back to the traffic
15 control point on the outside of town.

16 As these sounds are winding down, a call comes over the net
17 on the HMMWV. The call over the radio instructs them that at that
18 point they are to detain all males fleeing the village. Roger that.
19 Except they weren't quite sure because there was this farmer and
20 other farmers that were out there in the fields.

21

1 DC: So, clarification was sought from higher and the call goes
2 back over the radio, "We've got farmers out here. Do you want us to
3 detain them too?" And the answer is, "Yes."

4 So Sergeant ^{(b)(6)-2} [REDACTED] goes up to Private Richmond and says,
5 "Hey Richmond, come on with me. We have got to detain this guy."
6 Then they go to the closest farmer in the field who happens to be Mr.

7 [REDACTED]
8 ^{(b)(6)-4} Now the government has asserted in its opening statement
9 that Private Richmond wanted to kill Mr. [REDACTED] and intended to kill
10 Mr. [REDACTED]. Well when we look at the complete facts of the case, it
11 just doesn't make sense.

12 He has told you that Mr. [REDACTED] was flex-cuffed. He has
13 told you that there were numerous folks ^{(b)(6)-4} out there on the mission that
14 day. To jump to the step to say that Private Richmond knowingly shot
15 someone who was flex-cuffed with numerous people possibly watching
16 him with an NCO within meters of him just doesn't make sense.

17 Well what does make sense is what actually happened that
18 day. As they approached Mr. ^{(b)(6)-4} [REDACTED], with both of their weapons
19 visible to him, he started to resist. He started to shout in Arabic.
20 He saw two uniformed U.S. Soldiers coming towards him with weapons
21 and flex-cuffs.

22 .

1 DC: He did not just put his hands up. He resisted. He was
2 playing games. The Soldiers showed them their weapons. They shouted
3 at him to get him to understand and he continued to resist.

4 Sergeant [REDACTED] directed Private Richmond to go to the high
5 ready. Again, that is exactly what he did. But he didn't just tell
6 him to go to the high ready. Sergeant [REDACTED] told Private Richmond,
7 "If he fucking moves, shoot him. Shoot him if he fucking moves."
8 That's what he yelled at him. Private Richmond held his weapon up
9 and he looked through his scope.

10 Mr. [REDACTED] was resisting. Certainly, he did not want to be
11 apprehended by these two U.S. Soldiers. Sergeant [REDACTED] struggled
12 with Mr. [REDACTED] to get him flex-cuffed. Mr. [REDACTED] body had been
13 moved back and forth and that was what Private Richmond was seeing
14 when he was looking through his scope. He could see--he was focused
15 on his head like his NCO told him to do.

16 What the evidence will show and what Sergeant [REDACTED] will
17 tell you is that as he turned to move Mr. [REDACTED] away, he took one
18 step and then he took a second step and at that second step is when
19 he felt Mr. [REDACTED] lean into his right side. He will tell you that he
20 had to use his weight to push Mr. [REDACTED] back off of his right side.

(S)(b)-2

1 DC: What Sergeant [REDACTED] will also tell you is that after the
2 one step, two step, the shove, is when the shot--and it is at that
3 second step when Private Richmond shot Mr. [REDACTED]

4 What are they going to say? What will the facts and the (S)(b)-4
5 evidence show today? They will show you that Mr. [REDACTED] is flex-
6 cuffed. The facts will also show you that at the time he was flex-
7 cuffed, Mr. [REDACTED] (S)(b)-4 was standing on a berm. He was standing on a dirt
8 berm about 8 to 10 inches off the ground.

9 The facts today will show you--the photographs will show
10 you that it was on uneven ground. It was rough farmland. It was not
11 a smooth field.

12 But the facts will also show you that Mr. [REDACTED] didn't have
13 any weapons on him. The facts will show you that Mr. [REDACTED] (S)(b)-4 either
14 leaned into Sergeant [REDACTED] (S)(b)-2 or stumbled into him, and ultimately,
15 the facts may show you that Mr. [REDACTED] was an Iraqi farmer. He was
16 not an insurgent and he was not a terrorist. (S)(b)-4

17 That is what the evidence will show you during the course
18 of this court-martial. What the evidence will also show you is what
19 PFC Richmond was thinking at the time. Private Richmond has made
20 statements that the CID agents will testify about how they got the
21 statement that he gave to them.

22

017358

1 DC: What Private Richmond knew at the time was that no real
2 thorough and accurate search had been done on Mr. [REDACTED] It was a
3 one-two pat down on the front and at the most a one-two pat down on
4 the back. Why? Because Sergeant ^{(S)(b)-2} [REDACTED] is focused arresting the
5 detainee because he was resisting. ^{(S)(b)-4}

6 The facts will also show that Mr. [REDACTED] was quite clearly
7 resisting, that he was angry, that he had a clear of the Soldier or
8 at least had a clear view of him showing their weapons and raising
9 their weapons. The facts will show you that that is what PFC
10 Richmond knew at the time.

11 Private Richmond also knew at the time that Mr. ^{(S)(b)-7} [REDACTED] had
12 left the village sometime between 30 and 60 minutes prior to the
13 actual killing. He knew that the village was the focus of the
14 mission and he knew that Alpha Company was looking for high value
15 targets in that village. He knew that those high value targets were
16 male.

17 The photographs will show you that ^{(S)(b)-4} Mr. [REDACTED] was wearing a
18 scarf, as you have already seen. Mr. [REDACTED] was wearing a red and
19 white checked scarf that, at least at the time of his death, was
20 around his neck and flowing down his back several feet in length with
21 the excess part of his scarf.

22

1 DC: The evidence will also show you that Private Richmond
2 whether Sergeant (b)(6)-2 said it or not, never heard Sergeant (b)(6)-2
3 say, "He's good. Let's go." Whether or not he said it, PFC Richmond
4 never heard him say that because he was focused on his scope and when
5 he saw the individual in his scope lunge, or move, or stumble, he
6 thought he was going after his NCO.

7 At the time that he acted, Private Richmond was looking
8 after Sergeant (b)(6)-2 He was using all of the tools and all of the
9 skills that are given to him as a 20-year old PFC. He was making
10 decisions based on what he knew at the time.

11 Members of the panel, mistakes are not always crimes.
12 Killings are not always murder. This is not a murder, it is a
13 tragedy.

14 Thank you.

15 MJ: Members of the panel, before I have the government call
16 their first witness, there are a couple of things to say.

17 This is a lovely room, but the acoustics are funky, so if
18 you can not hear what a witness says, please raise your hand or
19 somehow get my attention so that I can ask the witness to speak up
20 some.

21

1 MJ: Second, the second row is not elevated. What I would like,
2 is in the first row, if you would keep your chairs in the lowest
3 possible position and in the second row, if you would keep your
4 chairs in the highest possible position. We did some test runs and
5 that gives you best the opportunity to see the witnesses and judge
6 their credibility.

7 Then the last thing that I would like to tell you is that
8 there are papers in your folder for taking notes. I would encourage
9 you to take notes so that you can have those to refresh your
10 recollection when you close to deliberate.

11 Government, call your first witness.

12 **FIRST LIEUTENANT** (b)(6)-7, U.S. Army, was called as a
13 **witness for the prosecution, was sworn, and testified as follows:**

14 **DIRECT EXAMINATION**

15 **Questions by the trial counsel:**

16 Q. Can you state your full name and your rank, and your unit
17 also?

18 A. First Lieutenant (b)(6)-7, Alpha Company,
19 1st Battalion, 27th Infantry, 2nd Brigade Combat Team, Rifle Company
20 Executive Officer.

21

1 Q. You say, "2nd Brigade Combat Team." From which division do
2 you come from?

3 A. The 25th Infantry Division (Light).

4 Q. So your combat team is better known as 2-25 amongst the
5 division?

6 A. No, Sir, it is 1-27, Wolfhounds.

7 Q. But your BCT?

8 A. Yes, Sir. That is correct.

9 Q. Your battalion is the 1-27 Wolfhounds. Where is--where are
10 the places that your battalion is located?

11 A. My battalion is split between FOB Gains Mills and FOB
12 McHenry. I am currently located on FOB McHenry.

13 Q. In what area of Iraq is this?

14 A. It is southwest of Kirkuk and immediately south of the town
15 of Hawija.

16 Q. Could you briefly describe your job as the Company
17 Executive Officer?

18 A. Yes, Sir. I am ultimately responsible for all aspects of
19 the rifle company. I am a resourcer basically all ammunition and
20 uh--in garrison it's more admin stuff. Here in the combat zone I am
21 subunit leader basically for the Commander when he wants to split the
22 elements.

23

1 Q. Okay.

2 A. That is pretty much my focus right now.

3 Q. When did your unit and you arrive in Iraq?

4 A. I arrove [sic] on January 21st. Actually Kuwait from
5 January 21st until around February 9th when we arrove [sic] in
6 Hawija.

7 Q. And do you recall the morning of the 28th of February of
8 this year.

9 A. Yes, Sir.

10 Q. Where were you that morning?

11 A. Sir, I was on the south-most sector of the village of Taal
12 Al Jal.

13 Q. And where is Taal Al Jal?

14 A. Taal Al Jal is immediately west of the village of Hawija.
15 It is like a satellite city if you will, a satellite village of
16 Hawija.

17 Q. And why were you in or near Taal Al Jal?

18 A. Sir, we had a mission that early morning to conduct a hard
19 raid on multiple target buildings in Taal Al Jal. The mission, the
20 intent of the mission was to take down chief finances of the Fedayeen
21 terrorists cell who were supporting and fighting us in Hawija.

22

1 Q. And who was involved in this operation?

2 A. Sir, we had two attachments and the company pure. The
3 company pure being about a 127 riflemen from my company and an
4 attachment of ADA, which is one Avenger truck, and an attachment of
5 mortars, a section.

6 Q. And what was the mortars section going to do during this
7 mission?

8 A. Sir, the battalion mortars section and the ADA vehicle
9 was--their mission was to set up a blocking position on the south
10 side of Taal Al Jal. Their mission was to basically cordon off to
11 keep us safe within the city. No enemy was to flee the city and no
12 one was to ever go into the city while we were conducting the--while
13 we were conducting our raid.

14 Q. How far was the mortars section positioned from Taal Al
15 Jal?

16 A. Sir, it was immediately south on the only road that goes
17 into Taal Al Jal, approximately 250 meters away from the village.

18 Q. And what was between the position of the mortars section
19 and the actual village?

20 A. There is nothing, Sir. It was plain view. It was open
21 field.

22

1 Q. Do you know Private First Class Edward Richmond?
2 A. I didn't until that afternoon, Sir.
3 Q. Okay, but you did see him that afternoon.
4 A. Yes, Sir. I saw him that afternoon.
5 Q. Do you see him in the courtroom here today?
6 A. Yes, Sir. I do.
7 Q. Can you point to him, please?
8 [The witness points to the accused.]
9 TC: The witness has identified the accused.
10 Q. From what you perceived, what happened outside the village
11 that day?
12 A. Roughly about 7:30 in the morning, we had just finished up
13 hitting our last target building and there was a shot that rang out
14 from that position's area, the approximate area.
15 Everyone rushed out of the building and immediately the
16 commander called for a SITREP. Basically he wanted to rally up all
17 the leadership because apparently someone had reported to him that
18 there had been a shot fired and there was a man down in the field, an
19 Iraqi. He wanted to rally all the leadership up so I moved to the
20 position of where the shooting occurred.
21

1 A. Other than that, I arrived on scene about 5 minutes later
2 and then-----

3 Q. About 5 minutes after the shot?

4 A. Yes, Sir.

5 Q. Okay.

6 A. Approximately 5 minutes after the shot occurred.

7 Q. And when you arrived, what was your role?

8 A. When I arrived, Sir, the Commander was already there and
9 the First Sergeant, who was with me, actually beat me there. He had
10 already cordoned off the area because it was outside of our blocking
11 position.

12 The Commander tasked me to set security up past where the
13 shoot occurred and basically take pictures. I was the only person,
14 the XO, I carry the digital camera on every combat OP and I am tasked
15 to take most pictures. I had the camera that day and he immediately
16 instructed me to start clicking photographs of the body.

17 TC: Your Honor, may I approach the witness?

18 MJ: You may.

19 Q. Lieutenant [REDACTED], I am handing you what has been labeled as
20 Prosecution Exhibit 7. (4)(6)-2 [REDACTED]

21 A. Yes, Sir.

22

1 Q. Could you please look through that?

2 A. Yes, Sir.

3 [The accused did as directed.]

4 Q. Do you recognize Prosecution Exhibit 7?

5 A. Yes, I do, Sir.

6 Q. How do you recognize it?

7 A. I took this photograph on the ground that day. This is the

8 way the body was lying when I found it.

9 Q. Okay, you were talking about the 1 of 10, the first page of

10 the pictures?

11 A. Yes, Sir, 1 of 10.

12 Q. Okay, would that be the same--you say you took that

13 picture?

14 A. Yes, Sir.

15 Q. How about the following nine?

16 A. All the other following, exhibits 2 through 10, I took

17 every one of these pictures.

18 Q. Approximately what time after your arrival or how much time

19 elapsed after your arrival did you start taking pictures?

20 A. It was almost immediate. It was another 5 minutes that

21 passed while we were getting our security out, which was pretty much

22 getting it in place.

23

1 Q. Okay.

2 A. The Commander said, "Get the picture [sic] out. We don't
3 have much time to waste and start clicking photographs."

4 Q. To your knowledge, when you arrived, had Mr. [REDACTED] body
5 been moved?

6 A. No, Sir. It was not touched.

7 Q. So what was the position of Mr. [REDACTED] body when you
8 arrived?

9 A. This was the position I am looking at in Exhibit 7, Sir, or
10 in----

11 Q. Prosecution Exhibit 7, 1 of 10?

12 A. Prosecution Exhibit 7, 1 of 10. This is the way I found
13 the body lying with the leg cocked up slightly, and his body to the
14 left laying on his back and with his head facing north towards the
15 city.

16 Q. There are several photos in there of Mr. [REDACTED] front.
17 How did that occur?

18 A. Of his front, Sir?

19 Q. His front side?

20 A. His front side?

21 Q. I mean, I'm sorry, of his backside?

22 A. Of his backside of where his hands were, Sir?

23 Q. Yes.

1 A. Well the Commander asked me to roll him over after I had
2 taken many angles of him already, including showcasing angles of his
3 body. I grabbed his left leg and I rolled him from right to left in
4 the field to take a picture of what I had seen.

5 Q. How large was Mr. [REDACTED]

6 A. Mr. [REDACTED] ^{(S)(G)-4} was not a big man at all. I had moved him with
7 one arm, Sir. So, I rolled him from right to left with my one arm so
8 he is a very light man, approximately I would say about 140 pounds,
9 Sir.

10 Q. Were there any weapons at or near Mr. [REDACTED] body?

11 A. No weapons, Sir. ^{(S)(G)-4}

12 Q. When you first got there this morning taking those
13 pictures, is it fair to say that Mr. [REDACTED] was dead?

14 A. Yes, Mr. [REDACTED] ^{(S)(G)-4} was dead, Sir.

15 Q. A few seconds ago, you mentioned a picture, can you turn to
16 the fourth picture in Prosecution Exhibit 7.

17 A. Yes, Sir. The fourth picture.

18 Q. What is in that picture?

19 A. Sir, this is a picture of my First Sergeant's foot. He was
20 marking the shell casing with his foot, where the shell casing laid.
21 The shell casing was never touched.

22

1 Q. Okay and----

2 A. We actually found it as I was taking all angles of the
3 picture. There is a little small mound between the body and the
4 shell casing and an approximate distance can be measured from myself
5 laying my rifle between the shell casing and the body.

6 Q. So that is your rifle in the photograph?

7 A. That is correct, Sir.

8 Q. What type of a shell casing was it?

9 A. That is a 5 5 6.

10 Q. And that goes to a--an M4 uses 5.56 ammunition?

11 A. That is correct, Sir.

12 TC: I am now retrieving Prosecution Exhibit 7.

13 No further questions.

14 MJ: Defense?

15 DC: No, Your Honor. Nothing for this witness.

16 MJ: Members of the panel, any questions for Lieutenant 

17 [Negative response from all members.]

18 Apparently not. Temporary or permanent, Government?

19 TC: Temporary, Your Honor.

20 MJ: Very well.

21

017370

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

3 MJ: Call your next witness.

4 SERGEANT ^{(S)(G)-2} [REDACTED] U.S. Army, was called as a witness for the
5 prosecution, was sworn, and testified as follows:

6 DIRECT EXAMINATION

7 Questions by the trial counsel:

8 Q. Sergeant [REDACTED] please state your full name, your rank,
9 and your unit. (S)(G)-2

10 A. My name is Sergeant [REDACTED], E5, HHC, 1-27
11 Infantry.

12 Q. How long have you been in the Army, Sergeant Waruch?

13 A. A little over 6 years.

14 Q. How long have you been in 1-27 Infantry?

15 A. A little over a year.

16 Q. How long have you been deployed to Iraq?

17 A. Since January 21st of this year.

18 Q. What is your military occupational specialty?

19 A. I am an 11 charlie, which is a mortar. A fire direction
20 chief.

21

1 Q. Where did you work when you first deployed to Iraq, where
2 did you work?

3 A. I worked at FOB McHenry outside of Al Hawijah, Iraq.

4 Q. And what was your job?

5 A. I was the Fire Direction Chief for the Battalion Mortars,
6 Sir.

7 Q. What roles did the mortars play for the 1-27 Infantry?

8 A. We provided indirect fire support for the battalion and we
9 also assisted anywhere else on patrols or TCPs. (s)(u)-3

10 Q. Do you know the accused Soldier in this case?

11 A. Yes, I do, Sir.

12 Q. What is his name?

13 A. PFC Edward Richmond.

14 Q. Do you see him in the courtroom today?

15 A. Yes, I do.

16 [The witness points to the accused.]

17 TC: The witness has identified the accused.

18 Q. Sergeant ^{(s)(u)-2} [REDACTED] I turn your attention to the night of 27
19 February. Were you at FOB McHenry that night?

20 A. Yes, I was, Sir.

21

017372

1 Q. What occurred late in the evening that night?

2 A. I was told by my Platoon Leader, Captain [REDACTED] that I was
3 going to be going out on a mission the next morning. (S)(G)-Z

4 Q. Do you know who was leading the mission?

5 A. Captain [REDACTED] Alpha Company's Commander. (S)(G)-Z

6 Q. To your knowledge, what was the mission about?

7 A. We were going to go to obtain about 10 adult males in a
8 city outside of Al Hawijah.

9 Q. And what was--what would be your job and how many Soldiers
10 would be under you for this mission?

11 A. My job was to set up a traffic control point, a TCP, on the
12 south side of the city, outside of the city, to stop traffic coming
13 in and out and to search for any weapons on personnel or in any
14 vehicles.

15 Q. How far outside of the city or village?

16 A. My traffic control point was set up about 200 to 250 meters
17 outside of the wall that was around the village.

18 Q. And what was the distance between your traffic control
19 point and the walls of the village?

20 A. It was about 200 to 250 meters.

21

1 Q. And what was between there?

2 A. Between?

3 Q. Between your position and the village.

4 A. Just the mud wall. Is that what you are talking about?

5 Q. Between the mud wall and your position?

6 A. Oh, just open field. There was a road that led to it.

7 Q. Now your position, how many vehicles do you recall being at

8 your position?

9 A. There were two vehicles. There was my HMMWV and there was

10 an Avenger.

11 Q. When the mission was briefed to you, were there any other

12 members that were with you on the mission, were they at the briefing

13 as well?

14 A. There were no other members of the mortars with me, Sir.

15 Q. Do you recall what the ROE for the mission were?

16 A. Yes, I do, Sir.

17 Q. Would you please tell the panel?

18 A. ROE for the mission was our standard ROE at the time on

19 hostile intent, hostile actions, our level of force that we would

20 normally use, also added to our ROE was that if there was an adult

21 male fleeing the village that we were to put him down or shoot him.

22

017374

1 Q. Well when you took this information and what did you do
2 with it?

3 A. I said, the exact words that I took out of the OP order
4 from my notes from Captain ^{(b)(6)-2} [REDACTED] and I told the squad that was
5 going with me what was put out. I also added to the OP order, to my
6 OP order to the Soldiers, that if we did see an adult male fleeing
7 the village, which could be a possibility because we were detaining
8 about 10 of them, that they were inform me, if at all possible,
9 before they shot.

10 Q. And who--which Soldiers were working for you for this
11 mission?

12 A. I had PFC Richmond, Specialist [REDACTED] Specialist
13 [REDACTED] Corporal [REDACTED]

14 Q. ^{(b)(6)-2} Were there other Soldiers at your TCP?

15 A. Yes, there was.

16 Q. What time did you go on the mission the next day?

17 A. We SP'd about 0410 in the morning.

18 Q. Approximately what time did you arrive at your position
19 then?

20 A. It was about 0445, maybe 0445, so it was about a half hour
21 to get there.

22

017375

1 Q. Once you set up, what kind of activity was there at the
2 TCP?

3 A. We had some--when we first set up there wasn't anything
4 really going on other than there was gunshots around us from the
5 village. It was really foggy and it was night and we couldn't see
6 anything through the night vision.

7 Q. Were you there when the sun came up?

8 A. Yes, I was, Sir.

9 Q. When the sun came up, what was the vision like there around
10 your TCP?

11 A. It started to improve and the fog was burning off and then
12 by that time, the sun was all the way up. By about 0700 you could
13 see clearly.

14 Q. What if anything did you see in the field once the sun came
15 up?

16 A. That farmers, shepherders and cow herders were starting to
17 make their way out of the city.

18 Q. Did you observe a farmer, a shepherder, or a cow herder
19 that you would see later on in the morning?

20 A. Yes, I did, Sir.

21

017376

1 Q. Would you describe what you saw when you first saw the cow
2 herder?

3 A. They were making their way out, a few of them, on the right
4 side of the field or on the right side of my TCP. We sighted in on
5 Mr. ^{(G) (G-4)} [REDACTED] He was on the right side of my position about 200 meters
6 out from me.

7 Q. Would you describe what you saw when you first observed
8 him? What was he doing?

9 A. He was walking cattle.

10 Q. Okay you said he was walking, are you positive that he was
11 walking?

12 A. Yes, Sir.

13 Q. Approximately how many cows did he have with him?

14 A. I don't really recall, about 10.

15 Q. Did you perceive this person as a threat?

16 A. No, I did not, Sir.

17 Q. Did you perceive any weapons or was he carrying anything?

18 A. Not that I saw, Sir.

19 Q. How long was he there before anything else happened with
20 him?

21 A. About a half an hour or 45 minutes, Sir.

22

1 Q. And during that period of time did Mr. [REDACTED] do anything
2 out of the ordinary, Sir? (S)(b)-7

3 A. No, he did not, Sir.

4 Q. What was he doing?

5 A. Staring at us, Sir.

6 Q. What happened next?

7 A. With? (S)(b)-7

8 Q. With regard to Mr. [REDACTED].

9 A. From my radio call, Sir?

10 Q. Yes.

11 A. I got a net call from Black Six, which is Captain
12 (S)(b)-7 [REDACTED] Alpha Company's Commander. It was a net call to all
13 stations. The call was to detain all male personnel inside the
14 village.

15 After all the other stations had responded, I came over and
16 told him my situation. I reminded him that I was in the TCP outside
17 the village, that I had farmers outside of my position. If he still
18 wanted me to detain all males. He came back over very firmly told me
19 to detain all males. So at that time I said out loud to the guys
20 that were with me, because we were beginning to have traffic trying
21 to come into the city. I told everyone that we were to begin to
22 detain all males.

23

017378

1 Q. Was that the exact word that you used, to "detain" them?

2 A. Yes, Sir.

3 Q. Had you detained anyone before?

4 A. Yes, Sir.

5 Q. What did you use to restrain them?

6 A. Flex-cuffs, Sir.

7 Q. What did you do after this order from the Company

8 Commander, what did you do in relation to Mr. [REDACTED]?

9 A. I did a quick scan around my position ^{(S)(b)(1)} to see the adult

10 males in the area, how many we had versus how many of us there were
11 there.

12 Then I started to notice that of the farmers in the field,
13 I noticed that Mr. ^{(S)(b)(1)} [REDACTED] was the closest one to us so he would be the
14 first one that we would go to detain. He was on Richmond's side of
15 the HMMWV where he was pulling security.

16 I said that we were going to go and detain him. I grabbed
17 Richmond because that was his side. Specialist ^{(S)(b)(1)} [REDACTED] asked if he
18 could come along too and I said, "No."

19 Richmond had the flex-cuffs and we began to walk through
20 the field and I told Richmond that he was going to pull security and
21 I was going to flex-cuff or detain Mr. ^{(S)(b)(1)} [REDACTED]

22

1 Q. Why did you make that decision?

2 A. We were still new at this with the detaining and I wanted
3 to make sure that the Soldiers saw from an NCO the right way to do
4 it, Sir.

5 Q. And how far away was Mr. (b)(6)(b)(7) when you started out from
6 your TCP?

7 A. He was about 200 meters.

8 Q. What uniform were you and PFC Richmond, in at the time?

9 A. We were in the desert camouflage uniform with body armor,
10 kevlar, M4 weapons with 68 scopes with pack fours.

11 Q. Did the body armor have the SAPI plates?

12 A. Yes, it did, Sir.

13 Q. Do you know if PFC Richmond had any additional weapons?

14 A. From what I saw, he had an ASP and a knife on his thigh.

15 Q. Where was the ASP?

16 A. It was on his left shoulder, Sir.

17 Q. Once you decided to walk out to detain Mr. (b)(6)(b)(7) how did
18 you--what did you do?

19 A. We started to walk out and I took the flex-cuffs from
20 Richmond. We headed straight towards him. At the time he was facing
21 away from us.

22

1 A. We got about 50 meters away from him and he turned around
2 and noticed that we were coming towards him. He started speaking in
3 Arabic very firmly and very loudly, not yelling, but he seemed to be
4 angry or distressed about that we were coming towards him and I am
5 assuming that he could probably see that--see that I had flex-cuffs
6 in my hand.

7 Then when we began to approach the individual, I raised my
8 hands. I had my weapon slung. Richmond had his weapon at the low
9 ready. It was about belt length, but stock under his arm, muzzle at
10 the ground. I had my weapon slung but hanging somewhat in the low
11 ready.

12 I put my hands in the air to signal to Mr. (S)(G)-7 to put his
13 hands in the air. He did so. When I put my hands down, he mimicked
14 me and put his down. When I put them back up in the air and
15 signaled, you know, to keep them up and I put them down and he began
16 to put them down again and then kept them out to the side. That was
17 good enough for me because I don't speak Arabic and all I wanted was
18 to see ^{his} ~~he~~ hands. (S)(G)-2

19 Q. When he kept them out to the side, do you mean that his
20 arms were raised to a horizontal position? [Raised his arms to his
21 shoulders.]

22 A. Just like that, Sir.

23

017381

1 Q. Kind of like a T position?

2 A. Yes, Sir.

3 Q. How far away from him were you at this point?

4 A. We started to do that at about 50 meters, about roughly
5 about 50 meters, and we started walking slowly towards him as I was
6 signaling to him. He seemed to be cooperative at the time so we
7 continued to approach him.

8 Q. You say that you took the flex-cuffs from PFC Richmond.
9 Please describe what those flex-cuffs look like.

10 A. They are a long white strap with a receiving and on one
11 end, the flex-cuffs, the long white strap has teeth on it and then
12 inside the box, the receiving end has a tab that grabs a hold of
13 them. You can put them in one way but then you can't take them back
14 out.

15 TC: I am showing you what--I am handing you what has been
16 labeled Prosecution Exhibit 11 for identification. Can you please
17 take a look at it?

18 [The witness did as directed.]

19 Q. Do you recognize those?

20 A. Yes, I do, Sir.

21

1 Q. What is it?

2 A. This is the zip-strip that I used that day.

3 Q. Is it an identical zip-strip as the one that you used on
4 the 28th of February?

5 A. Yes, it is.

6 Q. Now what kind of preparations did you make in order to use
7 this zip-strip? Would you first describe it, what you would do
8 without actually demonstrating it?

9 A. Okay, I would start to adjust it. I would adjust it about
10 as big as my hand so I could put the two hands through it. So, it is
11 already ready to go, all I have to do is put it on and pull it.

12 TC: Okay, could you go ahead and start it from where you are
13 sitting?

14 [The witness did as directed.]

15 TC: Let the record reflect that the witness has started the
16 zip-strip by placing one end through the clasp end and pushed it
17 through about 8 to 10 inches creating a loop or a noose, if you will.

18 Q. Sergeant ^{(b)(6)-2} [REDACTED], at this time, at this point in your
19 encounter with Mr. ^{(b)(6)-4} [REDACTED] was the zip-strip in that particular
20 configuration?

21 A. Yes, it was, Sir.

22

1 Q. At any point thus far, had Mr. [REDACTED] made any sudden moves
2 or any moves at all with his legs?

3 A. No, Sir.

4 Q. Okay, you were facing him and he was in a in a T-position
5 with his arms out. What happened next? (S) (G) 4

6 A. We both approached Mr. [REDACTED] I pointed to the ground and
7 then said, "Pull security here." I said that to PFC Richmond. It
8 was about 3 meters off to my right.

9 MEMBER [LTC [REDACTED]]: Can you speak up.

10 A. I told PFC Richmond to pull security off to my right. It
11 was about 3 meters off to the right of myself and Mr. [REDACTED] I
12 approached Mr. [REDACTED] and ran my hands across his arms that were still
13 up, around his collar, down his front, along his belt. I signaled
14 with my finger for him to turn around and he did so. I did the same
15 to his back. (S) (G) 4

16 I crossed his arms, around his collar, down his back, and
17 on his belt. He didn't have anything. I put my right hand on his
18 right shoulder. I put my left hand on his left wrists and attempted
19 to pull his wrist behind his back to put him in the flex-cuff. He
20 had not given me his hand. He resisted me by just keeping his hands
21 spreaded in the air.

22

017384

1 A. He wouldn't let me pull them behind his back. At that time
2 I looked at PFC Richmond and I told him to put his weapon up. He put
3 his weapon up to the high ready, looking over the scope and the
4 barrel was shoulder or chest range of Mr. [REDACTED]

5 Then I pulled firmly on Mr. [REDACTED] (S)1679 left arm and forced it
6 behind his back. At that time I ran my right hand down to his right
7 wrist and he willingly gave me his right arm. I attempted to start
8 putting him in the flex-cuffs and he was fighting his hands. He
9 wouldn't let me put him through the hole in the flex-cuff. After a
10 brief struggle with that, I had finally got both of his hands in
11 there and zipped it up really fast and had gotten both his hands in
12 there.

13 At that time he relaxed. I leaned over his left shoulder,
14 kind of turned to the left side of him, looked at him, looked at
15 Richmond, patted Mr. [REDACTED] on the shoulder and I told Richmond, "He's
16 good. Let's go." (S)1679

17 At that time Richmond began to lower his weapon. I grabbed
18 Mr. [REDACTED] with my right arm on his left bicep, turned him to my left
19 and began to walk pretty much from behind us. We took about two
20 steps and a rifle discharged from behind us.

21

017385

1 Q. Let me back up a little bit. You stated that you looked at
2 Richmond after you had completed the flex-cuff motion. What did you
3 see when you looked at Richmond?

4 (S)147 A. Richmond was--had his weapon at shoulder-chest area of Mr.
5 [REDACTED] The butt stock was in his shoulder. He was at the high ready
6 looking over the top.

7 Q. Did he see you or did you not see his face?

8 A. I saw his face, Sir.

9 Q. Where in relation was the scope of Richmond's M4 with--in
10 relation to PFC Richmond's eyes.

11 A. The scope was not on his eyes, Sir. The scope was probably
12 down here while he was looking over the top of his rifle.

13 Q. You mentioned that Mr. (S)147 [REDACTED] struggled with his hands and
14 with his hands with his zip-cuff. Did he struggle in any other way
15 with any other parts of his body?

16 A. No, Sir.

17 Q. When you did the brief pat down on the front and on the
18 back, did you notice anything at all within his clothing, anything at
19 all there?

20 A. No, Sir.

21

017386

1 Q. When you stated to PFC Richmond for him to put his weapon
2 out or raise your weapon, did you say anything else?

3 A. No, Sir.

4 Q. Would there be any reason that either one of your weapons
5 would be off safe during this encounter?

6 A. No, Sir.

7 Q. When would you take it off safe?

8 A. If I intended to discharge my weapon, Sir.

9 Q. How was Mr. [REDACTED] relaxing when after--once you completed
10 the zip-strip and secured his wrists together, how was Mr. [REDACTED]
11 acting then? (S) (G) (M) (S) (G) (M)

12 A. He--before he was in the zip strips his body was tense.
13 After I got him in them, I patted him on the shoulder and looked at
14 him and his muscles relaxed in his arms and back.

15 Q. As you took--you say that you took steps or you talked
16 about the turn, can you go ahead and relay what happened from the
17 time you had his arm and you were turning him just after you said
18 that he was good and let's go.

19 A. I grabbed his left bicep in my right hand and I kind of
20 turned him around to my front and then we both turned putting him to
21 my side and we started to walk. We walked about two steps and then
22 the rifle discharged behind us.

23

017387

1 Q. What was the sound of that?

2 A. It was the loudest I have ever heard an M4. It hurt my
3 ear. I lost my hearing in my ear for a moment and it seemed like it
4 was very close.

5 Q. What happened next with relation to Mr. [REDACTED]?

6 A. Um--I noticed that Mr. [REDACTED] was hit in the head. His face
7 turned to all blood immediately. (S)(b)(7) He uh--I wasn't sure what was going
8 on. I knew that a bullet had passed next to my head. I ducked down.
9 Mr. [REDACTED] fell to his knees. I looked back and Mr. [REDACTED] fell to his
10 face. (S)(b)(7)

11 I looked back and I saw Richmond standing behind us with
12 his weapon pointed at the ground and the only thing he was holding
13 his weapon with was the pistol grip and he had his other hand in same
14 manner but with nothing in it, with a look--with a look of shock on
15 his face. I said something along the lines of, "What the hell did
16 you do? What happened?" And he said, "He jumped at you."

17 Q. Had Mr. [REDACTED] jumped at you?
(S)(b)(7)

18 A. No, Sir.

19 Q. A few seconds ago you said that Mr. [REDACTED] fell on his face.
(S)(b)(7)
20 Is that a correct statement?

21 A. He fell to his knees and then he fell forward on to his
22 chest and head.

23

017388

1 Q. Fell forward on to his chest.

2 A. Yes.

3 TC: Your Honor, may I approach the witness?

4 MJ: You may.

5 TC: Sergeant [REDACTED], I am handing you Prosecution Exhibit 7.

6 Can you please take a look at it? There are 10 pages. Please

7 quickly look through it.

8 [The witness did as directed.]

9 Q. Have you finished looking through them?

10 A. Yes, Sir.

11 Q. Now in those 10 photographs that you just looked at, was

12 Mr. [REDACTED] in any of those positions of any of those photographs when

13 he fall--after he fell?

14 A. Yes, Sir. His initial fall was forward. His body did not

15 stop moving right away.

16 MJ: I'm sorry, I missed that.

17 A. He did not stop moving right away, Ma'am.

18 Q. What position did he end up in?

19 A. He ended up in the position that is on this first page,

20 Sir.

21

1 Q. And that is on his back?

2 A. Yes, Sir.

3 TC: I am retrieving Prosecution Exhibit 7.

4 Q. You also mentioned that a few questions ago that the bullet
5 came by your head. How close was Mr. [REDACTED] in relation to you when
6 you heard this gunshot? (S)(b)(4)

7 A. His shoulder was touching mine. His head was no more than
8 8 to 12 inches from mine.

9 Q. How tall are you Sergeant [REDACTED]?

10 A. I am 72 inches, Sir. (S)(b)(4)

11 Q. And how tall do you estimate that Mr. [REDACTED] was? What did
12 he come up to your height?

13 A. His head was pretty close to mine, Sir. I would say he was
14 probably about 68 or 67 inches.

15 Q. Now when he fell, were the flex-cuffs still on?

16 A. Yes, Sir. (S)(b)(4)

17 Q. Is there any indication to you at all that Mr. [REDACTED] was
18 attacking you?

19 A. No, Sir.

20 Q. What was the ground terrain like?

21 A. It was a field that they were working. In America it would
22 be like a cornfield before we plant.

23

(b)(6)-7

1 Q. Did, Mr. [REDACTED] making any sudden movements at all while you
2 were walking?

3 A. No, Sir.

4 Q. Could he have stumbled?

5 A. Yes, as we turned and walked, he stepped on one of the rows
6 and kind of rolled his ankle a little bit and I supported his weight
7 on my shoulder.

(b)(6)-7

8 Q. When you flex-cuffed Mr. [REDACTED] when you went through the
9 motion of actually tightening it, can you describe how you actually
10 did that? Just describe how you did that.

11 A. How I would put his hands into the flex-cuffs?

12 Q. Yes.

13 A. I hold his hands from underneath so I have control and I
14 lift up so that he can't pull them away and then I put the flex-cuffs
15 on and I tighten them.

(b)(6)-7

16 Q. How far did you lift up Mr. [REDACTED] hands, from say
17 touching his back, how far up did you pull his arms up?

18 A. Probably about 12 inches, maybe less. Enough to have
19 control of his arms.

20 Q. What did you do with your other hand?

21 A. My other----

22 Q. You said that you used one hand to lift up, what did you do
23 with the other hand?

1 A. I put the flèx-cuffs on, Sir.

2 Q. At this point, when you placed the flex-cuffs on, was there
3 any sound?

4 A. Yes, Sir.

5 Q. What was that sound?

6 A. From the flex-cuffs from the tab grabbing the teeth.

7 Q. Okay with Prosecution Exhibit 11 for identification, could
8 you demonstrate the tightening of the flex-cuffs for sound purposes
9 please?

10 [The witness did as directed.]

11 TC: Let the record reflect that the zip-strip made a zipping
12 sound when Sergeant [REDACTED] tightened it.

13 May I approach, ⁽⁵⁾¹⁶⁷² Your Honor.

14 MJ: You may.

15 TC: I am now handing you Prosecution Exhibit 9 for
16 identification. Can you please take a look at that?

17 [The witness did as directed.]

18 Q. Do you recognize it?

19 A. Yes, I do, Sir.

20 Q. What is it?

21 A. It is an M4 carbine rifle.

22

1 Q. Now that is not your particular weapon is it?

2 A. No, Sir.

3 Q. Would you briefly describe the configuration of the M4

4 carbine rifle?

5 A. The M4 carbine rifle has the see through sight in the back,

6 the 68 combat optical scope, with the pack 4 night laser aiming

7 device.

8 Q. Okay where is the scope located on the weapon?

9 A. It is right [pointing towards the scope] here, Sir.

10 Q. It is in the middle of the weapon and on top of the weapon

11 protruding about 3 inches above the weapon?

12 A. Yes, Sir. (S) 6/2

13 Q. Now Sergeant [REDACTED] is this the same type of M4 weapon

14 with scope that you and PFC Richmond were using on the 28th of

15 February?

16 A. Yes, Sir.

17 Q. And when you use the scope, how close is your eye, when you

18 are aiming with a scope, how close is your eye to the scope, to the

19 first ring of the scope?

20 A. My eye is about 6 to 8 inches from the rear lens of the

21 scope.

22

1 Q. And when you are actually using the scope, how does the
2 scope work?

3 A. It has a red optical dot inside of it, an adjustable dot
4 and you just put that on the target.

5 Q. And if you shoot then that is where the bullet goes,
6 wherever the red dot is?

7 A. Wherever the red dot is, the bullet will go.

8 Q. Do you actually need to use the scope if you are using the
9 red dot?

10 A. It's actually not a scope. It doesn't magnify. All it
11 does is gives you a field of view for the red dot.

12 Q. From a short range, 5 meters or less, do infantry Soldiers
13 normally need to use the M68 scope when using the weapon?

14 A. No, Sir, we do not.

15 Q. Would you describe the high ready position again?

16 A. The high ready would be the but stock in your shoulder, and
17 the weapon up and at chest level, eyes over the scope, both eyes
18 open.

19 Q. When you said, "He's good. Let's go." How loud did you
20 say that?

21 A. About as loud as I am speaking now. I mean, a little
22 louder, enough for Richmond to hear me.

017394

1 Q. And during this encounter with Mr. [REDACTED] outside of the
2 village, did you hear any noises from inside the village? (S)(b)-7

3 A. At the time that we were detaining Mr. [REDACTED]

4 Q. Yeah.

5 A. A minimal amount of noises. We could hear some commotion
6 going on inside the village.

7 Q. Besides cows and maybe a telephone pole here and there, how
8 far away were you from anything else except for the field?

9 A. The closest thing to us was my TCP about 200 meters away
10 from us.

11 TC: I am retrieving Prosecution Exhibit 11 for identification.
12 I'm sorry, Prosecution Exhibit 9 for identification.

13 No further questions.

14 MJ: Defense?

15 **CROSS-EXAMINATION**

16 **Questions by the defense counsel:**

17 Q. Sergeant [REDACTED], you know PFC Richmond?

18 A. Yes, I do. (S)(b)-2

19 Q. Prior to the February 28th, he had never worked directly
20 for you, had he?

21 A. That is correct, Ma'am.

22

1 Q. This is the first time that you had any supervisory role
2 over him?

3 A. As I recall, Ma'am.

4 Q. He knew that you were an NCO?

5 A. Yes, Ma'am.

6 Q. You attended a briefing on the evening of the 27th of
7 February?

8 A. Yes, Ma'am.

9 Q. That was a pre-mission brief?

10 A. It was an OP order brief, Ma'am.

11 Q. And Captain ^{(S)/A2} [REDACTED] gave you that OP order brief?

12 A. Yes, Ma'am.

13 Q. And he told you that the group was authorized to shoot any
14 males that were fleeing the village the next day?

15 A. Yes, Ma'am.

16 Q. He told you to put them down?

17 A. Yes, Ma'am.

18 Q. You briefed that to your own Soldiers?

19 A. Yes, Ma'am.

20 Q. And that briefing was about 2200?

21 A. Yes, Ma'am.

22 Q. It lasted for approximately 30 minutes?

23 A. Yes, Ma'am.

1 Q. And the SP time for the mission the next morning was at
2 about 0410?

3 A. Yes, Ma'am.

4 Q. You told your Soldiers the exact words that Captain
5 [REDACTED] told you, didn't you?

6 (b)(7)(F) A. Yes, Ma'am.

7 Q. Because you had taken careful notes in your notebook?

8 A. Yes, Ma'am.

9 Q. You confirmed that each of your Soldiers understood these
10 orders after the briefing?

11 A. Yes, Ma'am.

12 Q. And Private Richmond was one of these Soldiers that you
13 checked with?

14 A. Yes, he was, Ma'am.

15 Q. And he didn't have any confusion about the orders that you
16 had given him, did he?

17 A. He understood, Ma'am.

18 Q. Now your Platoon Leader taught you to shoot if there is a
19 hostile act or if there is a hostile intent? Isn't that also right?

20 A. That is our ROE, Ma'am.

21

017397

1 Q. That the ROE says that you are authorized to shoot if there
2 is a hostile act?

3 A. Yes, Ma'am.

4 Q. And the ROE says that you are authorized to shoot if there
5 is a hostile intent?

6 A. Yes, Ma'am.

7 Q. And the person who makes that judgment for a hostile act is
8 the individual Soldier, isn't that also true?

9 A. Yes, it is, Ma'am.

10 Q. And that person who makes that judgment for the hostile
11 intent is also the individual Soldier who is perceiving it, isn't it
12 as well?

13 A. Yes, Ma'am.

14 Q. Once you were on the mission at Taal Al Jal, you could hear
15 gunshots?

16 A. Yes, I could, Ma'am.

(S)(2)3

17 Q. From out at the traffic control point, you could hear
18 shotguns going through doors?

19 A. I could hear shotguns firing, Ma'am.

20 Q. You could hear doors being broken down?

21 A. I could hear shotguns firing.

22

1 Q. Things started to quiet down a little bit?
2 A. Yes, Ma'am.
3 Q. But you could still hear commotion, as you testified today,
4 going on in the village.
5 A. Yes, Ma'am.
6 Q. And you could hear women yelling, couldn't you?
7 A. Yes, Ma'am. (S) (C) 2
8 Q. Sergeant [REDACTED] did you wear earplugs during these
9 incidents on the 28th of February?
10 A. No, Ma'am.
11 Q. Weren't you ordered to wear earplugs after an incident on
12 the 18th of February?
13 A. No, Ma'am.
14 Q. So you weren't wearing earplugs at all?
15 A. No, Ma'am.
16 Q. Private Richmond was wearing earplugs though, wasn't he?
17 A. No, Ma'am.
18 Q. Are you just not sure?
19 A. No, Ma'am. I am sure that he was not wearing earplugs,
20 Ma'am.
21

1 Q. If Private Richmond was ordered to wear earplugs after the
2 mission on the 18th, he probably would have been wearing them, isn't
3 that right?

4 A. We were not ordered to wear earplugs, Ma'am.

5 Q. Private Richmond could have been when you were not there
6 though?

7 A. Not that I saw, Ma'am.

8 Q. You received a call over the net while you were out at the
9 TCP?

10 A. Yes, Ma'am.

11 Q. And that call, again, came from Captain [REDACTED]

12 A. Yes, it did, Ma'am.

(S)G7Z

13 Q. And he ordered you and the folks out there that you were to
14 detain all males in the area?

15 A. Yes, Ma'am.

16 Q. And you relayed that information to your Soldiers?

17 A. Yes, Ma'am.

18 Q. You chose Private Richmond to go detain Mr. [REDACTED] with you,
19 didn't you?

(S)G7Y

20 A. Yes, Ma'am.

21

(S)(b)(2)

1 Q. And you in fact told Specialist [REDACTED] that you didn't
2 need another person to go with you?

3 A. Yes, Ma'am.

4 Q. Mr. [REDACTED] (S)(b)(2) was the closest person in the field to you that
5 day, isn't that right?

6 A. Yes, he was, Ma'am.

7 Q. And that is why you chose him, to go and detain him first,
8 right?

9 A. Yes, Ma'am.

10 Q. You testified that at approximately 50 meters away from the
11 TCP that you started to raise your hands and Mr. [REDACTED] would lower
12 his hands. (S)(b)(2)

13 A. I was 50 meters away from Mr. [REDACTED] and about 150 meters
14 away from the TCP, Ma'am.

15 Q. And at that point Mr. [REDACTED] seemed to be upset with what
16 was going on? (S)(b)(2)

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

18 Q. You did a quick search of Mr. [REDACTED]

19 A. Yes, Ma'am.

20 Q. You didn't do a full search, did you?

21 A. No, Ma'am.

22

017401

1 Q. Just his upper arms and his torso?

2 A. And his belt and his neckline, Ma'am.

3 Q. You gave several statements regarding the facts of this
4 case, didn't you?

5 A. Yes, Ma'am.

6 Q. And in those statements you indicated that you searched his
7 upper arms-I'm sorry, his arms and his upper torso?

8 A. Yes, Ma'am.

9 Q. And that you ran your hands quickly down his back?

10 A. Yes, Ma'am.

11 Q. Mr. ██████████ was still angry at the time that you did this
12 quick rubdown, is that right?

13 A. He seemed angry.

14 Q. Well you also testified at an Article 32 hearing in this
15 case, didn't you?

16 A. Yes, Ma'am.

17 Q. And you swore to tell the truth under oath at that Article
18 32 hearing?

19 A. Yes, Ma'am.

20 Q. And Mr. ██████████ was still in fact angry when you were doing
21 that pat down?

22 A. That was my perception of it, Ma'am.

23

017402

1 Q. He was talking loudly?
2 A. Yes, he was, Ma'am.
3 Q. And Private Richmond could also hear Mr. [REDACTED] talking
4 loudly? (S)(G)-7
5 A. Yes, he could, Ma'am.
6 Q. In your opinion, Private Richmond was close enough that he
7 would have been able to hear that?
8 A. Yes, Ma'am.
9 Q. But you didn't say anything at all, did you?
10 A. No, Ma'am.
11 Q. Because you don't speak Arabic?
12 A. Yes, Ma'am.
13 Q. So you said nothing at all to Mr. [REDACTED]
14 A. It's pointless.
15 Q. Again, in addition to Mr. [REDACTED] being angry, he also wasn't
16 being very cooperative, was he? (S)(G)-7
17 A. No, he wasn't.
18 Q. And Private Richmond had a clear view of Mr. [REDACTED] as far
19 as you could tell at that time?
20 A. Yes, he did, Ma'am.
21

1 Q. And you certainly had a clear view of Mr. [REDACTED] when you
2 were approaching him?

3 A. Yes, Ma'am.

4 Q. And your M4 was visible to Mr. [REDACTED]?

5 A. Yes, it was, Ma'am.

6 Q. And you were in the uniform of a U.S. Army NCO?

7 A. Yes, Ma'am.

8 Q. Private Richmond also had a clear view of Mr. [REDACTED]?

9 A. Yes, Ma'am.

10 Q. And Private Richmond's weapon was also in clear view,
11 wasn't it?

12 A. Yes it was, Ma'am.

13 Q. Yet, Mr. [REDACTED] was still struggling and resisting at this
14 time?

15 A. Yes, he was, Ma'am.

16 Q. And he wouldn't give you his hand to flex-cuff him, would
17 he?

18 A. No, he would not, Ma'am.

19 Q. He did not want to be flexi-cuffed?

20 A. That is what I perceived it as, Ma'am.

21

017404

1 Q. And you also perceived he did not want to be detained?
2 A. Yes, Ma'am. *9/10-4*
3 Q. Mr. [REDACTED] continued to struggle throughout this zip-strip
4 incident, isn't that right?
5 A. Yes, he did, Ma'am.
6 Q. And he kept fighting you with his hands and he kept
7 twisting his hands?
8 A. Yes, he did, Ma'am.
9 Q. Was he also moving his upper body back and forth?
10 A. A little bit, Ma'am.
11 Q. And when he was moving his body back and forth, it was
12 difficult for you to put his hands in his flex-cuffs?
13 A. Him moving his body didn't make it difficult. Him moving
14 his fingers and hands around made it difficult, Ma'am.
15 Q. He was also twisting his shoulders and arms, wasn't he?
16 A. Not really, Ma'am.
17 Q. But yet you were trying to pull his left arm behind him,
18 weren't you?
19 A. At first I was trying to pull his left arm behind him.
20 Q. And at that point he was struggling?
21 A. He just locked up his arm, Ma'am, and he wouldn't put it
22 down.
23

017405

1 Q. And Private Richmond could see this, couldn't he?
2 A. Yes, Ma'am.
3 Q. Mr. ^{(b)(6)-7} [REDACTED] was still shouting or using a raised tone of
4 voice, wasn't he?
5 A. At what time, Ma'am.
6 Q. During this time when you were trying to zip-strip him.
7 A. No, Ma'am.
8 Q. Mr. ^{(b)(6)-4} [REDACTED] was remaining silent?
9 A. At that time he was, Ma'am.
10 Q. Were there any changes in Private Richmond's demeanor
11 throughout this incident, were there?
12 A. Not that I saw, Ma'am.
13 Q. And Private Richmond did everything you told him to do,
14 didn't he?
15 A. Yes, he did.
16 Q. The whole incident lasted, from the time that you started
17 to approach Mr. ^{(b)(6)-7} [REDACTED] when you said you were about 50 meters away
18 from him, through the time that he was shot, lasted at just 2
19 minutes, isn't that right?
20 A. Somewhere around there, Ma'am.
21

017406

1 Q. Certainly no more than 2 minutes?

2 A. Could have been more than 2 minutes, 3 minutes.

3 Q. Do you recall your Article 32 testimony, in which you

4 testified that it was no more than 2 minutes?

5 A. I said that it was 3 to 5 minutes in the Article 32

6 hearing, Ma'am.

7 Q. Are you sure about that?

8 A. Yes, I am. (b)(6)-7

9 Q. Mr. [REDACTED] was standing on a dirt berm at the time that you

10 were attempting to apprehend him, isn't that right?

11 A. Yes, he was, Ma'am.

12 Q. And it is at this point that you told Private Richmond to

13 put his weapon up?

14 A. At the point that Mr. [REDACTED] started to resist me with his

15 left arm, I told Private Richmond to put his weapon up.

16 Q. And you told him to go to the high ready?

17 A. I told him to put his weapon up, Ma'am. (b)(6)-7

18 Q. At this point, you didn't know if Mr. [REDACTED] had any smaller

19 weapons hidden on the lower part of his body, did you?

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

21

1 Q. You only did a pat down for larger weapons?
2 A. Yes, Ma'am.
3 Q. And you didn't find any?
4 A. No, I did not, Ma'am.
5 Q. Private Richmond again followed your instruction to put his
6 weapon up?
7 A. Yes, Ma'am.
8 Q. And he did go to the high ready?
9 A. Yes, Ma'am.
10 Q. Now immediately after the shot, Private Richmond told you,
11 "He came at you. He jumped at you."
12 A. Yes, Ma'am.
13 Q. Is that about what he said?
14 A. Yes, Ma'am.
15 Q. How many seconds was that after the shot went out?
16 A. I don't really recall how many seconds it was. I would say
17 it was within 15 seconds.
18 Q. And he told you that immediately, that he had jumped at
19 you?
20 A. Yes, Ma'am.
21

1 Q. At the time that the shot went out, Private Richmond was
2 behind you, isn't that right?
3 A. Yes, he was, Ma'am.
4 Q. You couldn't see him at all, could you?
5 A. No, I could not.
6 Q. So you don't know for sure what Private Richmond could see
7 at the time he fired?
8 A. Richmond could see the back of us, Ma'am.
9 Q. You don't know what he could see though?
10 A. No, I do not, Ma'am.
11 Q. Private Richmond had a look of shock on his face
12 afterwards?
13 A. Yes, he did, Ma'am.
14 Q. His face was white?
15 A. Very white, Ma'am.
16 Q. He was very pale?
17 A. Yes, Ma'am.
18 Q. And he looked really upset?
19 A. He looked shocked, Ma'am.
20 Q. Private Richmond's left hand was on the grip at the front
21 of his weapon?
22 A. At what time, Ma'am?
23

1 Q. After the shooting?

2 A. The only thing that was touching his weapon was his right
3 hand and it was around the pistol grip.

4 Q. His left hand was not on the grip at the front of the
5 weapon?

6 A. No, Ma'am.

7 Q. And after the shooting he was looking over the sight?

8 A. I don't know, Ma'am. He was behind me.

9 Q. When you turned around after the shooting, Private Richmond
10 was looking where?

11 A. At me, Ma'am.

12 Q. At the time of the shooting, Private Richmond was close
13 enough that you could have reached out with your hand to touch the
14 barrel of his weapon, isn't that right?

15 A. I don't know, Ma'am, he was behind me.

16 Q. Prior to the shooting, when you were attempting to detain
17 Mr.  ⁶⁷⁴⁷, Private Richmond was close enough then where you could
18 have reached out and touched the barrel of his weapon, isn't that
19 right?

20 A. Approximately, Ma'am.

21

1 Q. Well you could have touched the front of his barrel, isn't
2 that right?

3 A. I didn't try to, Ma'am.

4 Q. But you could have?

5 A. I don't know if I could have or not. I didn't try.

6 Q. Now Mr. ^{(b)(6)-(7)} ██████ shoulder was leaning into yours?

7 A. Yes, it was, Ma'am.

8 Q. And he was in fact leaning into you as he began to walk,
9 right?

10 A. Yes, he was, Ma'am.

11 Q. He was walking on uneven terrain?

12 A. Yes, Ma'am.

13 Q. And as he walked, his ankle rolled sideways?

14 A. He stumbled, he leaned in to me a little bit.

15 Q. You testified with the government that his ankle rolled.

16 A. I am assuming that is what happened to him. He miss-
17 stepped through the rows of dirt.

18 Q. That is how you interpreted it?

19 A. That is how I interpreted it.

20 Q. Certainly he did lose his balance?

21 A. Yes, Ma'am.

22

1 Q. And he did lean in to you?
2 A. Yes, Ma'am.
3 Q. And this was at approximately the second step?
4 A. Yes, it was, Ma'am.
5 Q. And when he took the second step, he stepped into you?
6 A. Yes, Ma'am.
7 Q. You supported his weight when he leaned into you?
8 A. Yes, I did.
9 Q. And you pushed him back up on to his feet?
10 A. Yes, I did.
11 Q. It seemed to you that Mr. (S)(b)-4 was relying on you at least
12 a little bit for balance, didn't it?
13 A. In a sense he was, yes.
14 Q. Now you have no way to know for sure what Private Richmond
15 could hear that day, do you?
16 A. No, I don't know what Private Richmond could hear, Ma'am.
17 Q. Private Richmond didn't verbally say anything to you after
18 you said, "He's good. Let's go." Did he?
19 A. No, Ma'am.
20 Q. He said nothing at all.
21 A. He began to lower his weapon.
22

1 Q. And again, that whole interaction lasted 3 minutes total,
2 maybe less than 3 minutes total?

3 A. Three minutes, maybe more.

4 Q. You and your Soldiers are trained to positively identify a
5 target before you engage, aren't you?

6 A. Yes, Ma'am.

7 Q. And you are also trained not to take warning shots?

8 A. Yes, Ma'am.

9 Q. The ROE was enforced within your squad only to take aimed
10 shots?

11 A. Yes, Ma'am.

12 Q. You have been trained on hostile act?

13 A. Yes, Ma'am.

14 Q. And on hostile intent?

15 A. Yes, Ma'am.

16 Q. And again, the ultimate decision for that is up to the
17 individual Soldier?

18 A. Yes, it is, Ma'am.

19 Q. At the time this incident, on the 28th of February, you
20 were under investigation for a shooting incident of three civilians
21 that had occurred 10 days earlier, isn't that right?

22 A. Not that I was aware of, Ma'am.

23

017413

1 Q. In fact, one of the civilians that was shot 10 days earlier
2 was killed, wasn't she?

3 A. Yes, Ma'am.

4 Q. And on the 28th of February the investigation into that
5 shooting incident wasn't complete, was it?

6 A. I don't know, Ma'am.

7 Q. You were the only subject of that investigation for the
8 actual shootings, weren't you?

9 A. I don't know, Ma'am.

10 Q. Soldiers are allowed to use their own discretion in
11 determining if an escalation of force is necessary, isn't that right?

12 A. Yes, Ma'am.

13 Q. And it is ultimately up to the individual Soldier, isn't
14 that right?

15 A. Yes, Ma'am.

16 DC: Nothing further, Your Honor.

17 MJ: Any redirect?

18 TC: Yes, Your Honor.

19

1 **REDIRECT EXAMINATION**

2 **Questions by the trial counsel:**

3 Q. The defense lawyer just mentioned an escalation of force in
4 relation to ROE.

5 A. Yes, Sir.

6 Q. What was trained at your unit and what do you understand
7 the escalation of force to be?

8 A. Escalation of force would be the difference of someone
9 throwing a rock at you and someone shooting bullets at you.

10 Q. Okay.

11 A. The escalation of force would be, as they escalated what
12 they were doing, you escalate your force to stop them from doing
13 that. So, if they were throwing a rock, I would probably just go
14 over there from throwing rocks. If they began to engage us with
15 weapons, we would shoot back.

16 Q. And that is what the Soldiers in 1-27 are taught?

17 A. Yes, Sir.

18 Q. And you are part of the same mortar section or mortar
19 platoon that PFC Richmond was a part of, right?

20 A. Yes, Sir.

21

017415

1 Q. And does your--is that the type of training your entire
2 unit received in terms of escalation of force?

3 A. Yes, Sir.

4 Q. Now at the time of the morning where you detained Mr.

5 [REDACTED] how--at what point was the raid in, in the village?

6 (S)(b)-7 A. At what point? It was before we detained Mr. [REDACTED] that
7 the village was raided. (S)(b)-7

8 Q. Okay, but where was it in relation to the beginning or the
9 ending of the raid when the detention occurred? Was it during the
10 beginning of the raid, the end of the raid, or somewhere in the
11 middle of the raid?

12 A. It was at the end of the raid, Sir. There was no more
13 gunfire in the village. (S)(b)-7

14 Q. You mentioned that Mr. [REDACTED] struggled with his hands. To
15 your--could you describe the relative strength, based on your
16 recollection of the events and your ability to move or inability to
17 move Mr. [REDACTED]. (S)(b)-7 What was the relationship of power? Who had more
18 strength and power in this particular detention? (S)(b)-7

19 A. I was a lot stronger than Mr. [REDACTED] was. When I wanted--as
20 I attempted to move his arm, he wouldn't give it to me. When I
21 forcefully pulled it, I pulled it right behind his back pretty
22 easily.

23

Q17416

1 Q. The defense counsel asked you if you knew there were any
2 smaller weapons on the lower part of Mr. [REDACTED] body. Did you see
3 anything attached to Mr. [REDACTED] ^{(S)(6)-4} body from the waist down?

4 A. No, I did not. He also had sweat pants on. I didn't
5 perceive that there was any way that he could hide anything on his
6 lower body.

7 Q. Prior to the miss-step that the defense lawyer was asking
8 about, how close was--when you first started stepping, you had your
9 right hand on Mr. [REDACTED] ^{(S)(6)-4} bicep. How close would your shoulders be
10 when you first started walking?

11 A. They were practically touching, Sir.

12 TC: No further questions.

13 MJ: Any re-cross?

14 DC: Yes, Your Honor. May I have a moment, Your Honor.

15 [Long pause.]

16 **RE-CROSS-EXAMINATION**

17 **Questions by the defense counsel:**

18 Q. Regarding the escalation of the use of force. You were
19 trained to use the five S's, weren't you?

20 A. Yes, Ma'am.

21

1 Q. Show, shout, shove, shoot a warning shot, and then shoot an
2 aimed shot?

3 A. At this time, I don't recall what the five S's are.

4 Q. Is that, what I have described, does that sound something
5 that you were trained on, generally, even if it wasn't called the
6 five S's?

7 A. We don't shoot warning shots. Other than that, it is
8 pretty close, Ma'am.

9 Q. As a Soldier, you try to show your weapon before you try to
10 use it?

11 A. Yes, Ma'am.

12 Q. And you try to engage a person, again before you have to
13 use your weapon, verbally?

14 A. Yes, Ma'am.

15 Q. And you were trying to do that with Mr. ^{(S)(G)-7} [REDACTED] by
16 demonstrating what he was supposed to do with his hands basically,
17 right?

18 A. Not really. I was trying to demonstrate what I wanted him
19 to do, Ma'am.

20 Q. Okay, so instead of shout, it would have been show?

21 A. Yes, Ma'am.

22

017418

1 Q. You are not required to go through each and every one of
2 those steps before you get to the last step of firing on the
3 individual are you?

4 A. It depends on the situation that you are in, Ma'am.

5 Q. Well if someone fires on you then you are certainly not
6 going to show them that you have a weapon before you fire back, are
7 you?

8 A. That is correct, Ma'am.

9 Q. And Soldiers never give up the right to self-defense, isn't
10 that right?

11 A. Yes, Ma'am.

12 Q. And Soldiers never give up the right to defend their
13 comrade if they feel that comrade is being threatened. Isn't that
14 also right?

15 A. Yes, Ma'am.

16 DC: Nothing further, Your Honor.

17 MJ: Anything else, Government?

18 TC: No, Your Honor.

19 MJ: Members of the panel, do you have any questions for the
20 witness?

21

017419

(b)(6)(7)
1 [A question from COL ██████████ was marked as AE XIX, inspected by both
2 counsel, and handed to the military judge for questioning.]

3 **EXAMINATION BY THE COURT-MARTIAL**

4 **Questions by the military judge:**

(b)(6)(7) Q. Sergeant ██████████ (b)(6)(7)
5 ██████████ after you had put the flex-cuffs on Mr.
6 ██████████ you said that you turned to the accused and said, "He's good.
7 Let's go." Right?

8 A. Yes, Ma'am.

9 Q. What did Private Richmond do at that point?

10 A. He began to lower his weapon, Ma'am.

11 Q. How, from where to where?

12 A. He had it at the high ready, looking over the scope, and he
13 began to lower the muzzle of his weapon [lowering his arms] to put it
14 down.

15 Q. All right, you used both hands so you had his right hand at
16 the pistol grip and his left hand at the muzzle?

17 A. Yes, Ma'am.

18 Q. And he lowered it to a 45-degree angle or so, you said?

19 A. Yes, Ma'am.

20 MJ: Does that answer your question, Sir.

21 MEMBER [COL ██████████]: Yes, thank you.
22 (b)(6)(7)

1 MJ: Are there any other questions for Sergeant [REDACTED]
2 [Negative response from all members.] (b)(6)-2

3 MJ: Apparently not. Temporary, Government?

4 TC: Temporary, Ma'am.

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

7 MJ: Sir, we have been going for almost 2 hours. Do you want to
8 take a short break or drive on?

9 PRES: Lets drive on, Ma'am.

10 MJ: Very well. Government?

11 **SPECIALIST [REDACTED], U.S. Army, was called as a witness for
12 the prosecution, was sworn, and testified as follows:** (b)(6)-2

13 **DIRECT EXAMINATION**

14 **Questions by the trial counsel:**

15 Q. Specialist [REDACTED] please state your full name, rank, and
16 your unit. (b)(6)-2

17 A. [REDACTED] Specialist, HHC, 1-27 Infantry.

18 Q. How long have you been in 1-27 Infantry?

19 A. A little over 2 years.

20 Q. What do you do in that Battalion?

21 A. I am in the section with mortars.

22

017421

1 Q. And do you know the accused Soldier in this case, PFC
2 Richmond?

3 A. Yes, I do.

4 Q. Do you see him in the courtroom today?

5 A. Yes, I do.

6 Q. Would you please point to him?

7 A. Right [pointing towards the accused] there.

8 TC: The witness has identified the accused.

9 Q. Specialist [REDACTED] when did you arrive in Iraq?

10 A. January 24th. (4)16-2

11 Q. And where, since then, where have you worked?

12 A. On FOB McHenry.

13 Q. Do you recall the events of, or do you recall 28 February
14 2004?

15 A. Yes, I do.

16 Q. What was your involvement or your job in that particular
17 mission?

18 A. I was the SAW gunner on the back of the cargo HMMWV.

19 Q. And what were--what was your section to do during this
20 particular mission?

21 A. Perform TCPs and make sure nobody goes in or out of the
22 town.

23

017422

1 Q. How--and about how far away was your position from the
2 outside of the town?

3 A. From the town?

4 Q. Yes.

5 A. From the town, several hundred meters as the best I could
6 remember.

7 Q. Do you recall anything happening in terms of the field in
8 front of you right around daybreak? Did you see anything there in
9 the field?

10 A. Nothing suspicious or wrong going on.

11 Q. Now later one we are going to talk about a particular
12 shooting that occurred. Prior to the shooting, did you see anything
13 happen in that general area after the sun came up?

14 A. No, I didn't.

15 Q. Did you see anyone out in that area?

16 A. There is--there was some people out there walking their
17 cows and you know, some other people not in the exact general area
18 but around there doing their morning chores and stuff like that.

19 MJ: If you could, direct your answers to the members and speak
20 very loudly, all right?

21 WIT: Yes, Ma'am.

22

1 MJ: Thanks.

2 Q. What if anything did any of the Soldiers do from your
3 section during the field that day?

4 A. All that we were doing was just standing by the truck
5 making sure that no one was coming in our out.

6 Q. Did anybody ever leave the truck area?

7 A. We all stayed around the area.

8 Q. The whole time.

9 A. Yes, Sir.

10 Q. Okay, who was with you?

11 A. PFC Richmond, myself, Corporal ^{(S)(G)-2} [REDACTED], PFC [REDACTED], and
12 Specialist ^{(S)(G)-2} [REDACTED] oh, and Sergeant [REDACTED]

13 Q. Did that entire morning, did Sergeant ^{(S)(G)-2} [REDACTED] and PFC
14 Richmond stay at the TCP? Did they ever leave the TCP?

15 A. No, we all stayed at the TCP. We all stayed at the truck.
16 We all arrived in this one truck and you know, just hung out there
17 and made sure that if anyone was coming down the road, we would turn
18 them around and, you know, just keep an eye on whatever else was
19 going on.

20

017424

1 Q. Did anything happen at the end of the raid?

2 A. All we heard, was like before daybreak, we heard like
3 shotgun blasts breaching doors going inside, so we kept a sharp eye
4 out.

5 Q. Did you see a cow herder that--strike that. Did your
6 section receive any directives to detain anyone?

7 A. Yes, we did. We--the order came over the radio to detain
8 all males in town and we--I believed we called and asked, you know,
9 there was this guy out in this field. Should we go get him and they
10 told us to go and detain him.

11 Q. Did you see the guy out in the field?

12 A. Yes, I did. We all saw him.

13 Q. What was he doing?

14 A. Walking with his cows.

15 Q. And so what happened after you received that order?

16 A. Sergeant ^{(b)(6)-2} [REDACTED] and PFC Richmond went out to go to detain
17 this man and at the same time we had, like a tractor full of women
18 coming from one of the directions and another car full of men from
19 the other direction, so we had to detain those men. So, we had a
20 little bit going on in almost every direction.

21

017425

1 Q. What if anything during the next 10 to 15 minutes--on 28
2 February, what if anything, did you see out in the field with this
3 cow herder?

4 A. I saw nothing else except the cow herder and him walking
5 with his cows.

6 Q. Okay, but after Sergeant [REDACTED] and PFC Richmond went to
7 detain him. (S) (A) 7

8 A. I am sorry, I don't understand the question.

9 Q. Did you--okay. Did you understand that a shooting occurred
10 that morning?

11 A. Yes.

12 Q. What do you know about it?

13 A. All I know is that at the time when the shooting happened,
14 I did not see the actual shot because I was looking to my left and
15 right. I didn't see the actual shot happening. All I heard--I heard
16 the shot. I saw the cow herder fall down. Even at that still time I
17 still didn't know exactly what happened. I was kind of like, what?
18 And so, later on when Sergeant [REDACTED] came back to--to the truck and
19 the TCP after having Specialist [REDACTED] go over and replace him is
20 when I found out exactly what happened. (S) (A) 7

21

1 Q. Okay, prior to--I am just interested to know what you saw.
2 Prior to hearing the shot, did you see anything out in that
3 direction?

4 A. No, just the cow herder.

5 Q. Did you see the cow herder and the Soldiers together then?

6 A. Oh yes, I did.

7 Q. What did you see?

8 A. I seen them walking out towards them. I don't actually
9 remember seeing them flex-cuff the guy but I did later find out that
10 he was, but I was looking to my left and right seeing what was going
11 on.

12 So, I don't remember seeing the guy being flex-cuffed. I
13 do remember seeing him walking. From my front it looked like they
14 were walking to the left to try and come and bring the guy back to
15 our location.

16 Q. And when you saw them walking, did you observe anything in
17 terms of the Iraqi man? Where were his arms and stuff?

18 A. His arms were behind his back and he was flex-cuffed.

19 Q. How long have you know PFC Richmond?

20 A. Since I got to the unit in November of 2002.

21

017427

1 Q. And what if anything does--have you heard him say about
2 Iraqis?

3 A. Well we all talk a certain amount of trash about this. We
4 all came to Iraq with a certain amount of, "I'm going to go over
5 there and kick some butt and jack everything up." You know, and we
6 all talked a little bit of trash and so, but Richmond definitely was
7 the most outspoken about it. "I'm going to get a bayonet kill."

8 You know, even that same morning he talked about killing
9 people. I especially remember a kid walking down the road, and he
10 mentioned it as a joke of course, but he said, "Hey there's a kid.
11 He's got sheep. Can I shoot him?" It was meant as a joke but you
12 know, he was definitely always the one that was the most outspoken
13 about it.

14 TC: No further questions. Thank you.

15 MJ: Defense?

16 DC: Yes, Your Honor.

17 **CROSS-EXAMINATION**

18 **Questions by the defense counsel:**

19 Q. Specialist ^{(S) 16-2} [REDACTED], you and PFC Richmond were in the same
20 squad prior to deploying to Iraq?

21 A. That is correct, Ma'am.

22

017428

1 Q. And that was during your train up back at Schofield
2 Barracks?
3 A. Yes.
4 Q. You were trained on the ROE during that time?
5 A. Yes, several times.
6 Q. And you were also trained on the ROE once you arrived in
7 country in Iraq?
8 A. Yes.
9 Q. You were selected by your command to go on the mission on
10 the 28th?
11 A. Yes.
12 Q. Is that correct?
13 A. Yes.
14 Q. And you went to a briefing on the evening of the 27th?
15 A. Yes.
16 Q. The briefing started on approximately 2030? [sic]
17 A. I believe so. Somewhere around there?
18 Q. Okay, 2200, 2230?
19 A. Yes, somewhere around there.
20 Q. It lasted for about 20 to 30 minutes?
21 A. I would say so.
22

017429

(S)(b)-2

1 Q. Sergeant [REDACTED] is the one that briefed you and the other
2 Soldiers on that mission?

3 A. That is correct.

4 Q. And he told you that it was a fairly high-profile mission,
5 right?

6 A. Yes.

7 Q. And he told you that there were several high value targets
8 that Alpha Company had hoped to detain?

9 A. Yes.

10 Q. And they were all males, isn't that also right?

11 A. Yes.

12 Q. He told you that it was Fedayeen insurgents?

13 A. I don't exactly remember who the priority targets were. I
14 just--you know they talked about what we were going to be doing with
15 the TCP. As best as I could remember. So like, I never actually
16 knew who we were actually going after.

(S)(b)-3

17 Q. Did it seem to you that it was a fairly important mission,
18 more so than some others that you had been on?

19 A. Yes. It had a new little twist to it.

20 Q. And Sergeant [REDACTED] was passing on to you the information
21 that he got from higher? (S)(b)-2

22 A. Yes.

23

1 Q. Now the new little twist on this mission was that you were
2 briefed that if you were to see anyone running away from the village,
3 you were authorized to shoot them?

4 A. That is correct.

5 Q. And that was different than the prior ROE as you understood
6 it?

7 A. Yes.

8 Q. You didn't seek clarification on that order from anybody
9 other than Sergeant [REDACTED] did you?

10 A. No. (5)(6)-2

11 Q. In fact, you didn't seek any clarification from him either,
12 did you?

13 A. I felt it was not necessary for me to seek clarification
14 because I understood my orders very clearly. It did seem very
15 different from all the others but the one thing that always goes
16 about ROE which doesn't ever change is common sense.

17 Q. And who evaluates common sense?

18 A. We do.

19 Q. Okay each individual Soldier?

20 A. Yes, we do it to our best judgment.

21

017431

1 Q. And you make decisions based on the facts which you know
2 them at the time?

3 A. Yes.

4 Q. Are you required to go to your squad leader or platoon
5 sergeant to ask them if your common sense is the right thing?

6 A. In a split-second type of decision, you know, we are
7 expected to take all the other things about ROE and plus common
8 sense, you know, if something is happening and you know it is wrong,
9 then you need to take care of it.

10 And if deadly force is not necessary, then it is not common
11 sense to use it.

12 Q. But each individual Soldier makes that decision at the time
13 they need to make the decision?

14 A. Yes.

15 Q. And deadly force is in fact authorized under certain
16 circumstances?

17 A. As a last resort, yes.

18 Q. Okay and one of those circumstances would be when there is
19 a hostile threat towards Coalition Forces?

20 A. Yes.

21

017432

1 Q. Now your specific mission that day was to be a part of the
2 traffic control point?

3 A. Yes.

4 Q. And you indicated that you could hear shotgun blasts going
5 through doors while you were out at the traffic control point, is
6 that right?

7 A. That is correct.

8 Q. Were you wearing earplugs that day?

9 A. Negative.

10 Q. And you were at the southern point of the village?

11 A. I believe so. I can't exactly remember what part of the
12 village we were at.

13 Q. Your--part of your job was to stop folks from exiting the
14 village.

15 A. That is correct.

16 Q. And the other part was to stop people from entering the
17 village.

18 A. That is correct.

19 Q. And that was so that Alpha Company had enough security to
20 perform their mission?

21 A. Correct.

22

017433

(S)(b)-7
1 Q. Specialist [REDACTED], the ROE changed for your unit between
2 the 18th of February and the 28th of February, didn't it?

3 A. We kind of set the standards of like what would happen kind
4 of change over the days.

5 Q. Okay but specifically within that time period it did
6 change?

7 A. Yes, it did.

8 Q. Now you received a call or you heard a call over the net
9 from Captain [REDACTED] the Commander of that mission.
(S)(b)-7

10 A. I don't exactly know who it was, but I believe so.

11 Q. Okay and that direction over the net was to detain to all
12 males leaving the village.

13 A. Yes.
(S)(b)-7

14 Q. And you had seen this Iraqi farmer leave the village
15 earlier that morning?

16 A. Yes.

17 Q. Approximately 30 to 60 minutes earlier?

18 A. I would say so.

19 Q. And the raid had started actually 90 minutes to an hour--90
20 minutes to 60 minutes earlier?

21 A. Yes.

22

017434

1 Q. You didn't see Mr. [REDACTED] get shot, did you?
2 A. No, I didn't. (S)(b)-7
3 Q. And the last time that you looked out at the field, you saw
4 two individuals and Mr. [REDACTED] standing? (S)(b)-7
5 A. Yes.
6 Q. Before you heard the shot?
7 A. Yes.
8 Q. And at that point Private Richmond was behind Sergeant
9 [REDACTED] and Mr. [REDACTED] wasn't he?
10 (S)(b)-7 A. Yes. (S)(b)-7
11 Q. You heard Private Richmond talk about getting a bayonet
12 kill?
13 A. I'm sorry, can you----
14 Q. You heard Private Richmond talk about getting a bayonet
15 kill?
16 A. Yes.
17 Q. And that was back at Schofield?
18 A. Yes.
19 Q. You never really took that seriously, did you?
20 A. No, I didn't take it seriously.
21

1 Q. And in fact, you, yourself, and several other of the
2 Soldiers, you all had that type of mind frame?

3 A. In somewhat of a way, yes.

4 Q. On that day, on the 28th, when you heard Private Richmond
5 make that comment, you laughed at it didn't you?

6 A. What--okay, excuse me, Ma'am, which comment were you
7 talking about?

8 Q. On the 28th, you indicated that you heard Private Richmond
9 say, "Hey can we shoot them?"

10 A. Yeah I thought it was a little funny.

11 Q. Okay, and you laughed?

12 A. I believe so.

13 Q. Okay, and you thought it was a funny joke.

14 A. In a way, yes.

15 Q. Private Richmond generally is a jokester, isn't he?

16 A. Yes, always has been.

17 Q. And you, yourself, have joked about shooting someone,
18 haven't you?

19 A. At one time or another.

20 Q. You have done cadences during PT where the cadence talks
21 about shooting people and putting them down?

22 A. Yes.

23

1 Q. You have heard the cadence, "Shoot, shoot, shoot the son of
2 a bitch."

3 A. Yes.

4 DC: Nothing further, Your Honor.

5 MJ: Government, any redirect?

6 TC: No questions, Ma'am.

7 MJ: Members of the panel, questions for Specialist [REDACTED]

8 [Negative response from all members.]

(S)(6)-2

9 MJ: Government, temporary or permanent?

10 TC: Permanent, Your Honor.

11 MJ: Any objection?

12 DC: Your Honor, the defense has one follow up with Specialist

13 [REDACTED]. We can certainly recall him on the defense's case in chief
14 if necessary. (S)(6)-2

15 MJ: Or you can ask him now if you want?

16 DC: Yes, Your Honor.

17 **Questions by the defense counsel:**

18 Q. Specialist [REDACTED] you had been on other missions with PFC
19 Richmond prior to the 28 February mission? (S)(6)-2

20 A. Yes.

21

1 Q. And one of those missions was to a town called Saab up in
2 the northern part of Iraq?

3 A. Yes.

4 Q. And on that mission you, in fact, saw Private Richmond
5 interacting with Iraqi children?

6 A. We all get bombarded with tons of kids coming up there
7 begging for stuff, yes.

8 Q. And Private Richmond never had any problem hanging out and
9 spending time with Iraqi children, did he?

10 A. Not that I know of except for the fact that it is a little
11 annoying, you know, having people asking for handouts all the time.

12 DC: Nothing further, Your Honor.

13 The Defense appreciates the court's discretion, Your Honor.
14 Thank you.

15 MJ: No problem. Any objections to him being permanently
16 released though, Captain [REDACTED] (b)(6)~

17 DC: No objections, Your Honor.

18 [The witness was duly warned, permanently excused, and withdrew from
19 the courtroom.]

20 MJ: Government?

21

(S)(G)-2

1 SPECIALIST [REDACTED] U.S. Army, was called as a witness for
2 the prosecution, was sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the trial counsel:

5 Q. Please state your full name, your rank, and your unit.

6 A. Specialist (S)(G)-2 [REDACTED] HHC, 1-27 Infantry.

7 Q. What do you do in 1-27 Infantry?

8 A. I am a mortar, Sir. I am actually the gunner for our
9 section.

10 Q. How long have you been in 1-27?

11 A. About 3 and a half, close to 3 and a half years, Sir.

12 Q. And do you know the accused Soldier in this case, PFC
13 Richmond?

14 A. Yes, Sir.

15 Q. Do you see him in the courtroom?

16 A. Yes, Sir.

17 Q. Could you point to him?

18 A. Yes, [pointing to the accused] Sir.

19 TC: The witness has identified the accused.

20 Q. Did you come to Iraq with the bulk of 1-27 in the January,
21 February timeframe?

22 A. Yes, Sir.

23

017439

1 Q. Do you recall the events of 28 February of this year?

2 A. Yes, I do, Sir.

3 Q. What was your involvement or your job with this mission?

4 A. That day we had to set up a TCP in support of Alpha
5 Company, Sir.

6 Q. In relation to the village that you were supporting the
7 operation from, how far away was your TCP from that village?

8 A. About 300 meters from the first building, Sir, at the
9 actual entrance of the village.

10 Q. Did you see anyone come out of the village that morning?

11 A. Roger, Sir.

12 Q. In particular, did you see anyone that you would see later,
13 up close?

14 A. Roger, Sir, it was a cattle herder, I believe, Sir.

15 Q. Would you please describe what you saw the first time you
16 saw this cattle herder.

17 A. Well we were on the south side of the village and on the
18 edge--on the right edge of the village, first we saw a bunch of
19 cattle come out and then we noticed that a herder was following
20 behind him and he went probably about 200 meters down and stopped and
21 let his cattle stop and graze there.

22

1 Q. And what did this cow herder do?
2 A. Just basically stood there, Sir.
3 Q. Did you notice if he was carrying anything or did he do
4 anything suspicious?
5 A. No, Sir.
6 Q. Approximately how long did you observe him before anyone
7 went out to meet him?
8 A. Probably about a half hour, Sir.
9 Q. With relation to that cow herder and later on, what do
10 you--what did you observe?
11 A. You talking about as far as the event, Sir?
12 Q. Yes.
13 A. As we were there at the TCP we got a call that came over
14 the radio to detain all males. And then Sergeant [REDACTED] actually had
15 called back to verify that Captain [REDACTED] wanted the cattle herder
16 as well detained. (b)(6)(b)(7)
17 And after we got the okay to go out there, myself and
18 Corporal [REDACTED] at the time, noticed that a tractor was coming with
19 three females. So, myself and Corporal [REDACTED] had turned to stop the
20 tractor with three females on it and that's when we heard the shot
21 fired.
22

017441

1 A. And so, we turned around and just noticed that there was
2 two figures standing and one laying on the ground.

3 Q. The ROE for this particular mission, the defense has
4 elicited that the ROE was the regular ROE plus to put down all males
5 fleeing the village. Do you recall that? (S)(R)-3

6 A. Roger, Sir.

7 Q. And did you observe any males fleeing the village that
8 morning?

9 A. No, Sir.

10 Q. And how long have you know the accused, PFC Richmond?

11 A. Maybe about a year and a half, Sir.

12 Q. What, if anything, have you heard him say about Iraqis?

13 A. Since the time that we have been on notice that we were
14 going to get deployed, just little comments here and there, you know
15 about, "I'm going to shoot one here. This is my chance to get one
16 here."

17 And, that morning when we noticed the cow herder come out
18 and he pointed at him and looked at Sergeant (S)(R)-2 and said, "He's
19 not fleeing or anything like that, but can I shoot him anyway?"

20 TC: No further questions.

21

017442

1 MJ: Defense?

2 DC: Yes, Your Honor.

3 **CROSS-EXAMINATION**

4 **Questions by the defense counsel:**

5 Q. Specialist ^{(5) (6) 2} [REDACTED], you received extensive ROE training in
6 preparation for your mission to Iraq, isn't that right?

7 A. Yes, Ma'am.

8 Q. And part of that training was how to identify and enemy,
9 isn't that right?

10 A. That is correct, Ma'am.

11 Q. And it is also correct that the enemy was described to you
12 as not always being somebody who would wear a military uniform?

13 A. Yes, Ma'am.

14 Q. And that very often in Iraq, the enemy could be wearing the
15 costume of a simple farmer or a village person?

16 A. Yes, Ma'am.

17 Q. And you were also trained that basically not to trust who
18 somebody was at first appearance but to find out further who they
19 were, isn't that also right?

20 A. Yes, Ma'am.

21

017443

1 Q. And that part of your training was that a threat to you or
2 one of your comrades might not always be an obvious threat? Isn't
3 that also right?

4 A. Yes, Ma'am.

5 Q. And that you had to be on your high alert because the
6 Iraqis were sneaky sometimes?

7 A. Yes, Ma'am.

8 Q. You were selected for the mission on the 28th that you
9 testified to on direct? Is that correct?

10 A. Yes, Ma'am.

(s)(b)2

11 Q. And you indicated that Sergeant [REDACTED] had briefed you that
12 you were authorized to shoot all males fleeing the village. Is that
13 also correct?

14 A. That is correct, Ma'am.

15 Q. You had seen the Iraqi cow herder leaving the village
16 approximately 30 minutes before, is that what you said?

17 A. Yes, Ma'am.

18 Q. And you knew that that was, in fact, a high profile mission
19 that day?

20 A. That is correct, Ma'am.

21

017444

1 Q. You did also know that Alpha Company was conducting a raid
2 to get some high value targets?

3 A. That is correct, Ma'am.

4 Q. The ROE for the mortars platoon changed between the 18th of
5 February and the 28th of February, didn't it?

6 A. Yes, Ma'am.

7 Q. And you were, in fact, briefed on those changes by the
8 Sergeant Major and the Battalion Commander, isn't that also correct?

9 A. That is correct, Ma'am.

10 Q. The ROE also includes that you can use common sense? Is
11 that also correct?

12 A. Yes, it does, Ma'am.

13 Q. And who is the ultimate judge of that common sense?

14 A. The individual Soldier, Ma'am.

15 Q. Are individual Soldiers always expected to check with their
16 superiors before they use that common sense?

17 A. When the ROE was put out to us it was suggested that if we
18 had time to confirm with leadership but under certain circumstances,
19 you might not always have the time.

20 Q. Generally Soldiers need to make split-second decisions
21 based on the information they have in hand.

22 A. Yes, Ma'am.

23

017445

1 Q. Deadly force is authorized under certain circumstances,
2 right?

3 A. Under certain circumstances, yes, Ma'am.

4 Q. You had heard Private Richmond make a comment that morning
5 about shooting a farmer that went by?

6 A. Yes, Ma'am.

7 Q. But you had also had been briefed that you were to shoot
8 all males fleeing the village, wasn't that also correct?

9 A. Yes, Ma'am.

10 Q. And Private Richmond actually is kind of a jokester among
11 the folks, at least within his squad in the mortars, isn't that also
12 right?

13 A. As far as that goes, I am not in his squad, Ma'am.

14 Q. Okay.

15 A. So, I don't know.

16 Q. Okay.

17 A. So, I don't know how much of a jokester he is.

18 Q. But you thought he was joking that morning thought, isn't
19 that right?

20 A. It's hard to say, Ma'am, because it has been going on so
21 long that you just kind of hear it and overlook it.

22

1 Q. There are other Soldiers that say that as well then you
2 mean?

3 A. When we first started to deploy, yes.

4 Q. That would be back in February of this year, then?

5 A. Yes, Ma'am.

6 Q. Certainly people don't joke now?

7 A. No, Ma'am.

8 Q. And you had been on prior missions with PFC Richmond
9 including on to a village called Saab?

10 A. Yes, Ma'am.

11 Q. Do you recall interacting with Iraqi children during your
12 stay at that village?

13 A. Yes, Ma'am.

14 Q. And Private Richmond was also a part of that, wasn't he?

15 A. Again, I can't answer that question because my security
16 point is actually behind a council building and his was located at
17 the front, Ma'am.

18 DC: Nothing further, Your Honor.

19 MJ: Any redirect?

20 TC: No, Your Honor.

21

1 MJ: Members of the panel, any questions for Specialist

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

3 [A question from COL [REDACTED] was marked as AE XX, inspected by both
4 counsel, and handed to the military judge for questioning.]

5 **EXAMINATION BY THE COURT-MARTIAL**

6 **Questions by the military judge:**

7 Q. Specialist [REDACTED] (b)(6)-2, you said that the week and a half
8 before the 28th of February, you were briefed on changes to the ROE,
9 is that right?

10 A. Yes, Ma'am.

11 Q. Do you recall what those changes were?

12 A. Yes, Ma'am. We actually had a couple of meetings, one with
13 the Battalion Commander and one with the Battalion Sergeant Major and
14 the changes were made that we were not allowed to fire warning shots,
15 we were not authorized to--excuse me--we were not allowed to return
16 fire unless fired upon. We could identify the target, identify that
17 the target was armed and I believe that was the rest of the changes,
18 Ma'am.

19 Q. So you said the briefing was done by the Battalion
20 Commander and the Sergeant Major?

21 A. Yes, Ma'am.

1 Q. And to the best of your recollection, you were told to not
2 fire, warning shots, you are not allowed to return fire unless fired
3 upon and identify the target

4 A. Yes, Ma'am.

5 MJ: Any other questions for Specialist [REDACTED]

6 **RECROSS-EXAMINATION** (b)(6)-7

7 **Questions by the defense counsel:**

(b)(6)-2

8 Q. Specialist [REDACTED] wasn't it also changed or reemphasized
9 during that time period that if you were going to shoot, you were to
10 take aimed shots?

11 A. Yes, Ma'am.

12 MJ: Permanent or temporary, Government?

13 TC: Temporary, Your Honor.

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

16 MJ: Government?

17 TC: Your Honor, at this time the government requests permission
18 to publish Prosecution Exhibit 8 to the panel?

19 MJ: You may.

20 TC: Thank you, Your Honor.

21

1 MJ: Members of the panel, a stipulation of fact is an agreement
2 between the trial counsel, the defense counsel, and the accused that
3 this fact is now a fact in evidence before ^{you} which you may consider
4 along with all the other facts and evidence before you. (S)(6)-2

5 Please proceed.

6 [The Trial Counsel published Prosecution Exhibit 8 to the members of
7 the panel.]

8 TC: At this point the government requests a recess to go over a
9 few legal issues.

10 MJ: How long do you need?

11 TC: About 5 minutes, Ma'am.

12 MJ: Okay.

13 TC: Thank you, Your Honor.

14 MJ: Court is in recess.

15 [The court-martial recessed at 1520, 4 August 2004.]

16 [The court-martial was called to order at 1533, 4 August 2004.]

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

19 Government?

20 TC: Your Honor, the government rests.

21

1 MJ: Sir, members of the panel, there are several things that I
2 need to take care of with counsel now. This recess is likely to be,
3 for you all, half an hour, not more than 45 minutes. Then we will
4 recall you. My preference is to drive on and take the rest of the
5 evidence tonight. We will probably then break and come back for
6 instructions and arguments in the morning.

7 I remind you of what I have told you before, and that is,
8 please do not discuss the merits of the case or anything you have
9 seen so far, even amongst yourself^{self} and certainly not with other
10 outside people during the recess.  (S/CZ) Save your discussions and thoughts
11 until you are in your deliberations. Thanks.

12 Court's in recess.

13 [The court-martial recessed at 1535, 4 August 2004.]

14 [END OF PAGE]

15

1 [The Article 39(a) session was called to order at 1535, 4 August
2 2004.]

3 MJ: Please be seated. The members have left the courtroom.
4 All other parties are present.

5 Defense, are you ready to proceed?

6 DC: Your Honor, the defense requests approximately a 30-minute
7 recess to better prepare, certainly for the better judicial economy
8 later on.

9 MJ: All right. Court's in recess.

10 [The session recessed at 1536, 4 August 2004.]

11 [The session was called to order at 1620, 4 August 2004.]

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

13 All parties present when the court recessed are again
14 present. The members are absent.

15 Defense, are you ready to proceed?

16 DC: Yes, Your Honor.

17 MJ: Please proceed.

18 DC: At this time the defense moves to dismiss the Charge and
19 its Specification under R.C.M. 917.

20 MJ: What is your basis?

21

1 DC: Your Honor, the government has failed to present evidence
2 that the killing that was done by the accused was in fact unlawful
3 and R.C.M. 916(c) provides that killing an enemy combatant is
4 justified. Further, it defines justification as a death, injury, or
5 other act called for proper performance of a legal duty is justified
6 and not unlawful.

7 The government has failed to show that Private Richmond was
8 not acting within his legal duties at the time of the killing, Your
9 Honor.

10 MJ: It is a good argument.

11 Government, what is your response?

12 TC: Your Honor, the response is the first, second, and fourth
13 elements, there are no questions about them and in the government's
14 view there is no question about the third element of unlawfulness.
15 We proved that Mr. ^{(S)(G)-4} [REDACTED] was not an enemy combatant, but rather a
16 civilian, a detained civilian and to add on to the unlawfulness, he
17 was flex-cuffed at the time that he was shot.

18 The evidence introduced by the government was that he was
19 flex-cuffed and Richmond observed him being flex-cuffed when he was
20 flex-cuffed.

21

017453

1 MJ: All right. I am satisfied and your motion is denied. I am
2 satisfied that there is evidence, which taken together, with all
3 reasonable inferences and applicable presumptions could reasonably
4 tend to establish every essential element of the offense charged,
5 which is unpremeditated murder. Viewing the evidence in the light
6 most favorable to the prosecution without an evaluation of the
7 credibility of the witnesses, there is plenty of evidence upon which
8 the members may find each and every element.

9 Are you ready to proceed?

10 DC: Yes, Your Honor.

11 MJ: Call the members.

12 [The Article 39(a) session adjourned at 1634, 4 August 2004.]

13 [END OF PAGE]

14

1 [The court-martial was called to order at 1634, 4 August 2004.]

2 MJ: Court is called to order.

3 All parties present when the court recessed are again
4 present. The members are also present.

5 Defense?

6 DC: Yes, Your Honor.

7 PRIVATE FIRST CLASS [REDACTED], U.S. Army, was called as
8 a witness for the defense, was sworn, and testified as follows:

9 DIRECT EXAMINATION

10 Questions by the trial counsel:

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

12 A. Yes, Sir.

13 TC: Your witness.

14 Questions by the defense counsel:

15 Q. Afternoon Private Richmond.

16 A. Good afternoon, Ma'am.

17 Q. Private Richmond, who shot Mr. [REDACTED]?

18 A. I did, Ma'am. (b)(6)-4

19 Q. Why?

20 A. I felt he was attacking Sergeant [REDACTED] Ma'am.

21 (b)(6)-2

1 Q. How old are you?
2 A. I am 21 now, Ma'am.
3 Q. Did you graduate from high school?
4 A. No, Ma'am. I dropped out after tenth grade but I went back
5 afterwards and got my GED.
6 Q. When did you join the Army?
7 A. In 2002, Ma'am.
8 Q. What month?
9 A. May, 2002, Ma'am.
10 Q. Where did you go through basic and AIT?
11 A. Fort Benning, Georgia, Ma'am.
12 Q. What was your first duty assignment?
13 A. Schofield Barracks, Hawaii, Ma'am, with HHC Company, 1-
14 27th, Ma'am.
15 Q. What is your MOS?
16 A. I am an 11 charlie, Ma'am.
17 Q. Did you ask to be an 11 charlie?
18 A. No, Ma'am.
19 Q. What did you ask to be?
20 A. They told us to just sign up for 11 x-ray. That was just
21 infantry, Ma'am. I didn't realize there was a distinction but I
22 found that out later in basic, Ma'am.
23

1 Q. How do you like being an 11 charlie?
2 A. I like it, Ma'am.
3 Q. To what unit were you assigned once you arrived at
4 Schofield?
5 A. To 1-27, Ma'am. The HHC, the Battalion Mortar Platoon,
6 Ma'am.
7 Q. So you have been with that platoon the entire time?
8 A. Yes, Ma'am.
9 Q. Private Richmond, at some point during your time with 1-27,
10 did your unit get notified that they would be coming over to the
11 Middle East? (b)(6)-2
12 A. Yes, Ma'am.
13 Q. At what point were you notified of that?
14 A. It was probably around the middle of 2003, Ma'am. We were
15 told we were going to Afghanistan, so we had like 6 months to prepare
16 for that.
17 That was our understanding for about the next 3 months.
18 Around October it got changed and they told us we were actually going
19 to Iraq so we changed up a few small points in the training but it
20 was pretty much still the same. We were still getting ready for
21 deployment.
22

017457

1 Q. Okay, what kind of training were you doing back at
2 Schofield?

3 A. They were doing things like, how to identify an IED, what
4 was an IED, because we didn't know what that was at the time, you
5 know, land mines, you know, how to--basic ROE that applies to
6 everyone no matter where they are but they didn't get too specific
7 with that. They were mainly about land mines and IEDs, Ma'am. So it
8 was like, be careful for all of that.

9 Q. Was the training a little bit different in a jungle
10 environment?

11 A. Yes, Ma'am.

12 Q. And how was that different once you actually got over here
13 in Iraq?

14 A. There was no jungle, Ma'am, and we didn't do the same basic
15 operations that we did on Schofield that we trained for, Ma'am.

16 Q. What day did you arrive in Kuwait?

17 A. I believe it was February [sic] 22nd, 23rd, Ma'am.

18 Q. And what day did you arrive up at FOB McHenry in Iraq?

19 A. I think it was sometime around the 9th, Ma'am. I am not
20 sure of the exact date.

21

1 Q. How did you move north?

2 A. Excuse me, Ma'am.

3 Q. How did you move north? Did you convoy?

4 A. Yes, Ma'am.

5 Q. Did you fly?

6 A. Yes, Ma'am, we convoyed.

7 Q. Who was on your convoy?

8 A. Most of my battalion, Ma'am. Most of the Brigade Combat

9 Team actually. They had a few different companies from the brigade

10 that flew up but I believe it was Alpha, Bravo, and HHC Companies

11 that convoyed up from our battalion.

12 Q. Did you convoy with your squad?

13 A. Yes, Ma'am.

14 Q. With members of your platoon?

15 A. Yes, Ma'am.

16 Q. From the time that you arrived at FOB McHenry about the 9th

17 of February to the time that you shot Mr. Kadir on the 28th of

18 February, how many missions had you been on?

19 A. Approximately 10, Ma'am.

20 Q. What was your role on those missions?

21 A. It all depended on the given the specific circumstances,

22 Ma'am.

23

1 Q. Okay.

2 A. Sometimes it was just to pull security for a town council
3 meeting. Sometimes we were interacting with the local community, the
4 kids, and opening schools and things of that nature. Some were raids
5 to go look for this, look for that. Some were TCPs, like on the
6 28th, Ma'am.

7 Q. You indicated that you didn't receive much training on the
8 ROE when you were back in Schofield?

9 A. That is correct, Ma'am.

10 Q. When did you receive further training on the ROE?

11 A. They discussed it back in Kuwait, Ma'am, and then all the
12 time once we hit the ground in Iraq, Ma'am.

13 Q. Did they give you anything when you were in Kuwait?

14 A. I believe they gave us a CFLCC card, Ma'am, it was like a
15 green card.

16 Q. Okay, and what was your understanding of what that was?

17 A. That was just the general rules of engagement for the area,
18 Ma'am.

19 Q. Private Richmond, what was your understanding of the use of
20 self-defense or defense of others in February of 2004?

21 A. My understanding was that if you felt yourself or another
22 Soldier was threatened then deadly force was authorized.

23

1 Q. And did you have a choice as to if you used deadly force or
2 not?

3 A. Yes, Ma'am.

4 Q. Who did you have to check with before you made that
5 decision?

6 A. Nobody, Ma'am.

7 Q. Okay, why is that?

8 A. Because depending on the situation, it might not be
9 something that gives you time to, you know, call higher up and things
10 like that can take 20, 30 minutes, Ma'am. Or, if you are next to
11 another Soldier, I mean, you don't take the time to clarify it if you
12 see something that is directly happening, Ma'am. So, depending on
13 the circumstances, you don't clarify in given situations.

14 Q. Were you present at the briefing that Sergeant 
15 talked about on the evening of the 27th of February? (S)(G)-2

16 A. Yes, Ma'am.

17 [END OF PAGE]

18

1 Q. What information was put out at that briefing about the
2 mission the next day?

3 A. We were told the basics of the mission. We were told that
4 it was old Iraqi Army personnel, like armorers, you know, basic
5 militants like that that were having weapon caches and building new
6 weapons since they had an armorer, you know, storing their things up.
7 So, we were going to look for them.

8 We were told specifically that we were setting up a TCP on
9 the south side of the town, to let no traffic come in or out of the
10 village and to shoot anyone running from the village, Ma'am.

11 Q. How did that differ from the normal mission briefings
12 before the 28th?

13 A. We had never been told to shoot anyone fleeing a village or
14 any area before, Ma'am.

15 Q. Private Richmond, there has been some testimony by other
16 witnesses that the ROE changed between the 18th of February and the
17 28th of February, do you recall that testimony?

18 A. Yes, Ma'am.

19 Q. Okay, how did it change?

20 A. First off, they stressed aimed shots. If you take a shot,
21 you will be looking in the scope. That is basically what they told
22 us, Ma'am.

23

1 A. They also told us that after an IED goes off, you don't
2 spray the place down. Look for the person who set it off, you know.
3 Those were the two main things because after that incident, those
4 were the two big concerns, Ma'am.

5 Q. On the 27th of February, during the daytime, what type of
6 shift did you work that day?

7 A. I believe that I just had a regular shift, either doing
8 some detail right there or working on the gun system, Ma'am.

9 Q. Okay, what hours did you work that day, do you recall?

10 A. Probably would have worked until about 2100, Ma'am.

11 Q. And the briefing of Sergeant [REDACTED] occurred around 22 or
12 2230? (S) 22

13 A. Yes, Ma'am.

14 Q. Were you asleep at the time and woken up for the briefing
15 then?

16 A. I believe I was already awake but getting ready to go to
17 sleep, Ma'am.

18 Q. What time did you go to bed that night?

19 A. I probably went to sleep about 2330, Ma'am.

20 Q. And what time did you get up on the morning of the 28th?

21 A. Around 0330, Ma'am.

22

017463

1 Q. PFC Richmond, what were you wearing that morning in
2 preparation to go out on this mission?

3 A. We all were wearing DCUs, kevlar, flak vests, and I also
4 had on a Gore-Tex top as well, Ma'am, because it was cold back then,
5 Ma'am.

6 Q. Were you wearing the old kevlar or the new kevlar?

7 A. The old kevlar, Ma'am.

8 Q. Did you have on those glasses that you are wearing now?

9 A. Yes, Ma'am. I was wearing these glasses and they had some
10 large goggles up on the top. I was wearing gloves on my hands also,
11 Ma'am.

12 Q. Was it still cold in February?

13 A. It was really cold, Ma'am.

14 Q. Approximately how long did it take you to get from your SP
15 point on FOB McHenry out to the village that you were going to?

16 A. Approximately an hour, Ma'am. It wasn't really that far of
17 a drive, but it was really foggy that night and we were the second to
18 last vehicle in the convoy when we left out and the Avenger behind us
19 that was supposed to be pulling rear security got lost at some point,
20 Ma'am.

21

1 A. It was--because it was so foggy so I remember we stopped
2 for a while because they had me waving an infrared chem-light hoping
3 they could find us but they ended up catching up to us about an hour
4 and a half later, Ma'am.

5 Q. Private Richmond, if I can go back for a moment to talk
6 about what you knew about the mission.

7 A. Yes, Ma'am.

8 Q. Did this mission seem to be more important to you then
9 other missions that you had been on?

10 A. Yes, Ma'am.

11 Q. Okay, why was that?

12 A. We had never been given anything this specific before as
13 far as the details that we were told in the briefing and they said
14 they had HVTs, high value targets and I think that was our second
15 mission on that but they said they had several in that village and
16 the other one was just for one person and we weren't right there in
17 that vicinity, Ma'am.

18 Q. And you knew that it was at least more then one person that
19 Alpha Company had hoped to detain?

20 A. Yes, Ma'am.

21

1 Q. Were you with your normal mortars squad when you went on
2 that mission?

3 A. No, Ma'am.

4 Q. Who-----

5 A. I was attached to the first gun squad and to Sergeant
6 [REDACTED] that day, Ma'am.

7 (S)Q-2 Q. Why were you attached to that gun squad?

8 A. They were originally going to send the first gun squad,
9 Ma'am, but our platoon leader didn't want to have a corporal in
10 charge of the operation so they attached Sergeant [REDACTED] and they
11 still needed another person so I was picked for that, (S)Q-2 Ma'am.

12 Q. Okay, when you are with your regular squad, what's your
13 normal duties with them?

14 A. I am gunner, Ma'am, so I basically serve as a team leader
15 in our squad.

16 Q. Now had you ever worked with Sergeant [REDACTED] before?

17 A. No, Ma'am. (S)Q-2

18 Q. Did you know who he was?

19 A. Yes, Ma'am.

20 Q. Did you know that he was an NCO?

21 A. Yes, Ma'am.

22

1 Q. So when you arrived at the south part of the village to set
2 up the traffic control point, how did your group split up, if they
3 did?

4 A. We arrived there and originally the Avenger wasn't there
5 yet so we had people pulling security in every direction. We had
6 myself, I was watching the right view.

7 I think [REDACTED] was watching the left field Ma'am, and
8 (S)(G)-2 [REDACTED] was up on the SAW and Specialist [REDACTED] and Corporal [REDACTED]
9 (S)(G)-2 were watching, you know, for traffic that might come in or out of the
10 village and Sergeant [REDACTED] was just walking around.

11 Q. Okay and how did you feel about going on this high priority
12 mission?

13 A. You feel the same as--because things pop up all the time
14 but you are just really alert for things like that, Ma'am.

15 Q. Okay, did you feel alert that morning?

16 A. Yes, Ma'am.

17 Q. Private Richmond, at some point while you were at the
18 traffic control point, you saw the farmer who has now been identified
19 as Mr. [REDACTED] leave the village.

20 (S)(G)-7
A. Yes, Ma'am.

21

1 Q. At approximately what time do you think that he left the
2 village?

3 A. At 08-0815, Ma'am.

4 Q. How long had the mission in the village been going on at
5 the time you saw Mr. (b)(6) leave?

6 A. Maybe 2 hours, Ma'am.

7 Q. And you asked Sergeant (b)(6) if you could shoot him?

8 A. Yeah, I asked if we were supposed to shoot him, Ma'am.

9 Q. Okay, why did you ask him that?

10 A. Because we were told to shoot all males fleeing the
11 village, Ma'am. That was a first to me, you know, and it is easy
12 enough when somebody tells you to do it but when you actually see
13 something going on, you know you want to seek clarification before
14 doing something like that, Ma'am. (b)(6)

15 Q. Did you think that Mr. (b)(6) was actually fleeing the
16 village at that time?

17 A. I didn't know what he was doing, Ma'am, to be totally
18 honest with you. That is why I asked the question. I figured it was
19 not my decision to make.

20 Q. And that was in part because of this guidance that you
21 received?

22 A. Yes, Ma'am.

23

1 Q. You had never been given that guidance before?

2 A. Correct, Ma'am. (b)(7)(C)

3 Q. What did Sergeant [REDACTED] tell you?

4 A. He told me, "No." So we left it at that, Ma'am. (b)(7)(C)

5 Q. You have heard testimony from Specialist [REDACTED] about
6 some of the ROE training, train up that you received to come over to
7 OIF?

8 A. Yes, Ma'am.

9 Q. What type of training did you receive about what the enemy
10 will look like?

11 A. They were telling us--they had people dressed in large
12 robes and stuff when we do FTXs and field problems like that, but
13 they had a big classroom session where they were going over all kinds
14 of slides and information.

15 They were getting people who were already over here to talk
16 to people about tactics they were using and things like that. So,
17 they were telling us to suspect anything, you know, IEDs are
18 everywhere, don't touch stuff because they put grenades under
19 everything.

20 When you are searching a vehicle, check everywhere. We had
21 like a 2 or 3 hour class on how to look through a vehicle because
22 they had so many hiding spots.

23

017469

1 A. We had like when you are actually searching a person all
2 the places you are supposed to search. Things and stuff like that,
3 Ma'am.

4 Q. Had you received training on how to search someone who was
5 going to be detained?

6 A. No, Ma'am.

7 Q. Had you ever detained anyone before?

8 A. I had flex-cuffed people before, Ma'am, on the 18th of
9 February but I hadn't detained them in the sense that we went out
10 there, got them, and flex-cuffed them. Not in that sense, Ma'am.

11 Q. Did you search them before you flex-cuffed them?

12 A. They were already searched, Ma'am.

13 Q. Another Soldier did that?

14 A. Yes, Ma'am. I watched that.

15 Q. Okay, while you were at the TCP, a call came out over the
16 radio?

17 A. Yes, Ma'am.

18 Q. Okay, and what was the information that came out over the
19 radio?

20 A. To detain all males in the area, Ma'am.

21 Q. Who called back for clarification?

22

017470

1 A. Sergeant (b)(6)-2 did, Ma'am.

2 Q. What was the answer once he sought clarification?

3 A. They said to detain all males in the area, you know, every
4 male you can find, detain them.

5 Q. Did you volunteer to go with Sergeant (b)(6)-2?

6 A. I told him that I would go with him, Ma'am, if he needed me
7 but he picked me and told me to come.

8 Q. So it wasn't you fighting over other Soldiers to go out
9 there?

10 A. No, Ma'am.

11 Q. Who was the closest individual at that time?

12 A. Mr. (b)(6)-4 Ma'am.

13 Q. Approximately how far away from Mr. (b)(6)-4 were you when you
14 think he first saw that you were coming toward him?

15 A. Approximately 25 meters, Ma'am.

16 Q. Did either of you call out to Mr. (b)(6)-4 at that time?

17 A. At this time, Sergeant (b)(6)-2 already designated that I
18 would be pulling security on him and that he would be attempting to
19 flex-cuff him so it wasn't my place to talk. Sergeant (b)(6)-2 was
20 trying to tell him, you know, to turn around, turn around before we
21 go there but they didn't speak the same language so that wasn't
22 working.

Page 566 is blank, but there is no
missing testimony. PFC Richmond's
testimony continues uninterrupted
from page 565 to page 567.



(S)(b)7

017472

1 Q. As the PFC with the E5, would it have been your place to be
2 the one to talk to Mr. [REDACTED] (S)(G)-4

3 A. Well, if I was attempting to detain him, Ma'am, I probably
4 would have taken that but as a security presence, my job is just to
5 observe and to make sure that Sergeant [REDACTED] doesn't come under
6 attack or nothing crazy happens while he is not able to defend
7 himself, Ma'am, because you have to sling your weapon, you know, so
8 you can have both hands free, Ma'am.

9 Q. So at what point did Sergeant [REDACTED] sling his weapon so
10 that he could have his hands free?

11 A. At some point walking over towards the man. I am not sure
12 how far away he was, Ma'am. I would say between 50 and 25 meters he
13 just let his weapon drop down in front of him as we were walking
14 towards him, Ma'am.

15 Q. Was there anything obstructing your view of Mr. [REDACTED]?

16 A. No, Ma'am. (S)(G)-4

17 Q. As far as you could tell was there anything obstructing any
18 kind of line of sight between Mr. [REDACTED] and Sergeant [REDACTED]?

19 A. No, Ma'am. (S)(G)-2

20 Q. Where does Sergeant [REDACTED] have his weapon?

21 A. It was in the front of him, Ma'am.

22

1 Q. How were you holding your weapon as you approached Mr.

2 [REDACTED]?

3 A. I was in the low ready.

4 Q. Was there any obstruction at all from your weapon?

5 A. No, Ma'am.

6 Q. At what point does Sergeant (b)(6)-2 [REDACTED] start to talk to Mr.

7 [REDACTED]?

8 A. As we were walking up to him, Ma'am. Once we got pretty
9 close, maybe from here to the courtroom door, he started to tell him
10 to turn around, turn around, thing like--but no response because he
11 didn't know what he was saying, Ma'am.

12 Q. Mr. (b)(6)-1 [REDACTED] didn't speak English?

13 A. No, Ma'am.

14 Q. As far as you could tell?

15 A. Naw, he didn't turn around.

16 Q. How did Mr. (b)(6)-1 [REDACTED] first react when he saw that you were
17 first approaching him?

18 A. He started pointing back at the village. It sounded like
19 he was angry and I have no idea what he was saying but the impression
20 I got was, "Oh no, not me. They are over there in the village. Go
21 back to the village." Things like that. I know he was trying to
22 redirect us back to the village.

23

1 Q. Was he pointing towards the village or pointing in another
2 direction?

3 A. He was pointing towards the village, Ma'am.

4 Q. What was the tone of his voice?

5 A. Loud, Ma'am.

6 Q. Did he sound angry?

7 A. Yes, Ma'am.

8 Q. How loud?

9 A. I don't know what [raising his voice] he was saying but go
10 down--that is the impression I got, Ma'am.

11 Q. Were you wearing ear plugs when you when you went out to
12 approach Mr. ^{(b)(6)-4} [REDACTED]?

13 A. I was wearing one, Ma'am. It was mandatory for people in
14 our platoon to wear at least one earplug as soon as you roll out the
15 gate after the 18th of February.

16 Q. Which ear did you have it in?

17 A. I can't recall, Ma'am.

18 Q. But one was mandatory?

19 A. At least one, yes, Ma'am.

20 Q. Once Mr. ^{(b)(6)-4} [REDACTED] was pointing towards the village----

21 A. Yes, Ma'am.

22

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1 Q. ----Did any kind of dialogue continue between he and
2 Sergeant [REDACTED] (b)(6)-2

3 A. He was speaking Arabic and Sergeant [REDACTED] (b)(6)-2, at that time I
4 think he addressed me and was like, "Man, it is this guy's unlucky
5 day." Something along those lines.

6 As I was moving into position where I was going to stand
7 at, Ma'am, I believe Sergeant [REDACTED] (b)(6)-2 was like, "Turn around." He
8 kept telling him to turn around but he didn't know what he was
9 saying. It was pretty useless, Ma'am.

10 Q. Now Sergeant [REDACTED] (b)(6)-2 had directed you to stay at the low
11 ready?

12 A. He didn't give me any direction on my weapon, like my
13 placement at that point.

14 Q. How did you know how to hold your weapon?

15 A. I just knew, Ma'am. It is pretty basic. When you walk
16 around you are at the low ready and you know, when you are pulling
17 security on somebody you don't want to be at the low ready, you are
18 going to raise up to the high ready, Ma'am.

19 Q. Sergeant [REDACTED] (b)(6)-2 indicated in his testimony that he directed
20 you where to stand when pulling security.

21 A. Yes, Ma'am.

22

1 Q. And did you follow his direction?

2 A. Yes, Ma'am. He didn't tell me where to stand at, Ma'am,
3 but I knew where to stand, like I said. So I stood off to the right
4 of both of them, Ma'am.

5 Q. And how did you know where to stand?

6 A. You have got to get an angle to where you can see the other
7 side of the person that the other person can't see and to where if
8 you do have to fire a shot to where it is not going to go
9 through--where it would not go through Sergeant [REDACTED] I wouldn't
10 want to shoot to where it would--you know--you know what I am saying,
11 Ma'am.

12 I can't stand in front of the guy when Sergeant [REDACTED] was
13 standing directly behind him just in case something happens and I
14 have to fire that shot, I don't want it to hit Sergeant [REDACTED] too,
15 Ma'am.

16 Q. Safety concerns?

17 A. Yes, Ma'am.

18 Q. As you approached Mr. [REDACTED] in this 50 to 25 meters, he
19 didn't make any sudden movements during that time period?

20 A. No, Ma'am.

21

1 Q. Okay, he didn't try to flee?

2 A. No, Ma'am.

3 Q. Nothing that caused you any concern?

4 A. No, Ma'am.

5 Q. As this apprehension progressed, Sergeant (b)(6)-2 [redacted] began to
6 try to zip-strip Mr. [redacted] is that right?

7 A. Yes, Ma'am. (b)(6)-4

8 Q. Okay, and how much resistance was Mr. (b)(6)-4 [redacted] giving during
9 that time?

10 A. From where I was at I could see his right arm and I don't
11 know if you wanted me show you what I saw, Ma'am, but he was moving
12 his arms and shoulders and you know, I could see like this [gesturing
13 with his arms] as Sergeant (b)(6)-2 [redacted] was trying to hold his arms behind
14 him, Ma'am.

15 DC: The witness has just made a jerking motion back and forth
16 with his left and right shoulders with his arms positioned behind his
17 back as if they were flex-cuffed low at his waist.

18 Q. Based on your motion, you indicated that both arms were
19 behind him. Was he resisting prior to having both arms behind him?

20 A. He wasn't cooperating at all, Ma'am.

21

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1 Q. How was-----

2 A. He didn't try to run off or anything like that. He wasn't
3 cooperating originally, you know, Sergeant [REDACTED] had to physically
4 turn him around and then he wouldn't keep his hands still for
5 Sergeant ^{(S)(G)-2} [REDACTED] to flex-cuff him after Sergeant [REDACTED] moved in place
6 behind him, Ma'am. (S)(G)-2

7 Q. Now during the time that Sergeant [REDACTED] was trying to
8 flex-cuff Mr. [REDACTED] where was your weapon?

9 A. ^{(S)(G)-4} My weapon was at the high ready. It was aimed around his
10 chest, Ma'am.

11 Q. Why was your weapon moved up to the high ready?

12 A. Because I can't pull security on somebody unless my weapon
13 is on them, Ma'am, so I wouldn't point it at the ground right there,
14 you know. As soon as I walked up I got a few meters away from him,
15 Ma'am, and I raised it up to his chest.

16 Q. How did your weapon come to be pointed as his head?

17 A. Once he started resisting and his hands were behind his
18 back, Ma'am, I--Sergeant ^{(S)(G)-2} [REDACTED] turned to me and he instructed me to
19 put my weapon on his head and to fucking shoot him if he moves,
20 Ma'am.

21

1 Q. Did that surprise you?

2 A. Yes, Ma'am. The way he said it, he sounded freaked out and
3 he sounded scared, Ma'am, when he said it.

4 Q. And at this point Mr. [REDACTED] was still resisting?

5 A. Yes, Ma'am. (S) 10-7

6 Q. Still struggling?

7 A. Yes, Ma'am.

8 Q. With his shoulders?

9 A. Yes, Ma'am.

10 Q. Back and forth?

11 A. Yes, Ma'am. At that point, once Sergeant [REDACTED] told me
12 that, that is when I turned my weapon down because I was using the
13 iron sights at that time, Ma'am, and I flipped down my iron sight and
14 turned on the 68 and I came back to his head, Ma'am. (S) 10-7

15 Q. Private Richmond, what could you see when you were looking
16 through the sight?

17 A. When I was looking through the scope, the vision was
18 restricted because I was so close and I was actually looking through,
19 you know, because they had been telling me, "Only aimed shots. Only
20 aimed shots."

21

1 A. Plus, due to Sergeant (S)142 standing right there, I
2 wouldn't take the chance of, oh I think I am pointing in the right
3 direction, you know, with somebody that close. So, I could see the
4 guy's head and shoulder region, Ma'am.

5 Q. How far away from him were you, from Mr. (S)144?

6 A. One to two meters, Ma'am.

7 Q. Why did you need your scope if you were only 1 to 2 meters
8 from him?

9 A. Because I didn't want to take the chance of, oh I thought I
10 was pointed at him, but you--with the angle--with them being so close
11 and with them stressing to us aimed shots only, I was just doing what
12 I was told to do, Ma'am.

13 Q. What was going through your head at this point?

14 A. I was just like, "Man I hope this guy don't give us no
15 shit." You know, because with Sergeant (S)142 the way he was
16 acting, Ma'am, it was kind of affecting me but I was trying to keep
17 my calm, you know and just watch out and keep my calm and see if this
18 guy did anything.

19 Q. And you had pulled security missions before?

20 A. Yes, Ma'am.

21

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1 Q. Private Richmond, when you were leaving the TCP to go out
2 the 200 to 250 meters to Mr. [REDACTED] what sounds could you hear coming
3 from the village? (S)A-1

4 A. I don't know if I actually heard gunshots while I was
5 walking through the field, Ma'am, but you know they were going on.
6 They were starting to get less and less frequent but you could hear
7 all kinds of noise. You could hear doors getting kicked in. You
8 could hear people. You couldn't really hear what they were saying
9 but you could hear people off in the distance and they were a few
10 hundred meters away so I assumed it was screaming and things like
11 that, Ma'am.

12 Q. Did you know if Alpha Company had detained all of the high
13 value targets that they were hoping to detain?

14 A. No, Ma'am.

15 Q. Do you know, or they did not?'

16 A. No, I certainly did not. I assumed that somebody had
17 escaped since they put out the call to detain every male because it
18 came pretty urgent. We were kind of keeping track on the radio of
19 what was going on. All the houses weren't done being cleared or
20 whatever buildings they were going into weren't done being cleared
21 yet, Ma'am.

22

1 Q. That information was coming in over the radio?

2 A. Yes, Ma'am.

3 Q. Where was Mr. [REDACTED] standing?

4 A. Ma'am? (S) (b)(7)

5 Q. What was he standing on when Sergeant [REDACTED] was trying to

6 flex-cuff him? (S) (b)(7)

7 A. He was standing on a berm, Ma'am.

8 Q. Okay, can you describe the berm for the panel?

9 A. Uh--I don't know if you all have seen them out here in the

10 fields when they--I don't know why they make them but it is probably

11 [holding his arms apart] this tall off the ground and it is just

12 rocks and dirt that is elevated off of the normal terrain.

13 DC: The witness had indicated a span of approximately one foot

14 in distance to indicate the rise of the dirt.

15 Q. What was the rest of the terrain like around that dirt,

16 around that berm?

17 A. It was a bunch of big chunks of dirt and rocks. The ground

18 was uneven. I don't know what they had did to the ground, Ma'am, but

19 it wasn't a normal flat field, Ma'am.

20 Q. It was not smooth terrain?

21 A. No, Ma'am.

22

1 Q. Were you also standing on the berm?

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

3 Q. Okay, was Sergeant [REDACTED] standing on the berm?

4 A. No, Ma'am. He was standing on the ground just behind Mr.

5 [REDACTED]

6 Q. Do you recall how tall Mr. [REDACTED] was? (b)(6)-4

7 A. I don't remember if we were eye to eye, Ma'am, but I think

8 we were pretty close.

9 Q. Did you hear Sergeant [REDACTED] say, "He's good. Let's go."

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

11 Q. Did you start to lower your weapon as Sergeant [REDACTED] led

12 Mr. [REDACTED] away?

13 A. (b)(6)-4 No, Ma'am. The only time I lowered my weapon after I

14 approached Mr. [REDACTED] was when he told me to put it on his head. Then

15 that is when I flipped down my iron sight and turned on the--my 68,

16 Ma'am.

17 Q. And at that point where was your weapon on your body?

18 Where did you have your weapon on your body?

19 A. Before or after, Ma'am?

20 Q. At the time that you----

21 A. When I-----

22

1 Q. ----raised it and turned on the scope.

2 A. When I was--I was in the high ready already.

3 Q. Okay.

4 A. I was at the high ready already with the but stock in my
5 shoulder, but I was pointed at his chest. And then when I lowered it
6 and came back up it was pointed at his head but it was in the same
7 position on me, Ma'am.

8 Q. Okay. At some point did you find out that Sergeant [REDACTED]
9 had flex-cuffed Mr. [REDACTED]

10 A. Yes, Ma'am.

11 Q. And at some point did you find out that Sergeant [REDACTED] was
12 leading Mr. [REDACTED] away from that detainment sight?

13 A. Yes, Ma'am.

14 Q. During--at the time that you shot him, what did you see
15 through your scope?

16 A. I could see Mr. [REDACTED]. I could see a little bit around his
17 head and I could see his shoulder region, Ma'am.

18 Q. Okay, why did you shoot him?

19 A. I felt he was attacking Sergeant [REDACTED] because about 3 to
20 5 seconds after he screamed at me, you know, "Put your weapon on his
21 head and if he fucking moves, shoot him."

22

1 A. I mean, I wouldn't shoot him just because he was moving but
2 it was such a sudden movement, Ma'am, but the way that his body
3 turned, but he turned and faced Sergeant [REDACTED] and was moving
4 towards him rapidly, Ma'am.

5 I felt he was lunging at him and I didn't know that he was
6 handcuffed and I thought maybe he had gotten something out of his
7 pocket. I didn't know what was going on, Ma'am, so I shot him.

8 Q. Did you see Sergeant [REDACTED] search Mr. [REDACTED] (b)(6)-2

9 A. No, Ma'am.

10 Q. Private Richmond, have you seen the photographs that are
11 contained in Prosecution Exhibit 1?

12 A. Yes, Ma'am. (b)(6)-4

13 Q. What is Mr. [REDACTED] wearing around his neck in those
14 photographs?

15 A. A large red and white scarf, Ma'am.

16 Q. In those photographs, approximately how many of the feet
17 are laying on the side next to Mr. [REDACTED]

18 A. Two and a half, three feet, Ma'am.

19 Q. Okay, do you recall seeing that on Mr. [REDACTED] that day?

20 A. Yes, Ma'am. (b)(6)-4

21

1 Q. Okay, where do you recall seeing that on Mr. [REDACTED] on that
2 day?

3 A. I remember seeing it around his neck. It wasn't hanging
4 down the side that I was looking at, Ma'am, but where he had it
5 wrapped around his neck you could see it because it was large and
6 bulky all the way around his neck, Ma'am.

7 Q. How come you could not see that Mr. [REDACTED] had been
8 flex-cuffed from the angle that you were standing at?

9 A. The angle that I was standing at, like I said, I didn't
10 want to stand at an angle to where I was directly side by side with
11 Sergeant [REDACTED] or to where my round would, if I had to shoot,
12 penetrate Mr. [REDACTED] and hit Sergeant [REDACTED] as well, so I was facing
13 his side and his front at an angle to where I couldn't see behind his
14 back at the angle they were standing.

15 I could see Sergeant [REDACTED] standing behind him and I could
16 see him right there with his arms behind his back until I looked into
17 the scope, Ma'am, but I couldn't see the actual interaction between
18 their hands. I just saw the guy's arms and shoulders moving around
19 when they were, Ma'am.

20 Q. What concerns did you have about firing your weapon at Mr.
21 [REDACTED] knowing that Sergeant [REDACTED] was so close by?

22 A. I didn't want to hit Sergeant [REDACTED] Ma'am.

23

1 Q. Okay, what steps did you take to ensure that you wouldn't
2 then?

3 A. Before hand, Ma'am?

4 Q. Well you indicated that you only saw Mr. (b)(6) when looking
5 through your scope.

6 A. Yes, Ma'am.

7 Q. How did you know where Sergeant (b)(6) was?

8 A. Well I was just looking through the scope. Are you talking
9 about after he started to lunge, Ma'am?

10 Q. Yes.

11 A. I opened my left eye briefly and I didn't see anybody right
12 there in that immediate area so I took a shot, Ma'am.

13 Q. How did you feel the accuracy would be while using your
14 scope?

15 A. How did I feel the accuracy would be, Ma'am?

16 Q. Yes.

17 A. High. Excellent accuracy, Ma'am. (b)(6)-7

18 Q. Immediately after you shot Mr. (b)(6) and he fell to the
19 ground, what did you say to Sergeant (b)(6)

20 A. Um, he asked me what happened and I told him that he jumped
21 at you.

22

1 Q. Is that it?

2 A. Yes, Ma'am.

3 Q. Now at some point Sergeant [REDACTED] left you in the field and
4 Specialist [REDACTED] came to the scene?

5 A. Yes, Ma'am.

6 Q. What did you tell Specialist [REDACTED] happened?

7 A. Specialist (S)42 [REDACTED] came up and I was kind of in shock,
8 Ma'am, because that was the first situation I had been in like that,
9 and he was like, "Are you okay? Here, do you want a cigarette? Calm
10 down. Calm down." So we were talking for a second just he was
11 calming me down, Ma'am and then he was like----

12 TC: Objection, Your Honor. Pursuing a line of hearsay.

13 MJ: Okay, his own statements are not hearsay though. You can
14 testify to those though. Overruled.

15 Q. Please continue.

16 A. Yes, Ma'am.

17 Q. He had offered you a cigarette.

18 A. Yeah, he had offered me a cigarette, Ma'am, and then he
19 asked me if I knew the guy was flex-cuffed or if the guy was
20 flex-cuffed.

21

1 MJ: Oh. Sustained. Is that what you are trying to get at?

2 DC: Your Honor, it is going to go to his state of mind at the
3 time. There is a subsequent comment by Specialist [REDACTED] that I am
4 going to follow up with. (S)(b)-2

5 TC: Your Honor, the statement made after the shooting is not
6 relevant.

7 MJ: After the fact?

8 DC: Your Honor, what he is telling him is an excited utterance
9 from Private Richmond still at that time under the extreme stress of
10 the situation where he told Specialist [REDACTED] that he didn't know
11 that he was---- (b)(6)-2

12 MJ: Then lay that foundation. Sustained for now.

13 Q. Private Richmond, how did you feel after you shot Mr.

14 [REDACTED] (S)(b)-1
15 A. I was shocked. You know, that was not what I expected to
16 do when I woke up that morning.

17 Q. Had you ever killed someone before?

18 A. No, Ma'am.

19 Q. About how much time had elapsed before Specialist [REDACTED]
20 had joined you in the field? (b)(6)-2

21 A. I probably had about 3 to 5 minutes by myself in the field,
22 Ma'am.

23

1 Q. Before Specialist [REDACTED] got there?

2 A. Yes, Ma'am.

3 Q. Okay, how were you feeling during this 3 to 5 minute time
4 period?

5 A. I was just shocked--would be a good word, Ma'am.

6 Q. What did you tell Specialist [REDACTED] about whether or not
7 Mr. [REDACTED] was flex-cuffed?

8 A. That I did not know, Ma'am.

9 Q. At some point during this investigation, did you then find
10 out that Mr. [REDACTED] was in fact flex-cuffed at the time?

11 A. Yes, Ma'am.

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

13 MJ: You may.

14 DC: Thank you.

15 [Long pause.]

16 Q. Private Richmond you indicated very early on in my
17 questioning that you are currently 21.

18 A. Yes, Ma'am.

19 Q. How old were you on the 28th of February?

20 A. Twenty, Ma'am.

21 DC: Nothing further, Your Honor.

22

CROSS-EXAMINATION

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Questions by the trial counsel:

Q. Private Richmond, on direct examination you testified that you dropped out at tenth grade and got your GED and joined the Army, right?

A. Correct, Sir.

Q. Isn't it true that you also went to a semester at LSU?

A. Um--I started a semester at LSU, Sir. I never finished it that. I was there for a few weeks.

Q. You got into LSU and you started school there?

A. Yes, Sir.

Q. And that is Louisiana State University?

A. Yes, Sir.

Q. On direct examination, you testified that your understanding was the ROE was, regarding self-defense, that if you felt threatened then deadly force is authorized?

A. Depending on the threat, Sir. Yes.

Q. What do you mean by that?

A. Well if somebody is throwing a rock at you, Sir, you are not going to shoot him. But if you felt as if someone is throwing a grenade at you, then you can shoot him.

1 Q. So if someone is about to use deadly force against you,
2 then you can shoot.

3 A. Or if you have that impression. Roger, Sir.

4 Q. And if someone is not using deadly force or if you have the
5 impression they are not using deadly force you should use an
6 escalation of force?

7 A. If the situation permits, Sir.

8 Q. You also testified that on the 28th of February the--part
9 of the ROE was to shoot anybody running from the village. Did
10 you--or to shoot anybody fleeing the village.

11 A. Yes, Sir.

12 Q. Did you see anyone flee the village that morning?

13 A. Um--I saw people leave the village, Sir. I didn't know
14 exactly their definition of fleeing the village.

15 Q. What is your definition of someone fleeing?

16 A. To say they are fleeing, you must assume they are being
17 looked for, Sir. So somebody that is being looked for in the village
18 that is trying to leave the village.

19 Q. So you would expect them to be going fast, perhaps running?

20 A. Depends, Sir. Possibly.

21

1 Q. Mr. [REDACTED] wasn't fleeing the village, was he?
2 A. He was leaving the village, Sir.
3 Q. Was he fleeing the village?
4 A. I would say he was fleeing the village, Sir.
5 Q. In fact, Mr. [REDACTED] was walking with cows?
6 A. Roger, Sir.
7 Q. So he was a cow herder?
8 A. He was walking with cows, Sir.
9 Q. He wasn't fleeing with cows?
10 A. He wasn't riding one or getting on its back, Sir.
11 Q. The other issues you said about changes to ROE that
12 occurred in the 10-day period between the 18th and 28th of February,
13 you stated that the two things are aimed shots were emphasized and
14 also don't spray after IEDs. The second one, don't spray after IEDs,
15 what was the purpose for that particular ROE?
16 A. On the 18th of February, Sir----
17 Q. You don't need to go into that. What was the purpose for
18 the don't spray if an IED goes off?
19 A. So that innocent people are not killed after an IED goes
20 off, Sir.

21

1 Q. Would you agree that the ROE exists then to protect
2 innocent people such as civilians?

3 A. I think it is to protect everyone involved, Sir.

4 Q. Do you agree that it is to protect noncombatants and
5 civilians?

6 A. Some of it is, Sir. Roger, because parts of it, the self-
7 defense applies also to civilians, DOD people and things like that,
8 Sir. So roger.

9 Q. You do admit that you asked if you were supposed to shoot
10 Mr. [REDACTED] when he walked out of the village?

11 A. Roger, Sir.

12 Q. You also admit that you made previous statements about
13 wanting to kill, or wanting to bayonet, or about wanting to shoot an
14 Iraqi?

15 A. Roger, Sir.

16 Q. Prior to the detention, did Mr. [REDACTED] do anything or did
17 you observe anything about him that would have classified him as an
18 enemy or a combatant?

19 A. Just being a male in the area that he was at, Sir, until we
20 knew otherwise because we were being told that we were going after
21 all Iraqi personnel and to detain all the males in the area, Sir.

22

1 A. So until you were sure that someone was just there or just
2 lived there, Sir, that wasn't involved in whatever people we were
3 going after, Sir, then you had to assume the worst for everybody.

4 I mean, it doesn't mean you are going to shoot at them just
5 for walking around for nothing, Sir, but you have to be suspicious of
6 everybody.

7 Q. You can hear okay, right?

8 A. Roger, Sir.

9 Q. When--do you recall Sergeant [REDACTED] testimony? (S) 61-2

10 A. Roger, Sir.

11 Q. When he was describing the zip-tie. Do you recall when he
12 actually zipped--he actually did it on two occasions, he actually
13 zipped the zip-tie?

14 A. Roger, Sir.

15 Q. And you heard that from where you were, right?

16 A. Roger, Sir.

17 Q. And that was about 20 feet away?

18 A. From here to the bench, Sir?

19 Q. Yes.

20 A. Roger, Sir.

21

(S)(b)(7)(C)

1 Q. And you heard Sergeant [REDACTED] flip the zip-tie on both
2 occasions?

3 A. I only heard him do it once when he was in here when he
4 made the loop, Sir, and then he tightened it all the way, Sir.

5 Q. How long does it take to turn on the 68 scope?

6 A. The whole process, you know, flipping down the iron sight,
7 turning it on, getting it back up, 2 seconds, Sir.

8 Q. And you stated on direct that you assumed that someone had
9 escaped.

10 A. Roger, Sir.

11 Q. Right, you said that?

12 A. Roger, Sir, it could be assumed.

13 Q. Okay, you didn't assume that Mr. [REDACTED] had escaped from the
14 village, did you?

15 A. Like I said, Sir. You know, you don't look at everybody as
16 Saddam Hussein himself, Sir, but until it is clarified otherwise, you
17 have to be suspicious, I mean, people are dying out here everyday so
18 you have to suspicious of everybody, Sir.

19 Q. Answer the question. Did you or did you not assume that
20 Mr. [REDACTED] had escaped from the village.

21 A. I knew he had came from the village, Sir. I didn't know.
22 I hadn't formed an opinion based off of that, Sir.

23

(b)(4)

1 Q. What if anything did Mr. [REDACTED] do to indicate to you that
2 he had escaped?

3 A. Well I watched him walk from the village, Sir, so I knew he
4 had left the village and I knew that the person they were looking for
5 was originally in the village, Sir, and I knew that they had not
6 found him in the village.

7 I mean, I hadn't made the connection. I wasn't trying to
8 call back and like we got this guy right here, but I knew that it was
9 a potential person that they were looking for, Sir.

10 Q. And Mr. [REDACTED] was, in actuality, the entire time you were
11 watching him just watching his cows, right?

12 A. He was in the field, Sir. I would assume that is what he
13 was doing.

14 Q. Now you stated on direct, and correct me if I am wrong, is
15 "I didn't know what was going on, so I shot him."

16 A. Um, I don't know if those are the exact words that I used,
17 but I know when he turned and lunged towards Sergeant [REDACTED] yeah I
18 didn't know what he was doing, Sir. I couldn't see his hands and
19 what he had grabbed, like if he had a knife or something in his
20 hands. I didn't know--didn't know as far as that what was going on
21 with it, Sir.

22

1 Q. You also admitted that you saw that Mr. (S)(b)-4 arms were
2 behind his back?

3 A. Um, roger, Sir. This was before I had actually put my eye
4 in the scope, before Sergeant (S)(b)-2 had told me to raise my weapon
5 to his head, Sir.

6 Q. You didn't say on direct examination that you could--
7 according to your testimony, you could see his arms behind his back
8 while you were looking through the scope?

9 A. No, Sir. I mean, I could see his shoulders. I could see
10 his head. I couldn't see his arms at all.

11 Q. You stated that you opened your left eye briefly.

12 A. Yes, Sir.

13 Q. And the purpose for that was so that you wouldn't shoot
14 Sergeant (S)(b)-2

15 A. I was just making sure that he wasn't sure [sic] that he
16 wasn't standing right beside him, Sir.

17 Q. And this was just before you pulled the trigger?

18 A. Roger, Sir.

19 Q. How long was your eye open?

20 A. I think it was really--I couldn't even tell you an amount
21 of time.

22

1 A. It was closed, then I looked through and it was like open
2 shot. I mean it was real quick. I was just making sure that
3 Sergeant ^{(b)(6)-2} [REDACTED] wasn't there so that he wouldn't get hit by the
4 round, Sir.

5 Q. Did you close your eye after you opened it?

6 A. Naw, it was--I don't think I did, Sir. I think I fired
7 right after that and I would have had no reason to close it, Sir.

8 Q. What was the name of the Iraqi man that you killed?

9 A. I don't have his whole name memorized but Mr. [REDACTED]
10 [REDACTED], I think.

11 Q. ^{(b)(6)-4} Do you admit that [REDACTED] is dead?

12 A. Yes, Sir.

13 Q. Do you admit that his death resulted from your act and that
14 you shot him in the head?

15 A. Yes, Sir.

16 Q. And you shot him with your M4 rifle in the vicinity of Taal
17 Al Jal village?

18 A. Yes, Sir.

19 Q. And that happened around 0830 to 0900 on 28 February 2004?

20 A. Yes, Sir.

21

1 Q. And do you also admit that at the time of the killing that
2 you had the intent to kill [REDACTED]

3 A. Yes, Sir. (b)(6)-2

4 Q. Okay you first saw Mr. [REDACTED] at daybreak? (b)(6)-2

5 A. It was about 0800, Sir.

6 Q. And you saw him walk out of the village with a group of
7 cows?

8 A. Roger, Sir.

9 Q. He never moved quickly, he just walked?

10 A. I never really stared at him, Sir, but I don't think he was
11 running around.

12 Q. He pretty much stayed with his cows the entire time that
13 you were observing him, right?

14 A. Roger, Sir.

15 Q. Now it was clear daylight outside, right?

16 A. Excuse me, Sir?

17 Q. At this point, it was full daylight?

18 A. Yes, Sir.

19 Q. The fog had burned off?

20 A. Yes, Sir.

21

1 Q. There was no more fog?
2 A. The fog had burned off.
3 Q. And by the time you and Sergeant [REDACTED] went out to detain
4 him, the raid had pretty much ended?
5 A. No, Sir. It seemed to be settling down and coming to a
6 conclusion but it wasn't over yet, Sir.
7 Q. Do you admit that when Sergeant [REDACTED] (b)(6)-2 was approaching with
8 you that Sergeant [REDACTED] put his hands up and the Iraqi put his hands
9 up?
10 A. I never saw that, Sir.
11 Q. You never saw Sergeant [REDACTED] put his hands up?
12 A. I saw what he testified to, Sir, (b)(6)-2 but I never saw that.
13 Q. Did you see Mr. [REDACTED] put his hands up?
14 A. He might have once Sergeant [REDACTED] (b)(6)-1 got face to face with
15 him when I was moving into position. I remember seeing Sergeant
16 [REDACTED] (b)(6)-2 spinning around to get his back facing him, you know, when he
17 went to grab his hands, Sir.
18 Q. So when you were walking towards Mr. [REDACTED] you were
19 watching Mr. [REDACTED] (b)(6)-4 is that correct?
20 A. Yes, Sir.
21

1 Q. You never saw him put his hands up?

2 A. I saw him when he pointed back towards the village, Sir, if

3 that is what you are talking about?

4 Q. Okay, but as Sergeant ^{(b)(6)-2} [REDACTED] describes when he put his

5 hands up and back down and back up and back down?

6 A. I never saw that, Sir.

7 Q. You didn't see it?

8 A. No, Sir.

9 Q. Mr. [REDACTED] was not a big person, right?

10 A. I think I might have an inch or two on him, Sir.

11 Q. How tall are you?

12 A. Uh, 5-10, 5-11, Sir, something like that.

13 Q. And Mr. ^{(b)(6)-4} [REDACTED] was very thin, would you agree to that?

14 A. I never touched him, Sir, and he was wearing very baggy

15 clothing. I have never seen him without his baggy pants or coat on,

16 Sir.

17 Q. You have seen photographs in this case, right?

18 A. Yes, Sir.

19 Q. And in the photographs, he is thin, right?

20 A. I mean, he was wearing the baggy clothes. Like I said, I

21 didn't touch him, Sir. I didn't really have anything to judge his

22 body to in the pictures that would say he is very small.

23

(S)(A)-2

1 Q. Sergeant [REDACTED] is about a little bit taller than you,
2 right?

3 A. I believe he is about 4 inches on me, Sir.

4 Q. That is 6-1, 6-2?

5 A. Yes, Sir.

(S)(A)-4

6 Q. Mr. [REDACTED] no weapon visible, right?

7 A. He didn't have anything in his hands when we walked up,
8 Sir.

9 Q. Was there any indication to you that he had any type of a
10 weapon?

11 A. I didn't know, Sir. We hadn't searched him.

12 Q. Well did you see any indication that he had any type of a
13 weapon?

14 A. I was just taking his behavior and attitude into account,
15 Sir.

16 Q. Answer the question.

17 A. Well----

18 Q. Was there any indication to you that he had a type of
19 weapon?

20 A. No, I never saw a weapon, Sir.

21

017504

1 Q. Was there any indication to you that he had a weapon?

2 A. I don't understand. Do you mean, like did I see a bulge in
3 his clothes, Sir, or did I think he was reaching or--I don't
4 understand exactly what you are asking.

5 Q. That is what I am asking you. Is there anything about Mr.
6 (b)(6)-1 that you could say that he had a weapon?

7 A. I thought he had a weapon when he lunged at Sergeant
8 (b)(6)-2 Sir.

9 Q. And what gave you that impression?

10 A. Just because he had been resisting. First, you know, he
11 didn't want to cooperate and everything and he was resisting,
12 actually putting his hands behind his back with Sergeant (b)(6)-2 and
13 he went still for about 2 seconds, Sir, and uh, about a second or 2
14 after that, that is when he lunged, so I figured maybe he was trying
15 to play it off and he had got caught so he grabbed it and now he was
16 going after Sergeant (b)(6)-2 Sir.

17 Q. What fact or indication was there that Mr. (b)(6)-2 that you
18 thought Mr. (b)(6)-1 had a weapon?

19 A. Just his general attitude, Sir, the way he had been acting,
20 Sir, we had not searched him, and he was now lunging at Sergeant
21 (b)(6)-2 Sir.

22 (b)(6)-2

1 A. That is what made me think he had a weapon, Sir. I thought
2 he had something in his hand and he was going after him.

3 Q. Let's talk about the scarf. This is a red and white
4 checkered scarf. You saw the bulk in the back. The scarf was
5 falling which way?

6 A. I don't know which way it was falling, Sir. I think it
7 would be safe to assume it was falling down his back because I could
8 see his right side and his front area, Sir. So it either had to go
9 falling off the left or his back, Sir.

10 Q. Now Sergeant ^{(b)(6)-2} [REDACTED] had an M4 rifle, right?

11 A. Correct, Sir.

12 Q. And you had an M4 rifle, right?

13 A. Yes, Sir.

14 Q. And you were pointing your M4 rifle at Mr. [REDACTED]

15 A. Yes, Sir.

16 Q. And Mr. ^{(b)(6)-4} [REDACTED] knew that you were pointing the rifle at him,
17 right?

18 A. Definitely, Sir.

19 Q. Now you had a few other weapons on you that morning, isn't
20 that correct?

21 :

1 A. Nothing military issue, Sir.

2 Q. What did you have?

3 A. I had a knife on my side. I had the ASP up [pointing to
4 his shoulder] here, Sir.

5 Q. What is an ASP?

6 A. It is a baton. I think the MPs might use something like
7 it, Sir. I am not sure.

8 Q. How does it work?

9 A. It is a short metal rod and then you can actually extend it
10 to where it sticks and I guess use it as a club, Sir. I have never
11 used it.

12 Q. You had that attached to your shoulder?

13 A. Yes, Sir.

14 Q. And you had a knife attached to your thigh?

15 A. Yes, Sir.

16 Q. How big was the knife?

17 A. A 6 or 7-inch blade, Sir, a fixed blade.

18 Q. Now you saw Sergeant [REDACTED] testify
19 A. Yes Sir. (b)(6)-2

20

1 Q. Testify about his strength and that he was much stronger
2 then Mr. [REDACTED] Is that a fair statement?

3 A. Um--I don't know, Sir. Like I said, I never touched Mr.

4 (b)(6)-4 [REDACTED] I wouldn't be able to judge his strength accurately but
5 Sergeant (b)(6)2 [REDACTED] was afraid when he told me to put my weapon to his
6 head, Sir.

7 Q. Mr. [REDACTED] never attempted to run, isn't that correct?

8 A. That is correct, Sir.

9 Q. When the flex-cuffs were being put on, he never moved his
10 feet?

11 A. I don't believe he did, Sir.

12 Q. And he never kicked?

13 A. I don't believe he did, Sir.

14 Q. With your glasses, do you see well?

15 A. I see decent, Sir. It is not 20-20. I think it is like
16 20-50, 20-60, or something along those lines, Sir.

17 Q. Nearsighted or farsighted?

18 A. I can't see anything without them, Sir. So without them I
19 don't know.

20 Q. With your glasses on, do you see pretty well from 1 to 2
21 meters away?

22 A. Yes, Sir.

23

1 Q. Back to ROE training. You stated that you were given an
2 ROE card, a CFLCC card?

3 A. Yes, Sir.

4 Q. And you stated that before you left Hawaii you had a little
5 bit of ROE training but it really got heavy in Kuwait and then part
6 of the time here in Iraq?

7 A. Yes, Sir.

8 Q. Is that correct?

9 A. Yes, Sir.

10 Q. In this ROE training, you talked about positive
11 identification?

12 A. Um, they were talking about hostile act, hostile intent,
13 the whole self-defense thing, Sir. They went over the five S's. I
14 remember that part. I am trying to think.

15 Q. Isn't it true that the term "positive identification" means
16 that you must have a reasonable certainty that what you are targeting
17 or what you are engaging is a legitimate military target? Does that
18 sound about right?

19 A. I have never seen it on a card, Sir. I mean if you are
20 reading it off of it, then I will take your word for it but I don't
21 remember that part, Sir.

22

1 Q. You were taught about the escalation of force, isn't that
2 right?

3 A. Yes, Sir.

4 Q. And if the situation permits, you start with shout,
5 correct?

6 A. Yes, Sir. Shout, shove, show, shoot, shoot.

7 Q. Okay, doesn't show go before shout? [sic]

8 A. Not that I know, Sir. Not the way I remember it.

9 Q. Okay, anyway, the first three are minimum levels of force,
10 right?

11 A. Yes, Sir.

12 Q. Isn't it true that you should always use, as a military
13 person, the levels of force necessary to complete the mission?

14 A. As long as it is possible, roger, Sir.

15 Q. And you should use proportionate force any time that you
16 are conducting a mission?

17 A. I don't understand what that means, Sir.

18 Q. Would you use a sledgehammer on a thumbtack?

19 A. No, Sir.

20 Q. You would use your thumb on a thumbtack?

21 A. Yes, Sir.

22

1 Q. That is a concept of proportionate force, would you agree
2 with that?

3 A. Um, as far as the sledgehammer thing, Sir?

4 Q. Well----

5 A. Are you talking about the ROE?

6 Q. Would you agree that you should not use a sledgehammer on a
7 thumbtack?

8 A. Not if you don't need to, Sir.

9 Q. You should use what you need to use, right?

10 A. Roger, Sir. (S)/A-2

11 Q. Would you agree with maybe the way Specialist [REDACTED] and
12 maybe some others, that you should use common sense?

13 A. Um----

14 Q. When evaluating the ROE?

15 A. Roger, Sir. (S)/A-4

16 Q. Would you classify Mr. [REDACTED] as a--prior to detaining him,
17 would you classify him as a combatant or a noncombatant?

18 A. Prior to detainment, neither. I didn't look at people in
19 that category, Sir.

20 Q. In your infantry battalion in Hawija and the 1-27 area,
21 didn't you also receive some training on how to treat detainees?

22 A. Yes, Sir.

23

1 Q. And part of that training was to always detainees with
2 dignity and respect?

3 A. Roger, Sir. I think there had been some incidents once
4 they put the sandbags over their face and had them flex-cuffed.
5 People were leading them around in to the backs of trucks and stupid
6 shit like that, Sir.

7 Q. When you approached (S)(b)-4 [REDACTED], Mr [REDACTED] with Sergeant (S)(b)-2 [REDACTED],
8 your weapon was on safe, correct?

9 A. Correct, Sir.

10 Q. Your weapon was on safe when you raised your weapon, isn't
11 that right?

12 A. Roger, Sir.

13 Q. And then you saw what you are talking about was a lunge,
14 and then you placed your weapon on fire?

15 A. I placed my weapon on fire right before I fired, Sir. It
16 is like a click-click.

17 Q. You said you were looking through your scope and you saw
18 some movement?

19 A. Yes, Sir.

20 Q. Did you have to adjust your aim?

21 A. Roger, Sir.

22

017512

1 Q. So you flicked your weapon on [sic] safe, adjusted your
2 aim, and opened your eyes for just a brief moment to make sure. Is
3 all that-----

4 A. No, Sir.

5 Q. ----true?

6 A. No, Sir.

7 Q. Well you did those three things before you shot him in the
8 head?

9 A. They all happened. It didn't happen like that, Sir, I
10 mean, it wasn't like do one thing, do one thing--I mean, it was all
11 happening at once as I was like moving my weapon to follow him. I
12 checked real quick and flipped it off safe and I fired, Sir. I mean
13 it all happened right at the same time. This was a really quick
14 thing, Sir.

15 Q. But you, during that time, during that brief time, you
16 opened your eye and you saw Sergeant [REDACTED]

17 A. Negative, Sir.

18 Q. You saw the absence of Sergeant [REDACTED]

19 A. Roger, Sir.

20 Q. You saw your target?

21 A. I saw Mr. [REDACTED] Sir.

22

(s)(b)7

(s)(b)-2

1 Q. And then you pulled the trigger and Mr. [REDACTED] dropped?

2 A. Roger, Sir. (S)(b)(4)

3 Q. PFC Richmond, you made approximately seven typewritten
4 statements in this case, isn't that right?

5 A. A bunch, Sir, roger.

6 Q. And to the issue of what Sergeant [REDACTED] told you "to raise
7 your weapon," is what Sergeant [REDACTED] says, and "Raise your weapon.
8 Shoot him if he fucking moves." (S)(b)(2) Something like that is your
9 testimony, right?

10 A. "Put your weapon on his head. If he fucking moves, shoot
11 him." Roger, Sir.

12 Q. Do you recall making a handwritten statement on little--on
13 small paper that you gave to First Sergeant [REDACTED] on 28 February
14 about 9:30 in the morning?

15 A. Yes, Sir.

16 Q. Do you recall in that (S)(b)(2) statement with regard to this command
17 you stated that, "Sergeant [REDACTED] told me to raise his weapon to his
18 head."

19 A. Yes, Sir.

20 Q. And you didn't say anything in that statement about, "Shoot
21 him if he fucking moves."

22 A. Not in that statement, Sir.

23

017514

1 Q. Okay, do you recall making a statement to Captain
2 [REDACTED] which Captain [REDACTED] wrote on small paper and you
3 signed around 9:40 that morning?

4 A. Yes, Sir.

5 Q. And in that statement, do you recall saying that, "Sergeant
6 (b)(6)-2 [REDACTED] stated to 'raise the weapon to his head.'"

7 A. Yes, Sir.

8 Q. And in that particular statement, you didn't say anything
9 about, "Shoot him if he fucking moves."

10 A. Not yet, Sir. That is correct.

11 Q. Do you recall making a statement on the same day at about
12 1405 hours to Major [REDACTED] the Battalion XO, or the Battalion S3
13 regarding this?

14 A. Yes, Sir.

15 Q. A written statement?

16 A. Yes, Sir.

17 Q. And isn't it true that in this statement, it was written,
18 the question was, "Who directed you to aim to his head?" And your
19 answer was, "Sergeant (b)(6)-2 [REDACTED] I understood that it was not a command
20 to fire, but more of a show of force."

21 A. Roger, I think that was my response, Sir, roger.

22

1 Q. That was your response?

2 A. Roger, Sir.

3 Q. Then on 28 February, that same day, there is another one-
4 pager--a couple of page statement that you made at 1704 hours, isn't
5 that right?

6 A. This was on the 28th, Sir?

7 Q. Yes.

8 A. Roger, Sir.

9 Q. And in that statement you stated, and this is your fourth
10 statement, "I was instructed and did raise my crosshair from his
11 chest to his face 1 to 2 meters from him in a final show of force."

12 A. Roger, Sir.

13 Q. And then to CID, on 1 March 04, you made a sworn written
14 statement. Is that right?

15 A. Yes, Sir.

16 Q. And in that statement you stated, or your wrote, "Sergeant
17 ^(Sgt) then stated to me, 'Place my weapon on his head, and if he so
18 much as moves, shoot him,' which I did." That is what you said to
19 them?

20 A. If that is the wording, roger, Sir. That sounds right.

21

1 Q. Then on 29 March you made another statement, a sworn
2 statement to CID, isn't that right?

3 A. Yes, Sir.

4 Q. And isn't it true in that statement you stated, "[REDACTED]
5 shouted at me to point my rifle at the Iraqi's head." (S)(b)(7)-C

6 A. If that is the wording, Sir.

7 Q. And in that particular statement, you didn't say anything
8 about the additional shoot him if he moves?

9 A. I don't think they quoted it in that one, Sir.

10 Q. And then on your 17 April 04 statement in the Article 32
11 investigation, you testified that, "Sergeant (S)(b)(7)-C [REDACTED] told me to raise
12 my weapon to his head. If he moves, fucking shoot him."

13 A. Yes, Sir.

14 Q. And that is exactly what you are testifying to today?

15 A. Um, yes, Sir. Can I have a chance to explain that, Sir.

16 MJ: Your defense counsel will have an opportunity to redirect
17 with you.

18 WIT: Yes, Ma'am.

19 Q. Now we have talked about weapons and the indications to you
20 that Mr. (S)(b)(7)-C [REDACTED] had a weapon. You also talked about in some of your
21 statements about your thoughts on that. Isn't that true?

22 A. Thoughts about what, Sir?

23

1 Q. Thoughts about whether or not Mr. ██████████ had a weapon.

2 A. Roger, Sir. (b)(6)-y

3 Q. Isn't it true that in your 28 February 0930 statement to
4 the first sergeant, you said nothing about a weapon?

5 A. Can I see it, Sir? I mean, I don't have all that in
6 memory, Sir.

7 Q. Would it refresh your recollection to see the statement?

8 A. Yes, Sir.

9 TC: Your Honor, may I approach?

10 MJ: Yes, you may.

11 [The TC hands PE 12 for ID to the witness.]

12 TC: I am showing you what has been marked Prosecution Exhibit
13 12 for identification.

14 Q. Do you recognize that?

15 A. Yes, Sir.

16 Q. Is that the statement that you made, the very first one,
17 the 0930 statement to first sergeant?

18 A. Yes, Sir.

19 Q. Please take a moment to look at it and see if it refreshes
20 your recollection.

21 A. Yes, Sir.

22

1 [The witness did as directed.]

2 Q. Are you----

3 A. Do you want me to hang on to this, Sir?

4 [The TC retrieves PE 12 for ID.]

5 TC: I am retrieving Prosecution Exhibit 12 for identification
6 from the witness.

7 Q. Does that refresh your recollection?

8 A. Roger, Sir, in reference to whether I mentioned a weapon in
9 that statement, Sir?

10 Q. You did not mention a weapon in that statement?

11 A. No, Sir,

12 *Q* And in your 9:40 statement that you signed when Captain
13  was asking you questions about it, you didn't state
14 anything about a weapon in that statement, did you?

15 A. Uh, I just----

16 Q. Would you like to see that one as well?

17 A. Roger, Sir.

18 Q. Would that refresh your recollection?

19 A. Roger, Sir.

20 [The TC hands PE 13 for ID to the witness.]

21

1 TC: I have handed you what is Prosecution Exhibit 13 for
2 identification.

3 WIT: Yes, Sir.

4 Q. Do you recognize that?

5 A. Yes, Sir.

6 Q. Is that the statement that you made and Captain [REDACTED]
7 asked the questions on the 28th of February at 0940? (S/A)-2

8 A. Yeah it was the question and answer session that he
9 recorded, Sir.

10 Q. And in that question and answer session do you discuss
11 anything about Mr. [REDACTED] having a weapon?

12 [The witness reviews the document.] (S/A)-4

13 A. No, Sir, there is no reference to Mr. [REDACTED] having a weapon
14 in that, Sir.

15 TC: I am retrieving Prosecution Exhibit 13 for identification
16 from the witness.

17 [The TC retrieves PE 13 for ID.]

18 Q. Now the next statement, that you made to Major [REDACTED] at
19 1405 on the same day. (S/A)-2

20 A. Yes, Sir.

21

1 Q. Isn't it true that when you were asked, "Did the farmer
2 have a weapon?" You answered, "No."
3 A. I am sure I did, Sir.
4 Q. And isn't it true that you said, "I was worried about what
5 he had in his pocket."
6 A. Roger, Sir.
7 Q. And isn't it true that you stated in that third statement,
8 "I felt it could be a knife or something but could only see his
9 backside."
10 A. If that is the words, Sir.
11 Q. Would it refresh your recollection to----
12 A. I mean, I take your word for it, Sir.
13 Q. You agree that is what you said?
14 A. Roger, Sir.
15 Q. And then in your 28 February statement, the 1704 hours, the
16 last statement of that day, isn't it true that you made a statement
17 and in that statement you said nothing about a weapon?
18 A. I don't think I have ever mentioned him having a weapon in
19 a statement, Sir, because he was found with no weapon.
20 Q. But in these statements that I described, you also do not
21 say anything about, "I thought he had a weapon."
22 A. I don't think they asked me that question, Sir.
23

1 Q. Now you said that you felt shocked after you killed Mr.

2 (b)(6)-4
[REDACTED]

3 A. Roger, Sir.

4 Q. And you were shocked when you, as your testimony says, when
5 you found out that he was flex-cuffed.

6 A. I was very surprised when I found that out, Sir.

7 Q. You were surprised?

8 A. Yes, Sir. Sergeant [REDACTED] asked me if he was flex-cuffed
9 after I shot him, Sir.

10 Q. Sergeant (b)(6)-2 [REDACTED] asked you if he was flex-cuffed?

11 A. Yes, Sir. That is why I was so confused once whoever it
12 was from Alpha Company rolled the body over, I was just like--it
13 threw me off, Sir. (b)(6)-2

14 Q. Sergeant [REDACTED] asked you if he was flex-cuffed?

15 A. Roger, Sir. The first thing he said was, "What the fuck?
16 What the fuck was that?" You know, he had his hands over his ears
17 and he was asking me what happened. I told him that he jumped at him
18 and he asked me if he was flex-cuffed and I was like, "Fuck, I don't
19 know." So he went off and was like, "Stay here and pull security."
20 Then he ran off to grab [REDACTED] and do whatever he did, Sir.

21 TC: No further questions. (b)(6)-2

22

1 MJ: Redirect?

2 DC: Yes, Your Honor.

3 **REDIRECT EXAMINATION**

4 **Questions by the defense counsel:**

5 Q. Private Richmond, regarding the handwritten notebook
6 statement that you gave to First Sergeant [REDACTED], how long did you
7 take to write that statement? (b)(6)-2

8 A. Two minutes, Ma'am.

9 Q. Who told you to write that? (b)(6)-2

10 A. Captain [REDACTED] and the First Sergeant, Ma'am.

11 Q. Just write what happened?

12 A. Yes, Ma'am.

13 Q. Did that--those two little scraps of notebook paper on
14 Prosecution Exhibit 12 contain every single detail about what
15 happened that day?

16 A. No, Ma'am.

17 Q. Now Prosecution Exhibit 13, which was your statement to
18 Captain [REDACTED] how long did you spend talking to Captain
19 [REDACTED] (b)(6)-2

20 A. Maybe 10 or 15 minutes, Ma'am.

21

1 Q. Now that Prosecution Exhibit 13, is any of that in your
2 handwriting?

3 A. No, Ma'am.

4 Q. Whose handwriting was that?

5 A. Captain [REDACTED] Ma'am.

6 Q. Is every question that Captain [REDACTED] asked you written
7 down on Prosecution Exhibit 13?

8 A. No, Ma'am.

9 Q. Is every answer that you gave written down on Prosecution
10 Exhibit 13?

11 A. No, Ma'am.

12 (b)(6)-2 Q. Regarding the 28 February statement that was made to Major
13 [REDACTED].

14 A. Yes, Ma'am.

15 Q. Do you recall that statement?

16 A. Yes, Ma'am.

17 Q. That wasn't shown to you today.

18 A. I know that I gave two more after I got back to the FOB,
19 Ma'am.

20 Q. Was that statement entirely in your handwriting as well?

21 A. No, Ma'am. I believe he was asking me the questions and
22 writing down my answers.

23

1 Q. Have you had a chance to review that statement that you
2 gave to Major [REDACTED] prior to coming to court today?

3 A. I have, ^{(5) Q-2} Ma'am, but I don't have the whole thing memorized,
4 Ma'am.

5 Q. Well generally, does that statement include every single
6 thing that happened that day?

7 A. I seriously doubt it, Ma'am.

8 Q. On March 1st you gave a statement to CID?

9 A. Yes, Ma'am.

10 Q. That was a typed statement?

11 A. Yes, Ma'am.

12 Q. Who typed that statement?

13 A. One of the CID agents, Ma'am.

14 Q. Okay, where was that statement given?

15 A. It was given in Kirkuk, FOB Warrior, in the JAG Office
16 there, Ma'am.

17 Q. How much time did you spend with CID before you they typed
18 that statement?

19 A. Four hours, Ma'am.

20 Q. Were they pretty thorough in their questioning of you?

21 A. Yes, Ma'am.

22

1 Q. Okay, now even with that thorough questioning, do you think
2 or can you recall if that statement on March 1st includes every
3 single thing that happened on that day, Ma'am?

4 A. I am sure it didn't, Ma'am.

5 Q. Private Richmond, you were discussing the five S's with the
6 government counsel.

7 A. Yes, Ma'am.

8 Q. Do you recall that?

9 A. Yes, Ma'am.

10 Q. What was your understanding of when that fourth step of
11 warning shots was required?

12 A. Never, Ma'am.

13 Q. Why was that? How was that briefed?

14 A. That got put out I believe when we were convoying up from
15 Kuwait, actually up here, that they told us originally that warning
16 shots if a vehicle tries to come into the convoy and then, you know,
17 actually shoot the vehicles.

18 I think that after that happened a few times they were
19 like, "Okay, no more warning shots." Or something like that, Ma'am.

20 I think it was clarified right around then, Ma'am.

21

017526

1 Q. You had expressed some confusion earlier about the term,
2 "fleeing."

3 A. Yes, Ma'am.

4 Q. What had you been--what was your understanding of, again if
5 an enemy insurgent would be fleeing a village?

6 A. They are at point A and they are trying to get to point B,
7 and they are, you know, moving from those locations I guess, Ma'am.
8 I mean, I don't know how specific--fleeing can be so many different
9 things. You could be like running away like if you are running from
10 the police like you see on Cops or-----

11 Q. But fleeing is generally fast?

12 A. Yes, Ma'am.

13 Q. But somebody could be leaving the village in disguise?

14 A. Yes, Ma'am.

15 [END OF PAGE]

16

017527

1 Q. Did you have any idea of who Mr. [REDACTED] was at the time that
2 he was leaving the village? (S)(b)-7

3 A. No, Ma'am.

4 Q. But again, you are not saying that you thought he was
5 fleeing the village?

6 A. I didn't know. I was just seeking clarification if that
7 was what they were looking for.

8 Q. Because you had seen him leave the village?

9 A. Yes, Ma'am.

10 Q. Private Richmond, were you serious when you were talking
11 about bayonet kills?

12 A. No, Ma'am.

13 Q. When you talk about killing Iraqis, what kind of Iraqis did
14 you mean?

15 A. Like insurgents, the ones who do the IEDs, snipers, people
16 that like shoot RPGs at convoys and things like that, Ma'am.

17 Q. How common was discussions among your squad about killing
18 an Iraqi?

19 A. Several times a day, Ma'am. At least a comment being made,
20 I mean, we didn't sit around and discuss it but comments were made
21 several times a day, Ma'am.

22

017528

1 Q. Just general discussion?

2 A. Yes, Ma'am.

3 Q. With regard to the zip-tie and the sound of the zip-tie,
4 did you hear that sound----

5 A. No, Ma'am.

6 Q. ----on the 28th of February?

7 A. No, Ma'am.

8 Q. Did you have any idea, approximately, of how much of the
9 zip-tie was going to be used to flex-cuff Mr. ^{(b)(6)-7} [REDACTED]?

10 A. Well you know they have got to leave a space maybe this big
11 around [holding up his hands] you know, once you actually get
12 somebody's wrists in there, so they would have to leave that much
13 room there.

14 Q. Okay and were you focused on listening to those types of
15 sounds?

16 A. No, Ma'am.

17 Q. What were you focused on?

18 A. Mr. ^{(b)(6)-7} [REDACTED] Ma'am.

19 Q. Why were you focused on Mr. [REDACTED]?

20 A. Because that was my job and then that is what Sergeant
21 [REDACTED] said, you know, it just makes you more alert, Ma'am.

22 ^{(b)(6)-2}

017529

1 Q. There also seems to be some confusion as to whether you are
2 saying today in court that Mr. [REDACTED] had a weapon or Mr. [REDACTED] never
3 had a weapon.

(b)(6)-4

4 A. There might have been confusion along that, Ma'am.

5 Q. Did, at the time you shot him, did you know definitively if
6 Mr. [REDACTED] had a weapon?

7 A. No, Ma'am.

8 Q. Do you know today in court whether or not Mr. [REDACTED] did in
9 fact have a weapon?

10 A. Yes, Ma'am.

11 Q. Okay and----

12 A. I know if he did or did not, and he did not have a weapon,
13 Ma'am.

14 Q. Okay, did you see any kind of a bulge on him?

15 A. I just remember really baggy clothing, Ma'am, but I don't
16 remember any specific bulges or anything.

17 Q. Okay so there wasn't anything that you thought--anything
18 specific that you saw that might make you think that he might have
19 had a weapon?

20 A. No, Ma'am.

21

017530

1 Q. Just based on your total knowledge of what you had been
2 told about Iraqi insurgents?

3 A. Yes, Ma'am.

4 Q. Is it possible that after the shooting Sergeant [REDACTED] had
5 asked, "Did you know he was flex-cuffed?" (b)(6)-2

6 A. I don't know what he asked, Ma'am. Well, I don't know if
7 that is what he asked and I misinterpreted it, but I got the
8 interpretation of, "Was he flex-cuffed?" Or something along those
9 lines because he looked really confused too. Like I said, he went
10 from scared and confused to when he left, Ma'am.

11 Q. Certainly Sergeant [REDACTED] would have known if he flex-
12 cuffed Mr. [REDACTED]

13 A. I would assume so, Ma'am. (b)(6)-4

14 Q. What was going through your mind at the time that he
15 shouted that at you? (b)(6)-2

16 A. Sergeant [REDACTED] is weird, Ma'am, so I was just kind of
17 like, whatever, but I was still shocked, you know, from the actual
18 incident, Ma'am. You know, I had never shot somebody in the head
19 like that before, Ma'am.

20 Q. So it is----

21 A. I had never killed anybody.

22

017531

1 Q. So it is possible--I am sorry, go ahead.

2 A. I was just saying that I was shocked from the incident,
3 Ma'am.

4 Q. And so it was possible that he said, "Didn't you know he
5 was flex-cuffed? Did you know he was flex-cuffed?" Very generally?

6 A. It is possible, Ma'am.

7 Q. Private Richmond, from the time that Sergeant ^{(S)/4-2} [REDACTED]
8 started to detain Mr. [REDACTED] to the time that you shot him, how long
9 did this all last? (9/4-4)

10 A. You mean actually once physical contact was established or
11 once we--he saw us walking towards him, Ma'am.

12 Q. Both, once he saw you walking towards him until the time he
13 was shot, how long did that period last?

14 A. He saw us between 25 and 50 meters, somewhere around there.
15 It probably would have taken to actually walk up and everything 45
16 seconds from there, Ma'am. It was really quick.

17 Q. And from the time that Sergeant [REDACTED]--from the time that
18 Mr. ^{(S)/4-4} [REDACTED] was struggling with Sergeant ^{(S)/4-2} [REDACTED] until the time that you
19 shot him, approximately time had elapsed there?

20 A. Five to ten seconds, Ma'am.

21

017532

1 DC: Nothing further, Your Honor.

2 MJ: Government?

3 TC: I have no further questions, Ma'am.

4 MJ: Members of the panel, any questions for the accused?

5 [A question from COL (b)(6)-2 was marked as AE XXI, inspected by both
6 counsel, and handed to the military judge for questioning.]

7 **EXAMINATION BY THE COURT-MARTIAL**

8 **Questions by the military judge:**

9 Q. Private First Class Richmond, can you describe for me, from
10 the point where Sergeant (b)(6)-2 apparently told you to raise your
11 weapon to his head.

12 A. Yes, Ma'am.

13 Q. Describe for me how you were looking through your sight.

14 A. Once I raised my weapon back up, Ma'am, on the charging
15 handle, I put my nose right there so I would have had my nose right
16 here on the on the weapon with my right eye actually looking into the
17 sight however far away that is, Ma'am, with my nose being on the
18 charging handle.

19 Q. Okay, and the sight is the 68, right?

20 A. Yes, Ma'am.

21

1 Q. Okay.

2 A. It is a very similar to that one [pointing to PE 9 for ID]
3 there. They are both M68s. I had a older version that was a little
4 bit shorter but it is really close to the ones on that weapon, Ma'am.

5 Q. So how far, estimate, from the edge of the front end of the
6 sight was your eye?

7 A. I don't know an exact measurement, Ma'am. Like I said, I
8 normally just put my nose on the charging handle just as a general
9 reference, Ma'am.

10 MJ: Well do you want him to use the prosecution exhibit? Trial
11 Counsel, would get please Prosecution Exhibit 9 for identification.
12 [The trial counsel did as directed.]

13 MJ: I realize that this may not be the exact same weapon that
14 you had.

15 TC: Your Honor, I am handing the accused Prosecution Exhibit 9
16 for identification. I have taken off the rubber end stoppers from
17 the sight.

18 Q. If you would please, PFC Richmond, raise the weapon to how
19 you had it that evening, or how you had it that morning.

20 A. At the high ready, Ma'am?

21

017534

1 Q. Right, at the high ready.

2 A. At the high ready it is up [raising the weapon to his
3 shoulder] like this, Ma'am. Like up like this in case something
4 happens.

5 Q. Okay, so at high ready, your nose is not at the weapon,
6 correct?

7 A. No, Ma'am, because you are not actually looking through the
8 sight.

9 Q. All right, so when Sergeant ^{(S)(b)-2} [REDACTED] told you to raise your
10 weapon, is that the position that you had it in?

11 A. No, Ma'am, I would have raised it and been [raising the
12 weapon to where the butt of the weapon is in his shoulder] looking
13 like this.

14 Q. Okay, so you have got the butt of the weapon against your
15 shoulder.

16 A. Yes, Ma'am.

17 Q. Okay and then you were looking through the sight, is that
18 right?

19 A. Yes, Ma'am.

20 Q. Okay, do it again for me please.

21 [The witness did as directed.]

22 A. You raise it up and I have my nose against the charging
23 handle.

1 Q. All right, the nose is against the charging handle and it
2 looks to me like about 4 to 6 inches from the edge of your glasses
3 and the front end of that sight. Does that sound reasonable?

4 A. Yes, Ma'am.

5 Q. Does that sound right to you?

6 A. Yes, Ma'am.

7 Q. All right. Do it again.

8 [The accused did as directed.]

9 Q. Do you close your left eye?

10 A. Yes, Ma'am.

11 Q. Are you looking through with your right eye?

12 A. Yes, Ma'am.

13 Q. All right, can you see around the edge of the sight when
14 you are in that position?

15 A. Uh, yes, Ma'am, I can see some things around the edge of
16 the sight Ma'am.

17 Q. Okay, and do you recall seeing anything around the edge of
18 the sight on that day?

19 A. No, Ma'am. When I am up like that I can see--my field of
20 view cuts down about like this [holding out his arm] to the right,
21 Ma'am.

22

017536

1 A. Ma'am, and down at an angle like this [holding out his
2 hand] to my hands and then because of my glasses and my eye being
3 closed I can see around here, so I don't remember anything that
4 specific. It was probably just grass and open fields out there,
5 Ma'am.

6 Q. So in terms of Mr. [REDACTED] what do you remember seeing?

7 A. I remember seeing his head and shoulders, Ma'am.

8 Q. All right.

9 A. Actually on someone, it would be like here [pointing] up,
10 Ma'am.

11 Q. If you saw his--put your weapon up again if you would.
12 [The witness did as directed.]

13 Q. That is the position you were in just before firing, is
14 that right?

15 A. Yes, Ma'am.

16 Q. Now if you saw his head and shoulders, could you tell that
17 his arms were behind him?

18 A. Um, I don't remember exactly what it looked like when he
19 was turned around like that, Ma'am, because he was moving so fast so
20 I didn't focus on that specific part of his body. I am not sure,
21 Ma'am. I don't know if his shoulders were canted or not.

22

1 Q. How did you keep a bead on him then?

2 A. How did I keep a bead on him?

3 Q. Yes.

4 A. The 68 is turned on with a red dot, which is [turning on
5 the scope on PE 9 for ID] turned on now and you just keep the dot on
6 whatever the target is, Ma'am.

7 Q. Okay, just now you shifted the weapon back and forth.

8 A. Yes, Ma'am.

9 Q. About a foot or so.

10 A. Yes, Ma'am.

11 Q. Did you have to do that back then?

12 A. Yes, Ma'am.

13 Q. All right so did you have to do that back then?

14 A. Yes, Ma'am.

15 Q. All right, so from the time that he told you to raise your
16 weapon, to the time that you actually shot, did you keep a bead on
17 him?

18 A. Yes, Ma'am.

19 Q. And where was that bead?

20 A. It was on his head, I believe the upper portion around this
21 side [pointing to the right of his head] of his body.

22