

I tell my soldiers that they are not to take their weapon off of safe until you make a positive identification. That positive Identification could be a car that pulled up where men jumped out and went to the back of the vehicle by the trunk. If that turned out not to be a threat the soldier should then put his weapon back on safe. It would be a mistake not to put your weapon back on safe. I have taken my weapon off of safe before. I have not had to actually pull the trigger. I put it back to safe every time. I have never forgotten to put it back on safe.

I have had the opportunity to see PFC Combs at work. He has always been very dedicated, takes a lot of initiative, always asking what he can do. He is always trying to stay two steps ahead of his team leader, making sure that everything is complete in getting ready for the mission the next day. Since this incident occurred, he is always coming to me and asking what other things he can do so that when the other soldiers come off of mission they do not have to pull extra hours. He will always be there for the soldiers. If they are on missions that day he will run errands for them. He did have some problems before he came to me. I don't know if I fixed his problems or if he fixed it himself when I got him. I have not had any problem with him whatsoever. He is a good soldier, but his counseling packet showed that he had had some problems. I do not think that reflects the soldier he is today. Everybody has issues. I trust him. I do not trust the Iraqi's.

#### CROSS EXAMINATION

I don't trust the Iraqi's because they are crooks. Not all of them, but the majority of the ones that I have run into. I did not say that Iraqi lives are not as important as American lives. I said most of them I do not trust. When it comes to his IP's I trust the station commander at IP 10. I do not completely trust him, but I trust him with his IP's. I don't know if this is a set up for some Iraqi's to get some money. I have gone through the case file but I have not investigated this incident. I have read through some of PFC Combs' statements. If Combs said he did it, he did it. I don't know if this was a set up by the IP's. I can't tell you that. The possibility is out there that it could be. I'm not saying that it is a set up and I'm not saying that it isn't.

I have my soldiers scan because they stay alert. I tell them to scan if they feel as if they need to scan. Scanning when you are bored is not a bad thing. It is important to scan so that you know what is in your sector because you never know what could happen. The enemy is out there. There are also innocents out there. I like for my soldiers to be aggressive but still follow the rules of engagement. They should know what is in their sector so that they don't cause unnecessary suffering. On the other hand you can not stand up there and scan on the tower for the entire two hours that you are up there. No soldier could. Scanning for forty five minutes is a long time. If you are not scanning the entire time you should at least always be looking around your sector. If you get tired

you are not going to scan. If you are scanning you are usually alert. You can be tired and still scan. It is safer for the soldier to be alert when scanning. If you are told that a General is coming the awareness is heightened. If a General is coming it could mean that we could be attacked, you never know. You wouldn't want the enemy to know that a General is coming. If a General is coming in the awareness should be heightened because we don't want anything to happen to him. There are always leaks in OP SEC, you never know. My soldiers do not get nervous because there is a General coming. With the awareness heightened, because of the general coming, it could have been a factor that contributed to what my soldier did.

When I have taken my weapon off of safe I place my finger on the magazine wall.

The TC approached the witness with a weapon and instructed her to show where she places her finger when the weapon is off of safe.

The DC objects to the relevancy.

The IO allows the demonstration to go forward.

The witness shows the IO and DC that she places her finger on the magazine release.

I place my finger on the magazine release as a safety measure for me. If my soldiers see a positive identification and they switch their selector switch from safe to semi or burst that means that they have something in their line of site. It is up to the soldiers themselves whether they want to put their finger on the trigger well or not. When the threat is gone their finger should not be on the trigger well because of safety reasons. There is no need to pull the trigger when the weapon is on safe. It is a possibility that you could squeeze the trigger and a round could go off. We know that weapons are dangerous instruments that could cause people to die. It is not a toy to play with when you are bored.

#### RE-DIRECT EXAMINATION

When you are in the guard tower and you are tired, scanning is a good thing to do to help keep you awake. I want my soldiers to do that. If you are holding your weapon up you are definitely going to be awake.

There being no further questions from either side or the Investigating Officer, the witness was instructed not to discuss her testimony or knowledge of this case with anyone besides Trial Counsel, Defense Counsel, the accused, or the Investigating Officer, was permanently excused, and departed the room.

The DC offers into evidence Defense Exhibit A, Picture with SGT Duran's etching that was drawn by 1LT Watken. Defense Exhibit B, a sketch drawn by SPC Cook from the CID file, Defense Exhibit C, SFC Prior's statement.

The TC objects to DE C.

The IO admitted DE C.

The DC offers into evidence Defense Exhibit D, Statement from the government provided translator.

The TC objected to DE D.

The IO admitted DE D.

The DC offers into evidence Defense Exhibit F, Agent Cintron's final AIR. Defense Exhibit G, a photograph from the alley looking toward the tower. Defense Exhibit H, DA PAM 27-17. Defense Exhibit I, Statement from SGT Everly.

The TC objected to DE I.

The IO did not allow DE I into evidence.

The DC offers into evidence Defense Exhibit E, Accreditation file for Special Agent Duggar.

The Defense rests.

The hearing recessed at 1043 hours, 19 December 2004.

The hearing reconvened at 1052 hours, 19 December 2004. All parties who were present before the recess were again present.

The DC requested to make closing argument second.

The IO instructed the DC to go first.

The DC made closing arguments.

The TC made closing arguments.

The Article 32(b) hearing closed at 1125 hours, 19 December 2004.

**ENLISTED RECORD BRIEF**

[illegible]

# CHARGE SHEET

## I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) <b>COMBS, James E., III</b>			2. SSN		3. GRADE OR RANK <b>PFC</b>	4. PAY GRADE <b>E-3</b>
5. UNIT OR ORGANIZATION <b>272d Military Police Company, 759th Military Police Battalion, 89th Military Police Brigade, Camp Cuervo, Iraq APO AE 09390</b>					6. CURRENT SERVICE	
					a. INITIAL DATE <b>20021107</b>	b. TERM <b>6 Years</b>
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED  <b>NONE</b>		9. DATE(S) IMPOSED  <b>NONE</b>	
BASIC <b>\$ 1,407.00</b>	b. SEA/FOREIGN DUTY <b>\$ 225.00</b>	c. TOTAL <b>\$ 1,632.00</b>				

## II. CHARGES AND SPECIFICATIONS

0. CHARGE I: **VIOLATION OF THE UCMJ, ARTICLE 119**

SPECIFICATION: In that Private First Class James E. Combs, III, U.S. Army, did, at or near Baghdad, Iraq, on or about 22 September 2004, by culpable negligence, unlawfully kill Babea'a Husaene, by shooting Babea'a Husaene in the head with an M4 rifle.

## III. PREFERRAL

1a. NAME OF ACCUSER (Last, First, MI) <b>JASON L. MARQUISS</b>		b. GRADE <b>O-3</b>	c. ORGANIZATION OF ACCUSER <b>272d MP Co, 759th MP Bn</b>
SIGNATURE OF ACCUSER <i>Jason L. Marquiss</i>			e. DATE <b>20 OCT 04</b>

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 20<sup>th</sup> day of October, 2004, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

**C. Cullen Sheppard**  
*Typed Name of Officer*

**HHC, 89th Military Police Brigade**  
*Organization of Officer*

**Captain**  
*Grade*

**Article 136, UCMJ**

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

*C. Cullen Sheppard*  
*Signature*

12.

On 20 October, 2004, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.) e(s) OK

JASON L. MARQUISS

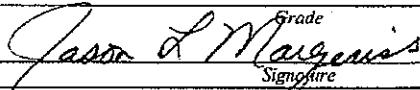
Typed Name of Immediate Commander

272d Military Police Company

Organization of Immediate Commander

O-3

Grade



Signature

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

13.

The sworn charges were received at 1745 hours, 20 OCT 04 at

759th Military Police Battalion

Designation of Command or

89th Military Police Brigade

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

FOR TIME: <sup>1</sup>

BYRON A. FREEMAN

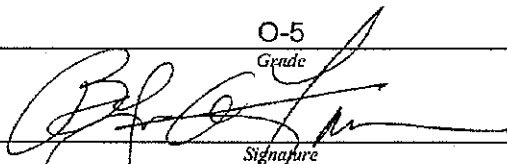
Typed Name of Officer

Commanding

Official Capacity of Officer Signing

O-5

Grade



Signature

## V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

Referred for trial to the \_\_\_\_\_ court-martial convened by \_\_\_\_\_

20

, subject to the following instructions: <sup>2</sup>

By \_\_\_\_\_ of \_\_\_\_\_

Command or Order

Typed Name of Officer

Official Capacity of Officer Signing

Grade

Signature

15.

On \_\_\_\_\_, 20\_\_\_\_\_, I (caused to be) served a copy hereof on (each of) the above named accused.

Typed Name of Trial Counsel

Grade or Rank of Trial Counsel

Signature

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

### 3-31-1. FALSE OFFICIAL STATEMENT (ARTICLE 107)

a. **MAXIMUM PUNISHMENT:** DD, TF, 5 years, E-1.

b. **MODEL SPECIFICATION:**

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location), on or about \_\_\_\_\_, with intent to deceive, [sign an official (record) (return) (\_\_\_\_\_)], to wit: \_\_\_\_\_ [make to \_\_\_\_\_, an official statement, to wit: \_\_\_\_\_], which (record) (return) (statement) (\_\_\_\_\_) was (to tally false) (false in that \_\_\_\_\_), and was then known by the said \_\_\_\_\_ to be so false.

c. **ELEMENTS:**

(1) That (state the time and place alleged), the accused [signed a certain official document] [made to (state the name of the person to whom the statement was allegedly made) a certain official statement], that is: (describe the document or statement as alleged);

(2) That such (document) (statement) was (totally false) (false in that (state the allegedly false matters) );

(3) That the accused knew it to be false at the time (he) (she) (signed) (made) it; and

(4) That the false (document) (statement) was made with the intent to deceive.

d. **DEFINITIONS AND OTHER INSTRUCTIONS:**

"Intent to deceive" means to purposely mislead, to cheat, to trick another, or to cause another to believe as true that which is false.

**NOTE 1: Official nature of document.** For a document to be regarded as official, it must concern a governmental function and must be made to a person who in receiving it is discharging the functions of his or her particular office, or to an office which in receiving the document or statement is discharging its functions. Further, a person conducting an interrogation or an office requesting submission of a document must, under the circumstances (including the application of Article 31, UCMJ), have the authority to require an answer or statement from the accused. Whether a statement or document is official is normally a matter of law to be determined as an interlocutory question. However, even though testimony concerning officiality may be uncontested, or even stipulated, when such testimony permits conflicting inferences to be drawn, the question should generally be regarded as an issue of fact for the members to resolve.

apparently tend to bring about the prohibited (communication) (delivery) (transmittal) and be done with the specific intent to bring about the (communication) (delivery) (transmission) of the matter to the (person(s)) (or) (entity) (entities) with the intent, or reason to believe, that the matter would be used to the injury of the United States or to the advantage of a foreign nation. For an act to apparently tend to bring about the commission of an offense means that the actual offense of espionage would have occurred except for (a circumstance unknown to the accused) (an unexpected intervening circumstance) (\_\_\_\_\_) which prevented completion of the offense.

“Intent or reason to believe” that the information “is to be used to the injury of the United States or to the advantage of a foreign nation” means that the accused acted in bad faith and without lawful authority with respect to information that is not lawfully accessible to the public.

“Instrument, appliance, or information relating to the national defense” includes the full range of modern technology (and matter that may be developed in the future) (including chemical or biological agents) (computer technology), and other matter related to the national defense.

“Foreign country” includes those countries that have and have not been recognized by the United States.)

**NOTE: Other instructions. Instruction 7-3, Circumstantial Evidence, is normally applicable.**

**e. REFERENCES:** United States v. Richardson, 33 M.J. 127 (C.M.A. 1991).



**3-44-1. VOLUNTARY MANSLAUGHTER (ARTICLE 119)**

**NOTE 1: About this instruction.** The following instruction should not be given when instructing on voluntary manslaughter as a lesser included offense. For the proper instruction in that case, see NOTE 2 in Instruction 3-43-2.

a. **MAXIMUM PUNISHMENT:** DD, TF, 15 years, E-1.

b. **MODEL SPECIFICATION:**

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location), on or about \_\_\_\_\_, willfully and unlawfully kill \_\_\_\_\_ by \_\_\_\_\_ him/her (in) (on) the \_\_\_\_\_ with a \_\_\_\_\_.

c. **ELEMENTS:**

- (1) That (state the name or description of the alleged victim) is dead;
- (2) That his/her death resulted from the (act) (failure to act) of the accused in (state the act or failure to act alleged) at (state the time and place alleged);
- (3) That the killing of (state the name or description of the alleged victim) by the accused was unlawful; and
- (4) That, at the time of the killing, the accused had an intent to kill or inflict great bodily harm upon (state the name or description of the alleged victim).

d. **DEFINITIONS AND OTHER INSTRUCTIONS:**

Killing a human being is unlawful when done without legal justification or excuse.

**NOTE 2: Sudden passion not an element.** When voluntary manslaughter is the charged offense, the existence of sudden passion caused by adequate provocation is not an element. The following instruction may be appropriate:

The offense of voluntary manslaughter is committed when a person, with intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation. "Passion" means anger, rage, pain, or fear. Proof that the accused was acting in the heat of passion caused by adequate provocation is not

required. It is essential, however, that the four elements I have listed for you be proved beyond a reasonable doubt before the accused can be convicted of voluntary manslaughter.

**NOTE 3: Capacity to form the specific intent.** *Instruction 6-5, Partial Mental Responsibility, Instruction 5-17, Evidence Negating Mens Rea, and Instruction 5-12-1, Voluntary Intoxication, may be applicable as bearing upon the capacity of the accused to formulate the specific intent required for voluntary manslaughter. If such capacity is in issue, instructions must be given on involuntary manslaughter and other lesser included offenses which may be raised by the entire evidence in the case.*

**NOTE 4: Transferred intent.** *When the issue of transferred intent is raised by the evidence, the following instruction should be given:*

When an individual with intent to kill or inflict great bodily harm attempts unlawfully to kill or to inflict great bodily harm upon a person (while in the heat of sudden passion caused by adequate provocation), but, by mistake or carelessness, kills another person, the individual is still criminally responsible for the killing with the intent to kill or inflict great bodily harm because the intent is transferred from the intended victim of (his) (her) action to the actual victim. If you are satisfied beyond a reasonable doubt that the victim is dead and that his/her death resulted from the unlawful (act) (failure to act) of the accused in (state the act or failure to act alleged) with intent to kill or inflict great bodily harm upon (state the name or description of the individual other than the victim) you may still find the accused guilty of the voluntary manslaughter of (state the name or description of the alleged victim).

**NOTE 5: Causation.** *If an issue is raised regarding whether the act or failure to act on the part of the accused caused the death of the victim, it would be necessary to instruct on lesser included offenses not involving death of the victim, e.g., aggravated assault.*

**NOTE 6: Brain death instruction.** *The military standard for death includes brain death. An individual is dead who has sustained either: (1) irreversible cessation of spontaneous respiration and circulatory functions, or (2) irreversible cessation of all functions of the brain, including the brain stem. See United States v. Gomez, 15 M.J. 954 (A.C.M.R. 1983); United States v. Jefferson, 22 M.J. 315 (C.M.A. 1986); and United States v. Taylor, 44 M.J. 254 (1996). 7-24, Brain Death, may be adapted for this circumstance.*

**NOTE 7: Other instructions.** *Instruction 7-3, Circumstantial Evidence (Intent), is ordinarily applicable.*

### 3-44-2. INVOLUNTARY MANSLAUGHTER—CULPABLE NEGLIGENCE (ARTICLE 119)

a. **MAXIMUM PUNISHMENT:** DD, TF, 10 years, E-1.

b. **MODEL SPECIFICATION:**

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location), on or about \_\_\_\_\_, by culpable negligence, unlawfully kill \_\_\_\_\_ by \_\_\_\_\_ him/her (in) (on) the \_\_\_\_\_ with a \_\_\_\_\_.

c. **ELEMENTS:**

- (1) That (state the name or description of the alleged victim) is dead;
- (2) That his/her death resulted from the (act) (failure to act) of the accused in (state the act or failure to act alleged) at (state the time and place alleged);
- (3) That this (act) (failure to act) amounted to culpable negligence; and
- (4) That the killing of (state the name or description of the alleged victim) by the accused was unlawful.

d. **DEFINITIONS AND OTHER INSTRUCTIONS:**

Killing a human being is unlawful when done without legal justification or excuse.

Culpable negligence is a degree of carelessness greater than simple negligence. Simple negligence is the absence of due care. The law requires everyone at all times to demonstrate the care for the safety of others that a reasonably careful person would demonstrate under the same or similar circumstances; this is what "due care" means. Culpable negligence is a negligent act or failure to act accompanied by a gross, reckless, wanton or deliberate disregard for the foreseeable results to others.

You may find the accused guilty of involuntary manslaughter, only if you are satisfied beyond a reasonable doubt that the (act) (failure to

act) of the accused which caused the death amounted to "culpable negligence."

**NOTE 1: Proximate cause in issue. In an appropriate case, the following instruction relating to proximate cause should be given:**

The (act) (failure to act) must not only amount to culpable negligence but must also be a proximate cause of death. Proximate cause means that the death must have been the natural and probable result of the accused's culpably negligent (act) (failure to act). The proximate cause does not have to be the only cause, but it must be a contributory cause which plays an important part in bringing about the death. (It is possible for the conduct of two or more persons to contribute each as a proximate cause to the death of another. If the accused's conduct was the proximate cause of the victim's death, the accused will not be relieved of criminal responsibility just because some other person's conduct was also a proximate cause of the death.) (If the death occurred only because of some unforeseeable, independent, intervening cause which did not involve the accused, then the accused may not be convicted of involuntary manslaughter.) The burden is on the prosecution to prove beyond a reasonable doubt (that there was no independent intervening cause) (and) (that the accused's culpable negligence was a proximate cause of the victim's death).

**NOTE 2: Contributory negligence of victim. In an appropriate case, the following instruction on contributory negligence of the victim should be given:**

There is evidence in this case raising the issue of whether the deceased failed to use reasonable care and caution for his/her own safety. If the accused's culpable negligence was a proximate cause of the death, the accused is not relieved of criminal responsibility just because the negligence of the deceased may also have contributed to his/her death. The conduct of the deceased is, however, important on the issue of whether the accused's culpable negligence, if any, was a proximate cause of death. Accordingly, a certain (act) (failure to act) may be a proximate cause of death even if it is not the only cause, as long as it is a direct or contributing cause and plays an important role in causing the death. An (act) (failure to act) is not a proximate cause

of the death if some other force independent of the accused's (act) (failure to act) intervened as a cause of death.

**NOTE 3: Lesser included offense commonly raised.** When an issue is raised regarding the degree of negligence, an instruction on negligent homicide must normally be given. See Instruction 3-85-1.

**NOTE 4: Brain death instruction.** The military standard for death includes brain death. An individual is dead who has sustained either: (1) irreversible cessation of spontaneous respiration and circulatory functions, or (2) irreversible cessation of all functions of the brain, including the brain stem. See United States v. Gomez, 15 M.J. 954 (A.C.M.R. 1983); United States v. Jefferson, 22 M.J. 315 (C.M.A. 1986); and United States v. Taylor, 44 M.J. 254 (1996). 7-24, Brain Death, may be adapted for this circumstance.

### 3-44-3. INVOLUNTARY MANSLAUGHTER—WHILE PERPETRATING OR ATTEMPTING TO PERPETRATE CERTAIN OFFENSES (ARTICLE 119)

a. **MAXIMUM PUNISHMENT:** DD, TF, 10 years, E-1.

b. **MODEL SPECIFICATION:**

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location), on or about \_\_\_\_\_, while (perpetrating) (attempting to perpetrate) an offense directly affecting the person of \_\_\_\_\_, to wit: (maiming) (a battery) (\_\_\_\_\_) unlawfully kill \_\_\_\_\_ by \_\_\_\_\_ him/her (in) (on) the \_\_\_\_\_ with a \_\_\_\_\_.

c. **ELEMENTS:**

(1) That (state the name or description of the alleged victim) is dead;

(2) That his/her death resulted from the (act) (failure to act) of the accused in (state the act or failure to act alleged) at (state the time and place alleged);

(3) That the killing of (state the name or description of the alleged victim) by the accused was unlawful; and

(4) That, at the time of the killing, the accused was participating in the (attempted) commission of the offense of (assault) (battery) (false imprisonment) (\_\_\_\_\_) directly affecting the person of (state the name or description of the alleged victim).

d. **DEFINITIONS AND OTHER INSTRUCTIONS:**

The killing of a human being is unlawful when done without legal justification or excuse.

To find that the accused was participating in the (attempted) commission of the offense of (assault) (battery) (false imprisonment) (\_\_\_\_\_), you must be satisfied by legal and competent evidence beyond a reasonable doubt:

**NOTE 1: Elements of offense directly affecting the person.** The military judge should here list the elements of the offense alleged to have been perpetrated or attempted. The statement should be based upon the pertinent instruction which lists the elements of the offense but should be tailored to serve the purpose for which the statement is intended.

***When the offense committed is an attempted perpetration, the military judge should refer to Instruction 3-4-1, Attempts, which will prove helpful in drafting the instructions at hand.***

***NOTE 2: Causation. If an issue arises as to the lack of a relationship between the offense directly affecting the person and the death, the members may be instructed substantially as follows:***

To find whether the killing, if any, was committed while the accused (was participating in) (attempted) (state the offense directly affecting the victim) you must find beyond a reasonable doubt that an act of the accused which caused the victim's death and the (state the offense alleged to have been perpetrated or attempted) occurred at substantially the same time and place. Additionally, you must find a causal connection between the commission of the (attempted) offense of (state the offense alleged to have been perpetrated or attempted) and the act which caused the victim's death.

***NOTE 3: Brain death instruction. The military standard for death includes brain death. An individual is dead who has sustained either: (1) irreversible cessation of spontaneous respiration and circulatory functions, or (2) irreversible cessation of all functions of the brain, including the brain stem. See United States v. Gomez, 15 M.J. 954 (A.C.M.R. 1983); United States v. Jefferson, 22 M.J. 315 (C.M.A. 1986); and United States v. Taylor, 44 M.J. 254 (1996). 7-24, Brain Death, may be adapted for this circumstance.***

**3-85-1. NEGLIGENCE HOMICIDE (ARTICLE 134)**

*a. MAXIMUM PUNISHMENT:* DD, TF, 3 years, E-1.

*b. MODEL SPECIFICATION:*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location), on or about \_\_\_\_\_, unlawfully kill \_\_\_\_\_, (by negligently \_\_\_\_\_ the said \_\_\_\_\_ (in) (on) the \_\_\_\_\_ with a \_\_\_\_\_) (by driving a (motor vehicle) (\_\_\_\_\_)) against the said \_\_\_\_\_ in a negligent manner) (\_\_\_\_\_).

*c. ELEMENTS:*

- (1) That (state the name or description of the alleged victim) is dead;
- (2) That his/her death resulted from the (act) (failure to act) of the accused, to wit: (state the act or failure to act alleged), (state the time and place alleged);
- (3) That the killing by the accused was unlawful;
- (4) That the (act) (failure to act) of the accused which caused the death amounted to simple negligence; and
- (5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

*d. DEFINITIONS AND OTHER INSTRUCTIONS:*

Conduct prejudicial to good order and discipline is conduct which causes a reasonably direct and obvious injury to good order and discipline. Service discrediting conduct is conduct which tends to harm the reputation of the service or lower it in public esteem.

Killing of a human being is unlawful when done without legal justification or excuse.

Simple negligence is the absence of due care, that is, (an act) (or) (failure to act) by a person who is under a duty to use due care which demonstrates a lack of care for the safety of others which a reasonably



careful person would have used under the same or similar circumstances.

**NOTE 1: Proximate cause. In an appropriate case, the following instruction on proximate cause should be given:**

The (act) (failure to act) alleged must not only amount to simple negligence but it must also be a proximate cause of the death. This means that the death of (state the name of the alleged victim) must have been the natural and probable result of the accused's negligent (act) (failure to act). In determining this issue, you must consider all relevant facts and circumstances, (including, but not limited to, (here the military judge may specify significant evidentiary factors bearing on the issue and indicate the respective contentions of counsel for both sides ).)

**NOTE 2: Two or more persons involved in injury to the victim. Give the following instruction where two or more persons caused the injury to the deceased.**

It is possible for the conduct of two or more persons to contribute, each as a proximate or direct cause, to the death of another. If the accused's conduct was a proximate or direct cause of the victim's death the accused will not be relieved of criminal responsibility just because some other person's conduct was also a proximate or direct cause of the death. The accused will, however, be relieved of criminal responsibility for the death of the victim if the death was the result of some unforeseeable independent intervening cause which did not involve the accused. If the victim died only because of the independent intervening cause, the (act) (failure to act) of the accused was not the proximate cause of the death, and the accused cannot be found guilty of negligent homicide. The burden is on the prosecution to establish beyond a reasonable doubt that (there was no independent intervening cause) (and) (that the accused's negligence was a proximate cause of the death of the victim).

**NOTE 3: Contributory negligence of victim. In an appropriate case, the following instruction relating to contributory negligence of the deceased should be given:**

There is evidence in this case raising the issue of whether the deceased failed to use reasonable care and caution for his/her own

safety. If the accused's negligence was a proximate cause of the death, the accused is not relieved of criminal responsibility just because the negligence of the deceased may have contributed to his/her death. The conduct of the deceased is, however, important on the issue of whether the accused's negligence, if any, was a proximate cause of the death. Accordingly, a certain (act) (failure to act) may be a proximate cause of death even if it is not the only cause, as long as it is a direct or contributing cause and plays an important role in causing the death. (An act) (A failure to act) is not the proximate cause of the death if some other force independent of the accused's (act) (failure to act) intervened as a cause of death.

*e. REFERENCES:* United States v. Kick, 7 M.J. 82 (C.M.A. 1979); United States v. Martinez, 42 M.J. 327 (1995).

COURT-MARTIAL CHARGES  
(FH PAM 27-7)

PART I

<b>TO</b> Commander, 759th MP Bn Commander	<b>FROM</b> Commander, 272d MP Co	<b>DATE</b> 20 OCT 04
1. Court-Martial charges against the following named individual are forwarded as Enclosure 1. Witness statements, any evidence of previous misconduct (to include properly certified DA Forms 2627) and the accused's DA Forms 2 and 2-1 are attached as Enclosure 2.		
2. Combs III, James Edward	PFC E-3	
Name	Rank	SSN
272d MP Co, 759th MP Bn, 89th MP Bde APO AE 09342		
Organization		

3. I recommend:

- ( ) Summary Court-Martial ( ) Special Court-Martial ( ) BCD Special Court-Martial  
(X) General Court-Martial

NAME OF COMMANDER  
CPT JASON MARQUISS

SIGNATURE OF COMMANDER  
*Jason L. Marquiss*

PART II

<b>TO</b> Commander, 89th MP Bde	<b>FROM</b> Commander, 759th MP Battalion	<b>DATE</b> 20 OCT 04
I have reviewed the attached charges and conclude that each offense is supported by the evidence.		
I (recommend) (direct):		
( ) Summary Court-Martial ( ) Special Court-Martial ( ) BCD Special Court Martial		
(X) General Court-Martial		

NAME OF COMMANDER  
LTC BYRON FREEMAN

SIGNATURE OF COMMANDER  
*Byron Freeman*

PART III

<b>Commander, 89th MP Brigade</b>	<b>DATE</b> 1 Nov 2004
I have reviewed the attached charges and conclude that each offense is supported by the evidence.	
I ( <del>recommend</del> ) (direct):	
( ) Summary Court-Martial ( ) Special Court-Martial ( ) BCD Special Court-Martial	
(X) Article 32 Investigation ( ) General Court-Martial	

NAME OF COMMANDER  
DAVID D. PHILLIPS

SIGNATURE OF COMMANDER  
*David D. Phillips*

PART IV

<b>TO</b> Commander, III Corps	<b>FROM</b> Commander, 89th MP Brigade	<b>DATE</b>
I have examined the Article 32 Investigation and allied papers and (recommend) (direct) trial by:		
( ) Summary Court-Martial ( ) Special Court-Martial ( ) BCD Special Court-Martial		
( ) General Court-Martial		

NAME OF COMMANDER  
DAVID D. PHILLIPS

SIGNATURE OF COMMANDER



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
89TH MILITARY POLICE BRIGADE  
Baghdad, Iraq APO AE 09342

1 NOV 04

MEMORANDUM FOR MAJ Margaret Compton, Headquarters and Headquarters  
Detachment, 231st Military Police Battalion, 89th Military Police Brigade, APO AE 09342

SUBJECT: Appointment as an Investigating Officer

1. You are appointed to investigate the enclosed charges against Private First Class James Edward Combs, 272d Military Police Company, 759th Military Police Battalion, 89th Military Police Brigade, APO AE 09342, in accordance with Article 32, UCMJ, R.C.M. 405, MCM (2002 Edition), and AR 27-10. Use DA Pam 27-17 as a procedural guide.
2. Staff Sergeant Monica Carlile, 759th Military Police Brigade Paralegal NCO, and Sergeant Jesse Roberson, 231st Military Police Battalion Paralegal, will assist you in coordinating the procedural details of the investigation, notetaking, and in preparing your report of the results of this investigation. **You should contact SSG Carlile immediately after receipt of this memorandum at 584-0900.**
3. You will consult with the Administrative Law Division, Office of the Staff Judge Advocate for guidance and assistance prior to commencement of the investigation for advice as to procedure, proper completion of the report and guidance on the law applicable to the case. The phone number is 822-2500.
4. Upon appointment, you will set the hearing for no later than 14 calendar days after the receipt of this appointment memorandum. Your report of investigation will be completed as soon as possible, but no later than 7 calendar days following the termination of your investigation. You will attach a detailed daily chronology from the time of this notification until the completion of your report.
5. Captain C. Cullen Sheppard or any other trial counsel deemed appropriate by the chief of justice will represent the government as the trial counsel and can be reached at 639-1571. The accused will be represented by defense counsel and can be reached at DNV 822-2866.
6. The date for the Article 32 hearing should be set within three working days from the date of the appointment. I delegate to you the authority to grant delays up to 14 days in the above Article 32 hearing. All requests for delays and approval or disapproval of delays must be in writing.
7. Unless otherwise directed by me, a summarized record of the Article 32(b) proceeding will accompany your report.

Encl  
Case File

  
DAVID D. PHILLIPS  
COL, MP  
Commanding

**DEPARTMENT OF THE ARMY**  
Headquarters, 89<sup>th</sup> Military Police Brigade  
Victory Base, Iraq, APO AE 09342

S: 12 November 2004

AFVP (27)

9 November 2004

MEMORANDUM FOR Private First Class James E. Combs, III

SUBJECT: Article 32(b) Investigation

1. On 17 November 2004, at 1000 hours, in the 759<sup>th</sup> Military Police Battalion Classroom, located at Camp Cuervo, I will conduct an investigation pursuant to Article 32(b), UCMJ, to investigate the facts and circumstances concerning a charge preferred against you by CPT Jason L. Marquiss. The required uniform for the hearing will be DCU's. The charges against you are found on the DD Form 458 Charge Sheet that is included as an enclosure to this memorandum.

2. You have the right to be present during the entire investigation. Additionally, you have the right to be represented at all times during the investigation by legally qualified counsel. Counsel may be a civilian lawyer of your choice, provided at no expense to the United States; a qualified military lawyer of your selection, if reasonably available; or a qualified military counsel detailed by the Trial Defense Service. There is no cost to you for military counsel. You also have the right to waive representation by counsel. Send your decision to me by 12 November 2004.

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

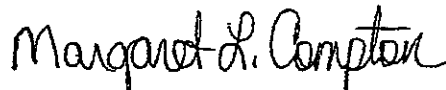
- a. SPC Wade E. Cook
- b. SGT Levi B. Duran
- c. SFC Kenneth I. Pryor, II

4. As investigating officer, I will try to arrange for the appearance of any witnesses that you want to testify at the hearing. Send names and addresses of such witnesses to me by 12 November 2004. If, at a later time, you identify additional witnesses, inform me of their names and addresses.

AFVP

SUBJECT: Article 32(b) Investigation

5. You may contact me by writing to: MAJ Margaret L. Compton, Headquarters and Headquarters Detachment, 231<sup>st</sup> Military Police Battalion, Camp Falcon, Iraq, APO AE 09310. You may also contact SSG Monica Carlile at Headquarters, 759<sup>th</sup> Military Police Battalion, APO AE 09342, DNV 242-4339.



MARGARET L. COMPTON  
MAJ, MP  
Investigating Officer



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
UNITED STATES ARMY TRIAL DEFENSE SERVICE  
BAGHDAD FIELD OFFICE  
CAMP VICTORY, IRAQ  
APO AE 09342

FICI-JA-BFO

12 Nov 04

MEMORANDUM FOR MAJ Margaret L. Compton, Article 32 Investigating Officer

SUBJECT: Article 32(b) Investigation Delay Request -- PFC James Combs, -----  
272nd MP Company, 759th MP BN, 89th MP BDE, Camp Cuervo, Iraq APO AE 09390

1. The Defense requests a delay in the Article 32 investigation from 17 Nov 04 until 1 Dec 04.
2. The Accused is charged with an offense carrying a maximum punishment of 10 years. The reason for the delay is to allow the Defense adequate time to prepare for the hearing and to avoid manifest injustice. An unprepared counsel at an Article 32 hearing is tantamount to no counsel at all, and to that extent, it denies an accused his right to effective assistance of counsel.
3. The instant case involves numerous witnesses, language barriers, and complicated scientific, forensic, and ballistic issues that require substantial research and expert assistance. Please find enclosed with this memorandum the Defense's request for that the Convening Authority appoint an investigator to the Defense Team. Additionally, the Defense intends to request that the Convening Authority appoint several other experts prior to the Article 32 hearing. Finally, due to logistical, geographical, and other supervisory duties as Senior Defense Counsel, the Defense is not prepared to move forward with the Article 32 Hearing.
4. The Defense will be credited with the delay.
5. POC is the undersigned at 822-2866.

encl  
as

//ORIGINAL SIGNED//

DAVID T. SCOTT  
CPT, JA  
Defense Counsel



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
UNITED STATES ARMY TRIAL DEFENSE SERVICE  
BAGHDAD FIELD OFFICE  
CAMP VICTORY, IRAQ  
APO AE 09342

FICI-JA-BFO

28 Nov 04

MEMORANDUM FOR MAJ Margaret L. Compton, Article 32 Investigating Officer

SUBJECT: Additional (second) Article 32(b) Investigation Delay Request -- PFC James Combs, 272nd MP Company, 759th MP BN, 89th MP BDE, Camp Cuervo, Iraq  
APO AE 09390

1. The Defense respectfully requests a delay in the Article 32 investigation from 2 Dec 04 until 16 Dec 04.
2. The Accused, with the assistance of his family, is currently engaged in obtaining civilian Defense Counsel. Granting this request will allow the accused a reasonable opportunity to finalize any civilian representation requirements and to avoid manifest injustice. A reasonable request for delay by the accused should be granted (DA PAM 27-27, para. 2-1d).
3. Additionally, the Defense is not prepared for the Article 32. We have not yet had time to review all relevant and necessary evidence. On 26 November 2004, the Defense was notified by CID Special Agent Irene Cintron that the Iraqi Police had conducted an investigation of this incident. The Defense has not had the opportunity to review any/all Iraqi Police investigation materials for U.S. v. Brady material, nor the time to interview Iraqi Police Investigators for same. An unprepared Counsel at an Article 32 hearing is tantamount to no counsel at all, and to that extent, it denies an accused his right to effective assistance of counsel.
4. For all the reasons listed above, the Defense respectfully requests that you grant a second 14-day delay. The Defense will be credited with the delay.
5. Thank you for your consideration in this matter. POC is the undersigned at 822-2866.

//ORIGINAL SIGNED//  
DAVID T. SCOTT  
CPT, JA  
Defense Counsel



**DEPARTMENT OF THE ARMY**  
Headquarters, 89<sup>th</sup> Military Police Brigade  
Victory Base, Iraq, APO AE 09310

AFVP-IO (27)

13 November 2004

MEMORANDUM FOR Private First Class James E. Combs, III, 272<sup>nd</sup> Military Police  
Company, 759<sup>th</sup> Military Police Battalion, APO AE 09342

SUBJECT: Defense Request for Delay

1. On 12 November 2004, CPT David T. Scott, requested a 14 day delay in the Article 32 proceedings to conduct a thorough investigation on behalf of the accused and to request an expert investigator. It is my belief that this is a reasonable request and I will grant the delay until 1 December 2004.

*Margaret L. Compton*

MARGARET L. COMPTON  
MAJ, MP  
Investigating Officer

CF:  
Defense Counsel  
Government Counsel  
Legal Advisor

DEPARTMENT OF THE ARMY  
Headquarters, 89th Military Police Brigade  
Victory Base, Iraq  
APO AE 09342

AFVP-CO

01 DEC 2004

MEMORANDUM FOR Defense Counsel for United States v. Private First Class James Edward Combs III, 272d Military Police Company, 759th Military Police Battalion, 89th Military Police Brigade, III Corps, Victory Base, Iraq, APO AE 09342-1400

SUBJECT: Defense Request for Delay.

1. Applicable Law: Rules for Courts-Martial 405(c)(2)(C) and 707(b).
2. On 20 October 2004, the unit commander, CPT Jason Marquiss preferred charges against the accused. On 1 November 2004, I directed MAJ Margaret Compton to conduct an Article 32 investigation. On 13 November 2004, MAJ Compton granted a delay in the proceedings from 17 November 2004 until 1 December 2004.
3. On 28 November 2004, PFC Combs' defense counsel, CPT Scott, submitted another delay request based on the accused's request for a reasonable amount of time to obtain civilian counsel. CPT Scott requested a delay until 16 December 2004. Due to the 89th Military Police Brigade's transfer of authority with the 42nd Military Police Brigade on 11 December 2004, I am only able to grant the delay until 11 December 2004.
4. I grant a delay in the proceedings from 2 December 2004 until 11 December 2004 to give the accused reasonable time to obtain and have the civilian counsel present for the Article 32 investigation. I am forwarding your request for delay to COL Richard Swengross, 42nd Military Police Brigade Commander.
5. POC is Captain Sheppard at VOIP 242-0256.

CF:  
Trial Counsel  
Defense Counsel  
Accused  
Article 32 Officer

  
DAVID D. PHILLIPS  
COL, MP  
Commanding



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
UNITED STATES ARMY TRIAL DEFENSE SERVICE  
BAGHDAD FIELD OFFICE  
CAMP VICTORY, IRAQ  
APO AE 09342

FICI-JA-BFO

13 Dec 04

MEMORANDUM FOR Investigating Officer, MAJ Margaret Compton, Headquarters and Headquarters Detachment, 231<sup>st</sup> Military Police Battalion, 89<sup>th</sup> Military Police Brigade, APO AE 09342

SUBJECT: Pretrial Investigation Witness and Evidence Request -- United States v. PFC James Combs, 272nd MP Company, 759th MP BN, 89th MP BDE, III Corps, Camp Victory, Iraq

1. IAW Article 32, Uniform Code of Military Justice (UCMJ) and Rule for Court-Martial (RCM) 405(g)(1), the Defense in the above case requests the following witnesses be present at the pretrial investigation:

a. Special Agent Bryan Dugger, 38<sup>th</sup> Military Police Detachment, 22d Military Police Battalion, APO AE 09342. **Relevance:** SA Dugger was a CID Special Agent (SA) on this case. SA Dugger took several statements from witnesses different than those taken by SA Cintron listed below. SA Dugger will testify regarding the nature and quality of the criminal investigation and statements made by Government witnesses that may tend to corroborate and/or impeach their testimony and may also lead to further discoverable evidence.

b. Special Agent Irene Cintron, 38<sup>th</sup> Military Police Detachment, 22d Military Police Battalion, APO AE 09342. **Relevance:** SA Cintron was a CID special agent on this case. SA Cintron took several statements of witnesses different than those taken by SA Dugger. SA Cintron will testify regarding the nature and quality of the criminal investigation and statements made by Government witnesses that may tend to corroborate and/or impeach their testimony and may also lead to further discoverable evidence.

c. SSG Connie G. Julian, 2nd Squad, 2d Platoon, 272nd Military Police Company, Camp Cuervo, Iraq. **Relevance:** SSG Julian has known the accused since October 2003 and been his squad leader since July of 2004. SSG Julian will testify as to the specific threat levels and circumstances regarding IP#10. SSG Julian will also testify regarding her personal directives to the accused regarding "scanning" with a weapon and other weapons safety and ROE measures.

d. SGT Darrell Hall, 3d Squad, 2nd Platoon, 272nd Military Police Company, Camp Cuervo, Iraq. **Relevance:** SGT Hall has known the accused for 1 ½ years and has served as his squad leader. SGT Hall will testify that the Accused is a good duty performer. SGT Hall will also testify as to the permissibility of "scanning" with an assigned weapon while on duty in a guard tower. SGT Hall will testify regarding any/all instructions to the accused regarding ROE, weapons handling, and/or scanning.

e. SSG Stephen McQuerry, 2nd Platoon, 272nd Military Police Company, Camp Cuervo, Iraq. **Relevance:** SSG McQuerry has known the accused since he arrived in the 272nd Military Police

FICI-JA-BFO

SUBJECT: Pretrial Investigation Witness and Evidence Request -- United States v. PFC James Combs, 272nd MP Company, 759th MP BN, 89th MP BDE, III Corps, Camp Victory, Iraq

Company. SSG McQuerry will testify that he has had ample opportunity to observe the accused and has formed opinions as to good duty performance and excellent rehabilitative potential. Additionally, SSG McQuerry will testify as to ROE training, weapons safety standards, and the permissibility of "scanning" with an individual weapon while in the guard tower.

f. CPT Jason Marquiss, Commander, 272nd Military Police Company, Camp Cuervo, Iraq. **Relevance:** CPT Marquiss is the accused's commander. CPT Marquiss was in charge of the unit at the time of the alleged incident. CPT Marquiss will testify as to his knowledge of the investigation(s) and the accused's participation therein. CPT Marquiss will also testify as to payment(s) made to Iraqi citizens regarding this case.

g. SGT Robert D. M. Everly, 1st Squad, 1st Platoon, 272nd Military Police Company, Camp Cuervo, Iraq. **Relevance:** Immediately after the alleged negligent discharge, SGT Everly was ordered to convoy to local hospitals to find the alleged victim in this case. SGT Everly will provide evidence regarding his search for the alleged victim. This testimony will corroborate and/or impeach the testimony of other Government witnesses.

j. SPC Pepple, 272nd Military Police Company, Camp Cuervo, Iraq. **Relevance:** SPC Pepple participated in convoy(s) to the Neurological Hospital that the alleged victim was treated in. SPC Pepple will testify as to the general nature of the hospital and the layout of the ER and treatment rooms. This testimony will corroborate and/or impeach the testimony of other Government witnesses.

k. The Defense incorporates the Government and Investigating Officer witness list by reference.

2. IAW Article 32, Uniform Code of Military Justice (UCMJ) and Rule for Court-Martial (RCM) 405(g)(2), the Defense in the above case requests the following evidence be present at the pretrial investigation:

a. Any and all physical evidence, including but not limited to any evidence seized by law enforcement personnel at or near IP#10, relating to this case in the custody or control of military or civilian law enforcement or any other Government agency.

b. Any and all documentary evidence, including but not limited to laboratory result reports, relating to this case in the custody or control of military or civilian law enforcement or any other Government agency.

c. The United States Army Criminal Investigation Command Criminal Investigation Accreditation File (CIAF) for SA Bryan Dugger. The file is kept at Headquarters, USACIDC, Fort Belvoir, VA. Additionally, all USACIDC inquiries or investigations conducted IAW CIDR 195-1 or RCM 303 done regarding allegations of misconduct by SA Dugger. The POC for the files is the USACIDC Deputy SJA at DSN 312-656-0369, or Ms. Black at DSN 312-656-0353.

FICI-JA-BFO

SUBJECT: Pretrial Investigation Witness and Evidence Request -- United States v. PFC James Combs, 272nd MP Company, 759th MP BN, 89th MP BDE, III Corps, Camp Victory, Iraq

The CIAF is relevant in that it may contain information impeaching SA Dugger's testimony regarding this case.

d. All other evidence and discovery materials requested previously by the Defense, and not yet produced by the Government.

3. POC is the undersigned at 822-2866.

*//ORIGINAL SIGNED//*

DAVID T. SCOTT

CPT, JA

Defense Counsel



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
Headquarters, 42<sup>nd</sup> Military Police Brigade  
Baghdad, Iraq APO AE 09342

13 DEC 2004

AFZF-JA

MEMORANDUM FOR Major Margaret L. Compton, Investigating Officer

SUBJECT: Article 32 Investigation-Private First Class James Edward Combs, III, 272nd Military Police Company, 759th Military Police Battalion, 42nd Military Police Brigade, Camp Rasdimayah, Iraq APO AE 09390

1. Purpose. To request the presence of witnesses for the above Art. 32 investigation.
2. References:
  - a. Article 32, Uniform Code of Military Justice
  - b. Rules for Courts-Martial (R.C.M.) 405, Pretrial Investigation
3. The Government requests the presence of the following witnesses:
  - a. Special Agent Brian Dugger, DNV 551-9413
  - b. Sergeant Levi B. Duran, 272nd MP Co.
4. The Government objects to the presence of the following witnesses under R.C.M. 405g(1)(A), 'any witnesses testimony who is relevant and not cumulative shall be produced':
  - a. Specialist Cook: not relevant
  - b. Sergeant First Class Pryor: not relevant
  - c. Special Agent Cintron: cumulative, not reasonably available because she is located CONUS.
  - d. Mr. Jalil Abbas Ali: not relevant
  - e. Master Saef Mezher Al Zubide: not relevant
  - f. Mr. Muzher Mohammed: not relevant
5. The government will not present the following items of evidence because they are located at the United States Army Criminal Investigation Laboratory in Forest Park Georgia:
  - a. Rifle M-4, Serial No. W053730
  - b. Magazine, 5.56 mm, 30 round size
  - c. Casing, brass for 5.56 mm round

AFZF-JA

SUBJECT: Article 32 Investigation-Private First Class James Edward Combs, III, 272nd Military Police Company,  
759th Military Police Battalion, 42nd Military Police Brigade, Camp Rasdimayah, Iraq APO AE 009390

6. POC for this memorandum is the undersigned at DNV 242-0256.



CHRISTOPHER L. PAWLOSKI  
CPT, JA  
Trial Counsel

CF:  
Defense Counsel  
Legal Advisor

**DEPARTMENT OF THE ARMY**  
Headquarters, 42<sup>nd</sup> Military Police Brigade  
Victory Base, Iraq, APO AE 09342

AFZF-IO (27)

13 December 2004

MEMORANDUM FOR Private First Class James E. Combs, III

SUBJECT: Ruling on Government Witness List

1. On 13 December 2004, I received the Government's witness list. The Government requested the presence of the following witnesses:

- a. Special Agent Brian Dugger, DNV 551-9413
- b. Sergeant Levi B. Duran, 272<sup>nd</sup> MP CO

2. The Government also objected to the presence of the following witnesses under R.C.M. 405g(1)(A), 'any witnesses testimony who is relevant and not cumulative shall be produced':

- a. Specialist Cook: not relevant
- b. Sergeant First Class Pryor: not relevant
- c. Special Agent Cintron: cumulative, not reasonably available because she is located CONUS.
- d. Mr. Jalil Abbas Ali: not relevant
- e. Master Saef Mezher Al Zubide: not relevant
- f. Mr. Muzher Mohammed: not relevant

3. I agree with the non-relevance of all the above witnesses, except Specialist Cook.



AFZF-IO

SUBJECT: Ruling on Government Witness List

5. You may contact me by writing to: MAJ Margaret L. Compton, Headquarters and Headquarters Detachment, 231<sup>st</sup> Military Police Battalion, Camp Falcon, Iraq, APO AE 09310. You may also contact SSG Monica Carlile at Headquarters, 759<sup>th</sup> Military Police Battalion, APO AE 09342, DNVF 242-4339.

/Original Signed/  
MARGARET L. COMPTON  
MAJ, MP  
Investigating Officer

CF:  
Defense Counsel  
Government Counsel



DEPARTMENT OF THE ARMY  
UNITED STATES ARMY TRIAL DEFENSE SERVICE, REGION V  
FORT LEWIS FIELD OFFICE  
FORT LEWIS, WASHINGTON 98433-9500

AFZF-JA-TDS

17 December 2004

MEMORANDUM FOR CPT Cullen Sheppard, Trial Counsel, 89<sup>th</sup> Military Police Brigade, Camp Victory, Iraq

SUBJECT: Pretrial Investigation Evidence Request -- United States v. PFC James Combs

1. IAW Article 32, Uniform Code of Military Justice (UCMJ) and Rule for Court-Martial (RCM) 405, the Accused, by and through his detailed defense attorneys, hereby requests that the Government produce for the use, inspection and copying by his defense counsel the following:

a. All papers which accompanied the charges at preferral, specifically to include, but not limited to: the charge sheet, all allied papers, transmittal documents accompanying the charges from one headquarters to another, all law enforcement reports whether prepared by military or civilian law enforcement personnel, all laboratory reports, copies of all requests for laboratory reports not yet completed or where the request has been withdrawn, statements of the accused or witnesses, convening orders and the written advice, pretrial advice, or guidance given by any judge advocate to the convening authority or any intermediate commander during the preferral process.

b. Any books, papers, documents, photographs, videotapes or copies or portions thereof and the opportunity to view tangible objects, buildings, or places which are in the possession, custody, or control of military authorities, and which are material to the preparation of the defense and intended for use by trial counsel as evidence in the prosecution case in chief, or were obtained from or belong to the accused. Specifically, any tangible material evidence seized or collected at the crime scene, such as expended ammunition casings, bullets, or bullet fragments.

c. Any results or reports of physical or mental examinations, autopsies, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of military authorities at all levels, the existence of which is known, or by the exercise of due diligence may become known, to the trial counsel, and which are material to the preparation of the defense or are intended for use by the trial counsel as evidence in the prosecution case in chief at trial. Specifically, all information regarding the testing, examination, or other experimentation on PFC Combs' weapon, ammunition, magazine, or any spent casings by USACIL, or other government agency. Additionally, immediate production of the exact type, caliber, and lot number of the ammunition taken into evidence from PFC Combs, to include any ammunition casing(s) found at IP Station #10 or at the crime scene. Finally, access to such said evidence by the Defense.

d. All information in the Government's possession regarding the payment of any monies to the alleged victim's family as a result of her injuries or death. Additionally, the Defense requests the identity and contact information of all U.S. Military, contractor, or Iraqi personnel that were involved in any payments.

e. All Platoon, Company, and Battalion Standard Operating Procedures for combat or peace-keeping operations in theatre, to include guard and security operations.

f. The Program of Instruction (POI) used by the 272<sup>nd</sup> MP CO to train Iraqi Police Recruits and monitor/manage/train IP Stations.

g. All ROE, POI, and/or other training materials regarding use of force, guard duty, security operations, convoy operations, weapons handling, weapons safety used to train members of the 272<sup>nd</sup> MP CO for deployment to OIF II. All ROE, POI, and/or other training materials regarding use of force, guard duty, security operations, convoy operations, weapons handling, weapons safety used to train members of the 272<sup>nd</sup> MP CO since arrival in Iraq.

h. Access to inspect and to obtain a photocopy of any/all Iraqi agency investigative files, to include all case notes, interim, final, and supplemental reports, photographs, slides, videotapes, diagrams, sketches, drawings, electronic recordings, handwritten notes, interview worksheets, and any other information in Iraqi agency files associated with this case.

i. Any information regarding the handling of the victim's body and the location of the victim's remains, including the names of the agencies and individuals who transported the victim and examined the victim's body.

j. All documentation and investigative materials related to other individuals who were considered potential suspects at any point during the investigation.

k. All handwritten, typed, or recorded statements about the offenses that are in the possession of the Government. This includes all statements of any person, not just the accused or potential Government witness, taken by or given to any person or agency to include all civilian or military law enforcement agencies, inspector general activities, AR 15-6 investigations, and all formal or informal commander inquiries.

l. All statements made by witnesses relating to this case.

m. The names, addresses, and telephone numbers of all Iraqi witnesses, including members of the victim's family.

n. The contents of all statements, oral or written, made by the accused that are relevant to the case, known to the trial counsel and within control of the armed forces, regardless of whether the Government intends to use the statements at trial.

o. All affidavits supporting requests, which pertain to this case, whether or not granted, for authorization to search and seize or apprehend. This request includes DA Forms 3745-R.

p. Notice of all evidence seized from the person or property of the accused or believed to be owned by the accused.

q. All evidence of a prior identification of the accused at a traditional line up, photo line up, show up, voice identification or other identification process.

r. All exculpatory, extenuating, or mitigating evidence known, or, that with reasonable diligence should be known, to the trial counsel which reasonably tends to negate the guilt of the accused of any offense charged, reduce the guilt of the accused of an offense charged, or reduce the punishment. R.C.M. 701(a)(6), Brady v. Maryland, 373 U.S. 83 (1963), U.S. v. Agurs, 427 U.S. 97 (1976), U.S. v. Bagley, 473 U.S. 667 (1985), United States v. Simmons, 38 M.J. 376, 381 (C.M.A. 1993), United States v. Kinzer, 39 M.J. 559 (A.C.M.R. 1994). This includes, but is not limited to, any statements made at any time during the course of the investigation, including oral statements, during interviews with the trial counsel, regarding PFC Combs' character and duty performance.

2. The Defense acknowledges that certain of these requests may have been partially complied with prior to the motion. Those matters previously provided need not be duplicated. The defense reserves the right to make additional and continuing discovery requests.

3. Request that the government notify the Defense in writing as to each and every demand by COB 26 November 2004.

4. Request that the government inform the Defense, in writing, if it does not intend to comply with any portion of this request.

5. A copy of this has been provided the Article 32 investigating officer.

6. It is understood that this is a continuing request.

7. POC is the undersigned at 822-2866.

*//ORIGINAL SIGNED//*

DAVID T. SCOTT

CPT, JA

Defense Counsel

Cf:

MAJ Compton, IO

UNITED STATES

v.

COMBS, James E.  
PFC, U.S. Army, .....  
272d Military Police Company, 759th  
Military Police Battalion, 89th Military  
Police Brigade, III Corps, Camp Cuervo,  
Iraq

)  
)  
) **RESPONSE TO DEFENSE**  
) **PRETRIAL INVESTIGATION EVIDENCE**  
) **REQUEST**  
)

19 November 2004

1. IAW Article 32, Uniform Code of Military Justice (UCMJ) and Rule for Court-Martial (RCM) 405, the Accused, by and through his detailed defense attorneys, hereby requests that the Government produce for the use, inspection and copying by his defense counsel the following:

a. All papers which accompanied the charges at preferral, specifically to include, but not limited to: the charge sheet, all allied papers, transmittal documents accompanying the charges from one headquarters to another, all law enforcement reports whether prepared by military or civilian law enforcement personnel, all laboratory reports, copies of all requests for laboratory reports not yet completed or where the request has been withdrawn, statements of the accused or witnesses, convening orders and the written advice, pretrial advice, or guidance given by any judge advocate to the convening authority or any intermediate commander during the preferral process.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

b. Any books, papers, documents, photographs, videotapes or copies or portions thereof and the opportunity to view tangible objects, buildings, or places which are in the possession, custody, or control of military authorities, and which are material to the preparation of the defense and intended for use by trial counsel as evidence in the prosecution case in chief, or were obtained from or belong to the accused. Specifically, any tangible material evidence seized or collected at the crime scene, such as expended ammunition casings, bullets, or bullet fragments.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

RESPONSE TO DEFENSE PRETRIAL INVESTIGATION EVIDENCE REQUEST  
U.S. v. COMBS

c. Any results or reports of physical or mental examinations, autopsies, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of military authorities at all levels, the existence of which is known, or by the exercise of due diligence may become known, to the trial counsel, and which are material to the preparation of the defense or are intended for use by the trial counsel as evidence in the prosecution case in chief at trial. Specifically, all information regarding the testing, examination, or other experimentation on PFC Combs' weapon, ammunition, magazine, or any spent casings by USACIL, or other government agency. Additionally, immediate production of the exact type, caliber, and lot number of the ammunition taken into evidence from PFC Combs, to include any ammunition casing(s) found at IP Station #10 or at the crime scene. Finally, access to such said evidence by the Defense.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

d. All information in the Government's possession regarding the payment of any monies to the alleged victim's family as a result of her injuries or death. Additionally, the Defense requests the identity and contact information of all U.S. Military, contractor, or Iraqi personnel that were involved in any payments.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

e. All Platoon, Company, and Battalion Standard Operating Procedures for combat or peace-keeping operations in theatre, to include guard and security operations.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

f. The Program of Instruction (POI) used by the 272<sup>nd</sup> MP CO to train Iraqi Police Recruits and monitor/manage/train IP Stations.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

RESPONSE TO DEFENSE PRETRIAL INVESTIGATION EVIDENCE REQUEST  
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g. All ROE, POI, and/or other training materials regarding use of force, guard duty, security operations, convoy operations, weapons handling, weapons safety used to train members of the 272<sup>nd</sup> MP CO for deployment to OIF II. All ROE, POI, and/or other training materials regarding use of force, guard duty, security operations, convoy operations, weapons handling, weapons safety used to train members of the 272<sup>nd</sup> MP CO since arrival in Iraq.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

h. Access to inspect and to obtain a photocopy of any/all Iraqi agency investigative files, to include all case notes, interim, final, and supplemental reports, photographs, slides, videotapes, diagrams, sketches, drawings, electronic recordings, handwritten notes, interview worksheets, and any other information in Iraqi agency files associated with this case.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

i. Any information regarding the handling of the victim's body and the location of the victim's remains, including the names of the agencies and individuals who transported the victim and examined the victim's body.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

j. All documentation and investigative materials related to other individuals who were considered potential suspects at any point during the investigation.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

k. All handwritten, typed, or recorded statements about the offenses that are in the possession of the Government. This includes all statements of any person, not just the accused or potential Government witness, taken by or given to any person or agency to include all civilian or military law enforcement agencies, inspector general activities, AR 15-6 investigations, and all formal or informal commander inquiries.

RESPONSE TO DEFENSE PRETRIAL INVESTIGATION. EVIDENCE REQUEST  
U.S. v. COMBS

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided prior to arraignment. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

l. All statements made by witnesses relating to this case.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

m. The names, addresses, and telephone numbers of all Iraqi witnesses, including members of the victim's family.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

n. The contents of all statements, oral or written, made by the accused that are relevant to the case, known to the trial counsel and within control of the armed forces, regardless of whether the Government intends to use the statements at trial.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

o. All affidavits supporting requests, which pertain to this case, whether or not granted, for authorization to search and seize or apprehend. This request includes DA Forms 3745-R.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

p. Notice of all evidence seized from the person or property of the accused or believed to be owned by the accused.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be*



RESPONSE TO DEFENSE PRETRIAL INVESTIGATION EVIDENCE REQUEST  
U.S. v. COMBS

*provided before arraignment, if necessary. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

q. All evidence of a prior identification of the accused at a traditional line up, photo line up, show up, voice identification or other identification process.

*Response: To the extent this request complies with Article 32, UCMJ and R.C.M 405, this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

r. All exculpatory, extenuating, or mitigating evidence known, or, that with reasonable diligence should be known, to the trial counsel which reasonably tends to negate the guilt of the accused of any offense charged, reduce the guilt of the accused of an offense charged, or reduce the punishment. R.C.M. 701(a)(6), Brady v. Maryland, 373 U.S. 83 (1963), U.S. v. Agurs, 427 U.S. 97 (1976), U.S. v. Bagley, 473 U.S. 667 (1985), United States v. Simmons, 38 M.J. 376, 381 (C.M.A. 1993), United States v. Kinzer, 39 M.J. 559 (A.C.M.R. 1994). This includes, but is not limited to, any statements made at any time during the course of the investigation, including oral statements, during interviews with the trial counsel, regarding PFC Combs' character and duty performance.

*Response: To the extent this request complies with Article 32, UCMJ, R.C.M 405, and R.C.M 701(a)(6) this information has already been provided, is in the control of the defense, or will be provided as soon as it becomes known to the trial counsel. To the extent this request does not comply with Article 32, UCMJ and R.C.M. 405, the request is denied.*

Having complied with the defense "Pretrial Investigation Evidence Request," Government requests the following:

Notice of alibi, if applicable;

Notice of lack of mental responsibility, if applicable;

Notice of innocent ingestion, if applicable;

Names and addresses of all witnesses whom the defense intends to call during the Article 32 hearing;


Copies of all books, papers, documents, photographs, tangible objects, or portions thereof that are in the possession, custody, or control of the defense and that the defense intends to introduce as evidence by the defense at the Article 32 hearing;

Copies of any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case that are in the

RESPONSE TO DEFENSE PRETRIAL INVESTIGATION EVIDENCE REQUEST  
U.S. v. COMBS

possession, custody, or control of the defense and that the defense intends to introduce as evidence in the defense case-in-chief at trial or that were prepared by a witness whom the defense intends to call at trial when the results or reports relate to that witness's testimony.

Should the Defense require any additional assistance with the above, the request should be made in writing.

  
C. CULLEN SHEPPARD  
CPT, JA  
Trial Counsel

I certify that this Response to Defense "Pretrial Investigation Evidence Request" was served on the defense counsel via e-mail on 20 November 2004.

  
C. CULLEN SHEPPARD  
CPT, JA  
Trial Counsel



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
**UNITED STATES ARMY TRIAL DEFENSE SERVICE**  
**BAGHDAD FIELD OFFICE**  
**CAMP VICTORY, IRAQ**  
**APO AE 09342**

FICI-JA-BFO

21 Dec 04

MEMORANDUM FOR MAJ Margaret L. Compton, Article 32 Investigating Officer

SUBJECT: Article 32(b) Investigation Defense Objections List

1. A summary of Defense Objections at the December 18-19 Article 32 is as follows:

a. Objection: All statements by the accused should be suppressed due to violation of Article 32b, UCMJ.

b. Objection: The Government did not lay any foundation for the admission of the Accused's statements.

c. Objection: A delay should be granted for the Government's failure to make timely discovery of several different items of documentary and physical evidence.

d. Objection: Neither SGT Dugger or SA Cintron should be allowed to testify due to their lack of physical presence.

e. Objection: The telephonic testimony was insufficient to allow proper cross-examination of SGT Dugger or SA Cintron.

f. Objection: The Arabic documents and the translated versions of the Arabic documents (medical/autopsy records) offered by the government were inadmissible due to the failure to provide any foundation for the documents.

g. Objection: The translated versions of the Arabic documents (medical/autopsy records) offered by the government were inadmissible due to the failure to show that the translator had been sworn before completing the translation.

h. Objection: The SGT Dugger and SA Cintron did not have a complete copy of the case file in front of them to reference during cross-examination.

i. Objection: The Defense should be allowed to argue last at the closing of the Article 32 hearing. Defense was forced to go first.

2. The summary of Defense Objections in paragraph 1 is not intended to be a verbatim list of objections. The Defense requests that the Reporter review the Article 32 tapes and provide a complete list of the Defense objections to the IO.

FICI-JA-BFO

SUBJECT: Article 32(b) Investigation Defense Objections List

3. The Defense also requests a copy of the Article 32 tapes be provided to the Defense as soon as possible. Defense intends to review the tapes before submitting a request for a verbatim, or substantially verbatim, transcript.

4. POC is the undersigned at 822-2866.

*//ORIGINAL SIGNED//*

DAVID T. SCOTT

CPT, JA

Defense Counsel

**RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE**

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

**DATA REQUIRED BY THE PRIVACY ACT**

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

1. LOCATION <u>CAMP CUFYD, BAGHDAD, IRAQ</u>	2. DATE <u>SEC</u> <u>22 SEP 04</u>	3. TIME <u>SEC</u> <u>1530</u>	4. FILE NO.
5. NAME (Last, First, MI) <u>COMBS, JAMES E., III</u>	8. ORGANIZATION OR ADDRESS <u>272<sup>ND</sup> MILITARY POLICE COMPANY</u> <u>APO AE 09390</u>		
6. SSN	7. GRADE/STATUS <u>E-3/AD</u>		

**PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE****Section A. Rights**

The investigator whose name appears below told me that he/~~she~~ is with the United States Army \_\_\_\_\_ and wanted to question me about the following offense(s) of which I am

suspected/accused: ART 92 - DERELICTION OF DUTY

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

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

- or -

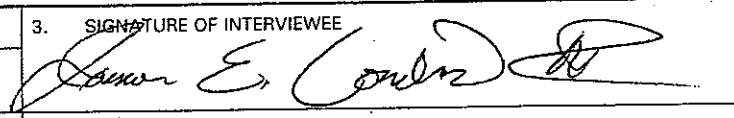
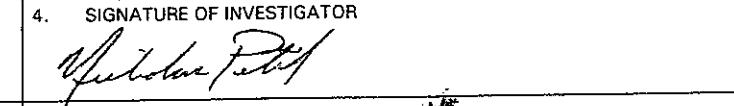
(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want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

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

5. COMMENTS (Continue on reverse side)

**Section B. Waiver**

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

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE 
1a. NAME (Type or Print)		
b. ORGANIZATION OR ADDRESS AND PHONE		4. SIGNATURE OF INVESTIGATOR 
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR <u>1LT PETIT, NICHOLAS P.</u>
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR <u>272<sup>ND</sup> MILITARY POLICE COMPANY</u> <u>APO AE 09390</u>

**Section C. Non-waiver**

1. I do not want to give up my rights  
☐ I want a lawyer ☐ I do not want to be questioned or say anything
2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

# SWORN STATEMENT

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

## PRIVACY ACT STATEMENT

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

1. LOCATION CAMP CUERVO, BAGHDAD, IRAQ	2. DATE (YYYYMMDD) 20040922	3. TIME 1635	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME Combs, James Edward III	6. SSN	7. GRADE/STATUS E-3/AD	
8. ORGANIZATION OR ADDRESS 272nd MP Co			

9. James E. Combs III, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On Sept 22, 2004 around 13:40-1345 PFC Combs was sitting in a tower at station 10. At the time we were about to leave station 10 and go to station 14. When accidental discharge my issued M-4 in and alley north of the station. This was our second of three station to visit on the date in question. I was on guard no longer then 45 minutes at station 10 when I shot a round down the alley north of the station. Up on the roof was me and SPC Cook with two IP's. At the time of the accident the IP that was in the tower with me left to do his own thing. It was about 10 to 15 minutes after he left that the accident occurred. I was looking around my areas of fire with my rifle not pointing it at anyone when I was looking down the alley I saw a few people but not that many most of the people were on the street. I observed before the accident that my weapon was on safe but next thing I knew my weapon went off and everything went blank for a second I guess from shock and the loud ringing in my ear. I really couldn't hear anything but I saw a group of people from the alley farther up the hill come down with a person in a person arms going to a blue like pick-up truck and put the person inside but at the same time SGT Duran got there and was talking to me so my mind was in two different places at the same time he was asking me what happen and I told him but at the

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

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

9. STATEMENT (Continued)

JEC Sometime I really didn't know then from there SFC Puyor came and asked me the something that SGT Duran did and I told him the something after that SFC Puyor tried to get all the information he could and called up higher and we got out there and come back to base camp. JEC

Q: ILT PETIT, N.P.

A: PFC COMBS, J. E., III JEC

Q: ABOUT HOW MANY HOURS OF SLEEP DID YOU GET LAST NIGHT?

A: About 14 to 16 hours JEC

Q: WHY DID YOU HAVE YOUR FINGER IN THE TRIGGER WELL?

A: When last observed weapon was on safe JEC

Q: WAS THERE ANY <sup>HTP</sup> CHANGE TO THE THREAT LEVEL AT THE STATION THAT WOULD HAVE CAUSED YOU TO BE "ON EDGE"?

A: NO JEC

Q: ARE THERE ANY PROBLEMS/SITUATIONS IN YOUR PERSONAL LIFE THAT WOULD CAUSE YOU TO BE "ON EDGE"?

A: NO JEC

/// NOTHING FOLLOWS ///

AFFIDAVIT

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

James E. Combs III  
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 22<sup>ND</sup> day of SEPTEMBER, 2004 at CAMP EVERG, BAGHDAD, IRAQ

ORGANIZATION OR ADDRESS

Nicholas Petit  
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

ILT PETIT, NICHOLAS P.  
(Typed Name of Person Administering Oath)

ART 136, UCMJ  
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

JEC

PAGE 2 OF 2 PAGES

OFFICE OF THE CLERK OF COURT  
US ARMY JUDICIARY  
ARLINGTON, VIRGINIA 22203-1837

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAVE BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION (7) (C), 5 U.S.C. 552 (b) (7) (C):

Criminal Investigation Report

*Contents cannot be released outside the Department of the Army without the approval of the Commander, United States Army Criminal Investigation Command, Fort Belvoir, VA.*



البطن والجوف البطنى  
البرصون والشرب  
الحمى والاعضاء  
الكبد والطحال والبنكرياس  
الكليتان والخصيتان  
الرحم وملحقاته

اعتبار

شاحبة

الأعضاء التناسلية والشرج :

الغدد التناسلية وعظام الحوض :

لا اثر للكسور

الطرفين العلويين :

الطرفين السفليين :

الغدد التناسلية وتناسلها والمنطقة :

بعد الاطلاع على الطلبة تبين انها ادخلت الى مستشفى جراحة الحيلة العصبية اثر اصابتها  
على ناري في الرأس وذلك بتاريخ ٢٢/٩/٢٠٠٤م وقد توفيت في نفس يوم دخولها المستشفى

الاستنتاج :

\*\*\*\*\*

- ١- يظهر من اوصاف الاعراض التشريحية الشاهدة في جثة المتوفية بدعوة حسن علي مضافا  
لما جاء في الطلبة انها اصبحت باطلاق ناري سبب لها الاضرار الموصوفة اعلاه وانتهى ذلك  
الى وفاتها
- ٢- لم نجد ما يستدل به على ان الاطلاق قد حصل من مسافة قريبة
- ٣- بالنظر لنفاذ المقدوف فلا يمكننا والحالة هذه معرفة نوعية وعائدية السلاح المستخدم في اطلاقه

الدكتور منير ابراهيم  
الطبيب في معهد الطب العدلي  
٢٠٠٤/٩/٢٢م

التيمن والجوف البطنى :  
التيمن والشرب :  
المعدة والأمعاء :  
الكبد والطحال والبنكرياس :  
الكلى والكظر :  
الرحم وملحقته :  
شاحبة

الأعضاء التناسلية والمخرج :

العمود الفقري وعظام الحوض :

الطرفان العلويان :  
لا اثر للكسور

الطرفان السفليان :

الحوض التكميلية ونتائجها والمناقشة :

\* بعد الاطلاع على الطيلة تبين انها ادخلت الى مستشفى جراحة الجملة العصبية اثر اصابتها  
بطلق نارى في الرأس وذلك بتاريخ ٢٢/٩/٢٠٠٤م وقد توفيت في نفس يوم دخولها المستشفى.

الاستنتاج :

=====

- ١- يظهر من اوصاف الاعراض التشريحية المشاهدة في جثة المتوفية بديعة حسن علي مضافا \*  
لماجاء في الطيلة انها اصيبت باطلاق نارى سبب لها الاضرار الموصوفة اعلاه وانتهى ذلك  
الى وفاتها.
- ٢- لم نجد ما يستدل به على ان الاطلاق قد حصل من مسافة قريبة.
- ٣- بالنظر لنفاذ القذوف فلا يمكننا والحالة هذه معرفة نوعية وعائية السلاح المستخدم في اطلاقه.

الدكتور منير ابراهيم  
الطبيب في معهد الطب العدلي  
٢٠٠٤/٩/٢٢م

اليدن والجوف البطنى  
البريتون والشرب  
المعدة والأمعاء  
الكبد والطحال والبنكرياس  
الكلى والكظر  
الرحم والمبايض

أعتيا  
شاحبة

الأعضاء التناسلية والشرج :

العمود الفقري وعظام الحوض :

لا اثر للكسور

طرفان الطويل :

طرفان القصير :

الحوض الكلية ومنتجها والمنقشة :

\* بعد الاطلاع على الطيلة تبين انها ادخلت الى مستشفى جراحة الحمة العصبية اثر اصابها  
بطلق نارى في الرأس وذلك بتاريخ ٢٢ / ٩ / ٢٠٠٤ م وقد توفيت في نفس يوم دخولها المستشفى \*

الاستنتاج :

\*\*\*\*\*

- ١ - يظهر من اوصاف الاعراض التشريحية المشاهدة في جثة المتوفية بدعة جرح على مضافا  
لما جاء في الطيلة انها اصبحت باطلاق نارى سبب لها الاضرار الموصوفة اعلاه وانتهى ذلك  
الى وفاتها \*
- ٢ - لم نجد ما يستدل به على ان الاطلاق قد حصل من مسافة قريبة \*
- ٣ - بالنظر لنفاذ المقدوف فلا يمكننا والحالة هذه معرفة نوعية وعائدية السلاح المستخدم في اطلاقه \*

الدكتور منير ابراهيم  
الطبيب في معهد الطب العدلي  
٢٠٠٤ / ٩ / ٢٠

Republic of Iraq  
Minister of Health  
Autopsy Institute

Technical NO. 10688

NO: 21125

Date: 30. Sept. 2004

To: Bab Alsheik Police station  
indicate to autopsy request NO. 5044 IN  
22-9-2004 include the special autopsy  
report For the deceased ((Badiāh Hassan Ali))  
Please study with respect.

Dr. Faiek Amin Baker  
Autopsy Manager  
30-9-2004

### Autopsy Report

I the under sign Dr. Monir Ibrahim do make  
Autopsy Check on the body of ((Badiāh Hassan Ali))  
at 7.45 AM. day 23-9-2004 and the result  
was as follows.

#### Description For body Diagnostic

Age ----- Sex - Female Hight - intermediate  
Skin color - Tan Hair color - Black Face Hair color -  
Eyes - ----- Deadly marks - the back face of the  
Body disintegration wont start yet  
Physique - ----- Death stiffness - Complete  
Tattoos and differentiate Marks ----- Clothes -----

#### outside damages

1. Bullet entrance at the Left Mural area almost

Please study with respect.

Dr. Faiek Amin Baker  
Autopsy Manager  
30-9-2004

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Autopsy Check on the body of ((Badiāh Hassan Ali))  
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Eyes - ----- Deadly marks - the back Face of the  
Body disintegration wont start yet  
Physique ----- Death stiffness - Complete  
Tattoos and differentiate Marks ----- Clothes -----

### outside damages

1. Bullet intrance at the Left Mural area almost  
one c.m. in diameter Penetrating to cranial  
"braincase" interior. there is no trace for Gunpowder  
around it and the outlet of upper right the Forehead  
area and with capacity almost two c.m.

EXHIBIT 13

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## Head:

Scalp: Torn apart with bruises

Braincase and Base: Fractures at the two Front Cavities, Mural and Forehead bone.

Brain and Meninx: Torn apart with bleeding

Face Bones

Neck and supplement

} normal no trace  
For Fractures

## Chest and Thorax:

Chest bones : Normal No trace for Fractures

Heart

LUNGS

diaphragm

} PALE

## Abdomen and inside Abdomen: Normal

stomach and intestines

Liver - Spleen - Pancreas

Kidney - Womb

} PALE

## The sexual organs and Anal

Spinal Column and Hip Bones, No Broke

Upper Legs / Lower Legs

} Bones

## Complement Checks / Results and Argument

After check on status it showed that she entered in Nervous system Surgery Hospital because

had bullet injured in head at 22-9-2004

She died in the same day that she took her to Hospital

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EXHIBIT 13

Chest and Thorax:

Chest bones : Normal No trace for Fractures

Heart

LUNGS

diaphragm

} PALE

Abdomen and inside Abdomen: Normal

stomach and intestines

Liver - SPLEEN - PANCREAS

Kidney - WOMB

} PALE

The sexual organs and Anal

SPINAL COLUM and Hip Bones, No Broke

UPPER Legs / Lower Legs } Bones

Complement Checks / Results and Argument

After check on status it showed that she interred in  
Nervous system Surgery Hospital because  
had bullet injured in head at 22-9-2004  
She died in the same day that she  
took her to Hospital

EXHIBIT 13

FOR OFFICIAL USE ONLY

## CONCLUSION.

- 1- Appear From Autopsy Report on the Body of Badiāh Hassan Ali that she injured with Bullet which caused her the damages that described above in this report which ended to death.
- 2- We can not find what indicated that the Bullet fired from close distance
- 3- Because the thrown Penetration we are unable to know in this situation the quality and to whom the weapon that been used belong to.

Dr. MUNIR Ibrahim  
Physician in Autopsy institute  
2004 / 9 /



رقم البطاقة

6669513

تاريخ التسجيل

تاريخ الميلاد

تاريخ الإحصاء

جمهورية العراق  
وزارة الصحة

الجنس

الديانة

البلد

اسم الأم

اللقب

الجنس

الديانة

البلد

اسم الأم

اللقب

الجنس

الديانة

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اسم الأم

جمهورية العراق

وزارة الصحة

الطبابة العدلية

الرقم

التاريخ ٤/٩/٥٥

## استبيان التقرير الطبي العدلي الأولي

اني الموقع ادناه الدكتور ..... من الفلقة ..... اجريت الفحص الطبي العدلي

على الشخص المدعو ..... رتبة ..... العمر ..... سنة ..... الجنس ..... المسمى

في طور ..... الكسري ..... بتاريخ ٤/٩/٥٥ وفي الساعة ..... الثانية من

حسب الطلب الوارد من ..... رقم ..... الرقم ..... المورخ ٤/٩/٥٥

فوجدت

(١) فقرات الوجه التاكس ..... الشفاه

(٢) الفم ..... الفم ..... الفم ..... الفم

(٣) الفم ..... الفم ..... الفم ..... الفم

(٤) الفم ..... الفم ..... الفم ..... الفم

(٥) الفم ..... الفم ..... الفم ..... الفم

(٦) الفم ..... الفم ..... الفم ..... الفم

(٧) الفم ..... الفم ..... الفم ..... الفم

(٨) الفم ..... الفم ..... الفم ..... الفم

(٩) الفم ..... الفم ..... الفم ..... الفم

(١٠) الفم ..... الفم ..... الفم ..... الفم

ارى ان سبب هذه الاضرار ..... خاضع

وبالنظر لما شاهدناه فلن يتمكن من القيام بالاشغال المعتادة

يحتاج الى:

تداوي لمدة ..... فحص بعد اخر

وضع تحت المشاهدة في ..... وحالته الحاضرة

ولاجله قد نظمت هذا التقرير واودعته الى ..... المرسل بصحبة المصاب

التوقيع

وظيفة

2258

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EXHIBIT

8-2

وزارة الصحة

دائرة صحة بفسطاط

تونس

((استمارة الطوارئ))

اسم المؤسسة الصحية

اسم المريض /	العمر /	الجنس /
العنوان : محافظة /	قضاء /	محلة /
رقم الهاتف /	زقاق /	دار /
عنوان اقرب شخص للمريض /		
تاريخ الدخول ٢٠٠٤ / ٩ / ٢٠	ساعة الدخول /	
تاريخ الخروج ٢٠٠٤ / /	ساعة الخروج /	
حالة الخروج / ١. متشابك	٢. متحسن	٣. نفس الحالة
٤. على مسؤوليته	٥. احالة	٦. متوفي

Chief Complaint /

Duration /

present. Hx /

Clinical Findings /

Prov - Diagnosis /

BP :- ٨٥ / ٤٠
P.R :- ١٠٥ B/min
Temp :- ٣٧
R-R :- ٣٧

دائرة صحة بغداد / الرصافة  
مستشفى جراحة الجلطة العصبية

جميعه في الرحمن الرحيم

اسم المأمور :- م. ع. ق. ر. هوية - ٨٤

توقيع المأمور: - مركز الشرطة: ١٥ - ضاح

م / ارسال جثة متوفي الى الطباية العالية

تدليل انكم خلت المتوفيه (ب) بحرصه عاير (ا) والبنف من العمر (٩٠ سنة) والتغير احيلا الى مستشفانا من  
مستشفى الكليه الخامس بتاريخ ٤/٩/٢٠٠٤ والذي كان مصابا بـ (التهاب السحايا) اجري له  
اشعة مغرسة الدماغ وبتاريخ ١٠/٩/٢٠٠٤ مع ثقب دماغ السطح ادخل على اثرها الى العناية المركزة  
توفي المصاب في الساعة ١٠ مساءً من يوم ١٠/٩/٢٠٠٤ بتاريخ ١٠/٩/٢٠٠٤

Dear DR.

May I refer to the cadavre of this (male/female) male, 69 years.

Brain C.T.Scan depressed skull fracture with bone pieces

2 contusion

The patient died at (7-00 AM/PM) PM on 24/9/01

اسم الطبيب :- د. طارق  
التوقيع طارق

ملاحظة :- الرجاء تنظيم بنسختين النسخة الاولى تلم الى المأمور والنسخة الثانية تحفظ في طبلة المريض

٥١

قال المستشفئ  
الحلة العسية

وزارة الصحة  
دائرة صحة بغداد - الرصافة  
مستشفى الكندي التعليمي

التي / الوحدة الطبية  
م / احالة مريض من شعبة لطوارئ

الجنس

عمر

نحوه / المريض

المصاب بـ )

وذلك لغرض

مع التقدير

الدكتور / ر. ب. ك. /  
التاريخ //



العلاج :-

Recept -> Notes

Pt. was presented to us a Bullet injury  
to head through & through from side  
to side (Cranialy)

she was reaching our casualty in

GCS = E V R 13 = 5/15 - not irregular

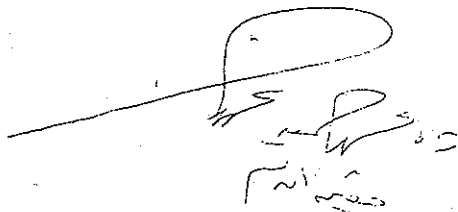
Breath -> ET -> sh endotracheal

f. bullet = ICH & IVH

she was admitted to ICU & put on ET

she was beyond surgical intervention

اسم وتوقيع الطبيب



Republic of Iraq  
Ministry of interior

Division - AL Rasafa.

File number: 300M

Page : 64.

Identification number  
211629

Department of citizens  
and civilian.

Identification.

Issued under the Law of civilians Rights number -

name : Badca.

Father name : Hasan AL

last name : AL Anbaki

Mother name : Makia Hasan.

Sex : female.

Issued Date : DEC-1-1993.

Signature of employee :

Full name : Nour -



(1)  
Republican  
of Iraq  
Ministry of  
medical

Department of Medical  
and living Statistics

Death Certificate

Deceased name: Bada'a Sex Female  
nationality: Iraqi Religion: Muslim  
Date: Sep - 23 - 2004

Address information (not written down)

name of informant: Hasan Ali

- \* in the next paragraph is a questionnaire about the Cause of the Death (nothing is written down)
- \* the next paragraph is the medical certification. they indicate here the Cause of the Death which is a bullet injury.

I am the undersigned Doctor Moneer Ibrahim state  
that the Deceased name Bada'a Hasan Ali  
Deceased on \_\_\_\_\_ (the Date not clear)  
Signature \_\_\_\_\_ (there is no signature)

File number: 2923

Siham Al Jabari

SS# 619-82-4711 2265

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EXHIBIT

9-2

(27)

Republican of Iraq

Ministry of Medical  
Legal medicine

number- 460  
Date: Sep 22-2004

Referendum report of  
Legal Medicine.

I am the undersigned Doctor Raghda Sabeh Hasan AL ALAgi, did the legal Medicine examination of the patient, name: Rabaa Hasan ALi, Age: 56, Sex Female, in the emergency room of Kindy hospital, on Sep-22-2004, at 2:00 pm, upon the request of Bab AL Shit Police Station, number (None), date Sep-22-2004.

The following what I can report.

- 1- Patient unconscious during the examination.
- 2- Increase of the pulse, decrease of the blood pressure.  
(we were unable to measure it)
- 3- we were unable to open her right eye, the pupil of her eyes were (I was unable to read the word)
- 4- Soft abdomen
- 5- destruction on the right side of the head, and the forehead, appearance of the brain, bleeding, I was told that she was bleeding during the examination.
- 6- X-ray, the result and the analysis is required by her Doctor, the patient is referred to Kindy hospital for further procedures.

\* the only thing is mentioned in the rest that, the patient is having unstabilized condition.

Signature of ~~Dr~~ Dr. Raghda AL ALAgi.

Date Sep-22-2004

EXHIBIT

9-3

(3)

Ministry of health  
Baghdad Iraq

## Emergency form

Name of medical center —

Patient name: Badaa. Hasan.

Patient Address, Baghdad.

Sex —

Age —

Date of Admission, Sep-22-2004.

Time of Admission, 2:00 pm.

\* the rest in English

\* Some words are written on the top of the page they are,

patient name Date she was referred to the  
intensive care Sep-22-, person name, Taber b fadi  
(it is not mentioned who that person is).

the patient died 7:00 pm.

4

In the name of God

Medical Center	Identification number.
of Baghdad	2896.
Al Rasafa	Bab AL Shak
Head Surgery	Police station.
hospital	

Commander name, Salah Kathem Kdhan.  
Commander signature.

Subject / refer a Body for  
Autopsy  
the rest is translated in English at the bottom  
of the page.

(5)  
Ministry of Health  
Baghdad - Iraq  
Kindy hospital

To / Medical Unit.  
Subject / referral patient  
to intensive care

referral name Badean Age — Sex female

injury —

For the reason of —

Doctor : Rabab Asaam

Date // —

Occupation : Student.

Religion : Muslim.

Date of Birth: Jul - 1 - 1945.

Print : Fifty nine.

Place of Birth : Baghdad.

Remarks : NONE

Marital Status: Married.

Spouse name : Kaleh Abbas Ali

Place of record : Baghdad - AL Ridafa.

Description

eye color : Brown

Skin color : Tan

Hair color : Black

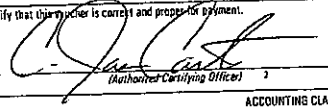
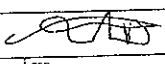

Height : 160 centimeter.

Blood type :

Signature.

Siham ALJabari

SS# 619-82-4711

Standard Form 1034 Revised October 1987 Department of the Treasury 1 TFM 4-2000 1034-121		<b>PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL</b>				VOUCHER NO.	
U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION <b>DEPARTMENT OF THE ARMY HQ 39TH BRIGADE COMBAT TEAM OFFICE OF THE STAFF JUDGE ADVOCATE APO AE 09378</b>				DATE VOUCHER PREPARED <b>12 OCTOBER 2004</b>		SCHEDULE NO.	
CLAIM #39BCT-521  PAYEE'S NAME AND ADDRESS <b>JALIL ABASS BAGHDAD, IRAQ</b>				CONTRACT NUMBER AND DATE		PAID BY <b>336th Finance Command DSSN 8551 APO AE 09366</b>	
				REQUISITION NUMBER AND DATE		DATE INVOICE RECEIVED	
						DISCOUNT TERMS	
						PAYEE'S ACCOUNT NUMBER	
SHIPPED FROM				TO		WEIGHT	
NUMBER AND DATE OF ORDER		DATE OF DELIVERY OR SERVICE		ARTICLES OR SERVICES <i>(Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)</i>		QUANTITY	
				In full settlement of the amount allowed by the Secretary of the Army, or any officer duly designated for such purposes under authority of 31 U.S.C. 3721 and AR 27-20, Chapter 10 upon the claim of the above named claimant for property damage, lost, destroyed, captured, or abandoned in service.		UNIT PRICE COST PER	
						AMOUNT (\$)	
						3,500.00	
(Use continuation sheet(s) if necessary)				(Payee must NOT use the space below)		TOTAL	
PAYMENT: <input type="checkbox"/> PROVISIONAL <input checked="" type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL <input type="checkbox"/> PROGRESS <input type="checkbox"/> ADVANCE		APPROVED FOR BY 3 <b>SFC ARLIN R. TERRELL, JR</b>  TITLE <b>39TH BCT FOREIGN CLAIMS PAY AGENT</b>		EXCHANGE RATE - \$1.00		DIFFERENCES	
				Amount verified, correct for (Signature or initials) <b>A.R.T.</b>		3,500.00	
Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.							
12 OCT 04 (Date)		 (Authorized Certifying Officer)		<b>CHARLES J. CARTER, CPT, JA, CLAIMS OFFICER</b> (Title)			
ACCOUNTING CLASSIFICATION <b>215020 22-0202 P436099.22-4200 VIRQ F9206 S99999 APC 9609</b>							
CHECK NUMBER <b>1</b>		ON ACCOUNT OF U.S. TREASURY		CHECK NUMBER <b>3</b>		ON (Name of bank)	
CASH <b>+ 3,500.00</b>		DATE <b>12 OCT 04</b>		PAYEE 		PER 	
				TITLE			

Previous edition obsolete

**PRIVACY ACT STATEMENT**  
 The information requested on this form is required under the provisions of 31 U.S.C. 82a and 82c, for the purpose of disbursing Federal money. The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.

NSN 7540-00-900-2234  
 USAFA V4.00

39<sup>TH</sup> BRIGADE COMBAT TEAM  
OFFICE OF THE BRIGADE STAFF JUDGE ADVOCATE

SETTLEMENT AGREEMENT

CLAIM No.: 39BCT-521

I, JALIL ABBAS, of BAGHDAD IRAQ, hereby agree to accept the sum of \$3,500.00 U.S. dollars as payment in full satisfaction and final settlement of any and all claims against the United States of America, its commissioned and noncommissioned officers, agents, and employees which have been asserted or which may be asserted arising from the incident occurring on or about the 22<sup>nd</sup> day of September, 2004 at Baghdad, involving U.S. Forces. The harm incurred was the loss of your wife.


In consideration thereof, I hereby release and forever discharge the United States of America, including its officers, agents, and employees from all liability, claims and demands of whatsoever nature arising from the said incident. This release / settlement specifically includes all current or potential claims including attorney fees, if any, arising from or related to property damage, injury, and/or death resulting from this incident.

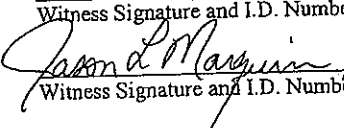
It is understood that the amount tendered is accepted as full satisfaction and final statements and that the award is made pursuant to the Foreign Claims Act, 10 U.S.C. 2734, and is not to be construed as an admission of liability on the part of, but as a release of, the United States of America, its officers, agents and employees.

  
\_\_\_\_\_  
Claimant

Name: JALIL ABBAS

Address: BAGHDAD, IRAQ

  
\_\_\_\_\_  
Mohammed Hisham Jasim Badge # C-3133  
Witness Signature and I.D. Number - INTERPRETER

  
\_\_\_\_\_  
James D. Marquis, CPT, MP Commanding  
Witness Signature and I.D. Number - SOLDIER





DEPARTMENT OF THE ARMY  
HEADQUARTERS, 39TH BRIGADE COMBAT TEAM  
OFFICE OF THE STAFF JUDGE ADVOCATE  
CAMP TAJI, IRAQ  
APO AE 09378



WQNUAA-JA


18 October 2004

MEMORANDUM FOR RECORD

SUBJECT: Foreign Claim action for JALIL ABASS

Claim #39BCT- 521

1. Facts- Claimant states that he was shot and injured by U.S. Forces on 10 October 2004. The claimant presented proper documentation validating the claim for injuries occurred. The claimant requested \$3,500.00 for injuries sustained during this incident.
2. Opinion- In order to form a basis for a claim under the FCA, it must be shown that the incident occurred outside the United States, and that it was caused by noncombatant activities of the United States Armed Forces or by the negligent or wrongful acts of military members or civilian employees of the Armed Forces. The claimant suffered injuries in this incident. The claimant was not at fault in this incident; therefore, the injuries incurred were due to the negligence of US Forces. The evidence submitted by the claimant substantiates the injuries suffered during this incident.
3. Authority- The Foreign Claims Act (10 U.S.C. § 2734) as implemented by AR 27-20, Chapter 10.
4. Action- Pay this foreign claim in the amount of \$3,500.00.

  
C. JASON CARTER  
CPT, JA  
FOREIGN CLAIMS COMMISSION

quences of the act or omission, or indifference to the likelihood of death or great bodily harm. Examples include throwing a live grenade toward another in jest or flying an aircraft very low over one or more persons to cause alarm.

(b) *Knowledge*. The accused must know that death or great bodily harm was a probable consequence of the inherently dangerous act. Such knowledge may be proved by circumstantial evidence.

(5) *During certain offenses*.

(a) *In general*. The commission or attempted commission of any of the offenses listed in Article 118(4) is likely to result in homicide, and when an unlawful killing occurs as a consequence of the perpetration or attempted perpetration of one of these offenses, the killing is murder. Under these circumstances it is not a defense that the killing was unintended or accidental.

(b) *Separate offenses*. The perpetration or attempted perpetration of the burglary, sodomy, rape, robbery, or aggravated arson may be charged separately from the homicide.

d. *Lesser included offenses*.

(1) *Premeditated murder and murder during certain offenses*. Article 118(2) and (3)—murder

(2) *All murders under Article 118*.

(a) Article 119—involuntary manslaughter

(b) Article 128—assault; assault consummated by a battery; aggravated assault

(c) Article 134—negligent homicide

(3) *Murder as defined in Article 118(1), (2), and (4)*.

(a) Article 80—attempts

(b) Article 119—voluntary manslaughter

(c) Article 134—assault with intent to commit murder

(d) Article 134—assault with intent to commit voluntary manslaughter

e. *Maximum punishment*.

(1) Article 118(1) or (4)—death. Mandatory minimum—imprisonment for life with eligibility for parole.

(2) Article 118(2) or (3)—such punishment other than death as a court-martial may direct.

f. *Sample specification*.

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter

IV-64

jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_\_\_\_, (with premeditation) (while (perpetrating) (attempting to perpetrate) \_\_\_\_\_) murder \_\_\_\_\_ by means of (shooting him/her with a rifle) (\_\_\_\_\_).

#### 44. Article 119—Manslaughter

a. *Text*.

“(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.”

(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—

(1) by culpable negligence; or

(2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title (article 118), directly affecting the person; is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

b. *Elements*.

(1) *Voluntary manslaughter*.

(a) That a certain named or described person is dead;

(b) That the death resulted from the act or omission of the accused;

(c) That the killing was unlawful; and

(d) That, at the time of the killing, the accused had the intent to kill or inflict great bodily harm upon the person killed.

(2) *Involuntary manslaughter*.

(a) That a certain named or described person is dead;

(b) That the death resulted from the act or omission of the accused;

(c) That the killing was unlawful; and

(d) That this act or omission of the accused constituted culpable negligence, or occurred while the accused was perpetrating or attempting to perpetrate an offense directly affecting the person other than burglary, sodomy, rape, robbery, or aggravated arson.

c. *Explanation*.



272<sup>ND</sup> MILITARY POLICE

"FIGHTING DEUCE"

**95<sup>th</sup> MP BN  
COUNSELING  
SOP/INVENTORY SHEET**

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APPENDIX 9 (Counseling SOP), Annex A (Administration) to The 95<sup>th</sup> Military Police Battalion Administrative SOP

1. **PURPOSE:** This SOP establishes policy and procedures for counseling requirements for all assigned personnel for Reception and Integration, monthly performance counseling adverse counseling, positive re-enforcement counseling, and promotion counseling.

2. **REFERENCES:** AR 600-8-19 (enlisted Promotions)  
AR 623-205 (Evaluations)  
FM 22-100 App. C (Leadership Counseling)

3. **APPLICABILITY:** This SOP applies to all officers, noncommissioned officers, and soldiers assigned or attached to the 95<sup>th</sup> Military Police Battalion.

4. **RESPONSIBILITIES**

a. **Battalion Commander will:**

(1) Enforce the battalion's counseling program.

(2) Ensure all counseling is completed in a timely manner and counseling is accomplished as a necessary management and development tool for assigned personnel.

(3) Review counseling packets on a show-me basis to check counseling compliance and quality.

(4) Incorporate the battalion's counseling program as an inspection area during the command inspection program.

b. **Command Sergeant Major will:**

(1) Manage the battalion's counseling program.

(2) Administer a counseling training program through NCODP to ensure compliance and understanding.

(3) Review counseling packets on a show-me basis to check counseling compliance and quality.

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**c. Company/Detachment Commander will:**

- (1) Manage the counseling program at the unit level.
- (2) Ensure all counseling is completed in a timely manner and accomplished as required.
- (3) Review counseling packets on a show-me basis to check the counseling compliance and quality.

**d. First Sergeants will:**

- (1) Apply the counseling program at the unit level.
- (2) Review 50% of unit counseling folders on a monthly basis to check for completeness and accuracy.
- (3) Conduct NCO DP classes on how to counsel and the effects of counseling needed.
- (4) Ensure the provisions of this SOP are adhered to.

**e. Supervisors will:** conduct counseling, both formal and informal as needed. The proper application of this SOP will serve as a management tool for the professional development of our subordinate soldiers, noncommissioned officers and officers.

**5. POLICY.** Counseling is a basic responsibility of every leader and an important part of soldier care. A soldier-to-soldier relationship recognizes and encourages good performance. Its principle objectives are developing the soldier, improve his well-being, maintain discipline, and resolve his problems. Soldiers expect to be told how they are performing and have a right to seek assistance and guidance from their leaders through counseling. Counseling is also used as a training tool to correct minor violations of behavior or conduct. At a minimum, soldiers in the rank of E-1 to E-4 will be counseled monthly on their performance, promotion eligibility, and when necessary, on their personal conduct. Sergeants in the grade of E-5 will be

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(4) **Referent power.** Based on soldiers identifying with their leaders. Referent power relies on soldiers positive association with their leader's performance.

(5) **Expert power.** Based on the soldier's perception the leader possesses the knowledge, skill, or information related to the tasks to be performed. Soldiers respect and obey a leader who is competent in his duties, and distrust those who demonstrate incompetence.

c. **Be technically and tactically proficient.** Soldiers will accept guidance and follow directions from a leader they believe knows the correct action or solution.

d. **Develop a sense of responsibility in your subordinates.** Soldiers must be assisted in learning to take initiative and to be accountable for their actions.

e. **Reasons for counseling.** There are a number of reasons to counsel. When counseling, remember that each situation stands alone. When constructing a record of counseling, it will comprise the management tool that best contributes to the unit's effectiveness and readiness.

(1) **Reception and Integration.** Reception and Integration counseling welcomes new soldiers to the unit and addresses individual concerns. The counseling is broken down into four phases. Reception and integration counseling must accomplish two major objectives. First: identify and resolve any problems or concerns the soldier faces coming into the unit. The second: to set standards. Other aspects of integration involve orientation and sponsorship. The commander or first sergeant will accomplish counseling within the first 48 hours the soldier arrives to the unit. The DA Form 4856 titled Reception and Integration Counseling will be used for newly assigned individuals. The NCO/Enlisted counseling continuation sheets located at Tab A and B will be used as a general guideline and attached to a general counseling form 4856

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as initial counseling and needs only to be given one time during the soldier's assignment.

- (a) First Sergeant's interview
- (b) In-processing
- (c) Commander's interview
- (d) Chain of command's initial counseling

(2) **Performance counseling.** This counseling informs soldiers about their job and the expected performance standard that provides the basis for feedback from actual performance. The general counseling form (DA Form 4856) will be used to counsel soldiers on missions and duty performance. It will also be used to establish goals and objectives to be accomplished for the upcoming month and will be used as a reference to cover issues during subsequent counseling sessions. In addition, the positive counseling form located at Tab D will be used to detail soldier performance by category and subject area.

(3) **Personal counseling.** Personal counseling involves helping the soldier solve a personal problem. Problems may vary from financial matters to marital difficulties. The emphasis must be to help the soldier find solutions to help solve his own problems. When counseling, keep in mind, all regulatory requirements and procedures.

(4) **Disciplinary counseling.** Counseling soldiers who violate regulations, policies, fail to carry out orders, or do not meet set standards is a necessary part of a leader's duty. Disciplinary counseling is used when the leader takes corrective steps not resulting in formal punitive action against the soldier under the provisions of the UCMJ. Administrative measures are normally applicable to minor or first offenses concerning conduct or inefficiency. Disciplinary counseling differs from performance counseling. While both are used to improve performance and maintain standards, performance

5.

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Specific deficiencies that must be corrected. The punitive general counseling form located at Tab F will be used for any incident of misconduct or criminal behavior.

(5) **Promotion counseling.** Per AR 600-8-19, Para 3-12g, soldiers in the grade of E-4 and E-5 who are eligible for promotion without waiver, but not recommended, will be counseled. Counseling will be conducted using the DA Form 4856 located at Tab F.

(6) **Weight Control and PT counseling.** These are two areas of performance counseling that requires continuous monitoring of progress or in some cases, to correct apathy. The examples outlined at Tab G and H will provide the initial counseling and monthly progress counseling. The final counseling will be completed as a rehabilitative transfer counseling. If after the rehabilitative transfer is completed and the soldier fails to make progress, then chapter action will be considered.

(7) **Pregnancy counseling.** AR 635-200, Chapter 8, requires a female soldier to make an election of remaining in the military or be processed under Chapter 8, of AR 635-200. The pregnancy counseling is used to outline the soldier's decision and informs the soldier of the options, entitlements, and responsibilities connected with the pregnancy. Tab I outlines the pregnancy counseling.

(8) **Rehabilitative counseling.** In the event a soldier is not performing at acceptable levels or when a perceived prejudice or conflict is occurring between him/her and the chain of command, a rehabilitative transfer may be required. If a determination is made to rehabilitate, counseling will be completed, outlining the problems and actions taken to affect a transfer under rehabilitative conditions. The gaining unit/section will be advised of the reason for the transfer and evaluate the soldier for future value to the Army.