

COURT-MARTIAL RECORD

NAME WERST, SHANE A. SSG

SSN [REDACTED]

ACTIONS CODED:

INITIAL FEB -9 2006

ACCA

FINAL FEB 28 2006

COMPANION(S):

ASSIGNED TO:

PANEL

~~EXAM-DIV~~ ✓
ACCA CLERK of Court

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VOL I OF III VOL(S)

Malcolm H. Squires, Jr.
Examiner FEB 28 2006

G MALCOLM H. SQUIRES, JR.
Clerk of Court's Office

ARMY 20050648

**SUMMARIZED
RECORD OF TRIAL¹**

Volume I of III
ORIGINAL
ARTICLE 32-RECORD

(and accompanying papers)
of

WERST, SHANE ALLEN

SSG/E6

(Name: Last, First, Middle Initial)

(Social Security Number)

(Rank)

HHC,
4th Infantry Division

U.S. Army

Fort Hood, Texas

(Unit/Command Name)

(Branch of Service)

(Station or Ship)

By

GENERAL

COURT-MARTIAL

Convened by

COMMANDER

(Title of Convening Authority)

Headquarters, 4th Infantry Division

(Unit/Command of Convening Authority)

Tried at

Fort Hood, Texas

26 April, 16 May, and
23-26 May 2005

(Place or Places of Trial)

on

(Date or Dates of Trial)

ACTION OF JUDGE ADVOCATE OR GENERAL COURT-MARTIAL CONVENING AUTHORITY (SPCM)/JAG (GCM)
(RCM 1111 and 1112, MCM, 1984)

UNIT/COMMAND NAME	LOCATION OF JUDGE ADVOCATE OR GENERAL COURT-MARTIAL CONVENING AUTHORITY/JAG	DATE RECORD RECEIVED
ACTION	DATE	REMARKS
FINAL DISPOSITION: Findings and sentence, as approved by convening authority, correct in law and fact; to file		Companion Cases: None.
OR Findings and sentence, as modified or corrected (see remarks), correct in law and fact; to file		
Acquittal or sentence set aside (see remarks); to file		
Copies of CMO disposed of in accordance with departmental regulations		

JUDGE ADVOCATE OR LAW SPECIALIST		
SIGNATURE	RANK	DATE SIGNED

See inside back cover for instructions as to use, preparation and arrangement.

10190 **FILE** 20050648

COURT-MARTIAL DATA SHEET				I. OJAG NUMBER
2. NAME (Last, First, Middle Initial) WERST, Shane A.	3. SOCIAL SECURITY	4. RANK SSG/E-6	5. UNIT/COMMAND NAME HHC, 4ID(M), Fort Hood, Tx 76544	

INSTRUCTIONS

When an item is not applicable to the record of trial being reviewed, mark the proper block with a diagonal line similar to the ones which appear in the SPCMCA blocks for items 6a and b.

KEY TO USE

<p>TC - Trial Counsel. This column will be completed in all cases in which a finding of guilty is returned.</p> <p>SPCMCA - Special Court-Martial Convening Authority who is not empowered to convene a general court-martial. This column will be completed in each special court-martial case by the SPCMCA or his/her designated representative.</p>	<p>GCM or JA - General Court-Martial Convening Authority or Judge Advocate. This column will be completed in any case in which the record is forwarded by the commander exercising general court-martial jurisdiction to The Judge Advocate General of the branch of service concerned. If the record is reviewed under Article 64(a), UCMJ, this column will be completed by the judge advocate accomplishing the review</p>	<p>OJAG - Appropriate appellate agency in the Office of The Judge Advocate General of the branch of service concerned. This column will be disregarded if a record of trial was reviewed under Article 64, UCMJ, and in cases where there are no approved findings of guilty.</p> <p>References - All references are to the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial, United States (MCM), 1984.</p>
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SECTION A - PRETRIAL AND TRIAL PROCEDURE	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
6. a. If a general court-martial: Was the accused represented in the Article 32 investigation by civilian or military counsel of his/her own selection or by counsel qualified within the meaning of Article 27(b), UCMJ?	X				X			
b. If not: Did the accused waive his/her right to such representation?	/	/			/	/		
7. Does the record show place, date, and hour of each Article 39(a) session, the assembly and each opening and closing thereafter?	X				X			
8. a. Are all convening and amending orders of courts to which charges were referred entered in the record?	X				X			
b. Are court members named in the convening orders, detailed military judge (if any), counsel and the accused accounted for as present or absent?	X				X			
c. Was less than a quorum present at any meeting requiring the presence of court members (RCM 805)?	/	/			/	/		
d. Does the record show that after each session, adjournment, recess, or closing during the trial, the parties to the trial were accounted for when the court reopened (A13-5)?	X				X			
e. If the military judge or any member present at assembly was thereafter absent, was such absence the result of challenge, physical disability or based on good cause as shown in the record of trial (RCM 505(c)(2)(A))?	/	/			/	/		
9. Were the reporter and interpreter, if any, sworn or previously sworn?	X				X			
10. a. Was the military judge properly certified (RCM 502(c))?	X				X			
b. Was the military judge properly detailed (RCM 503(b))?	X				X			
c. Was the military judge present during all open sessions of the court?	X				X			
11. a. Was the accused advised that:								
(1) He/she had the right to be represented free of charge by a military lawyer of his/her own selection, if reasonably available, in which case detailed counsel might be excused (RCM 506(a))?	X				X			

COURT-MARTIAL DATA SHEET

SECTION A - PRETRIAL AND TRIAL PROCEDURE (CONTINUED)	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
(2) He/she had the right to be represented at the trial by a civilian lawyer provided at no expense to the government, in which case detailed counsel would serve as associate counsel or be excused with the accused's consent?	X				X			
(3) If he/she did not exercise any of the rights listed above, he/she would be defended by detailed counsel certified under Article 27(b), UCMJ (RCM 502(d)(1))?	X				X			
b. (1) Was the accused represented by a civilian lawyer?	X				X			
(2) Did the accused request a specific military counsel?		X				X		
(3) (a) If so, was such request complied with?	/	/			/	/		
(b) If not, were reasons given why requested counsel was not reasonably available?	/	/			/	/		
12. a. Was the detailed defense counsel properly certified (RCM 502(d))?	X				X			
b. Was at least one qualified counsel for each party present during all open sessions of the court (RCM 502(d) and RCM 805(c))?	X				X			
13. a. If the special court-martial adjudged a BCD:								
(1) Was a military judge detailed to the court (RCM 503(b))?	/	/			/	/		
(2) If not, did the convening authority submit a statement indicating why a military judge could not be detailed and why trial had to be held at that time and place (Article 19, UCMJ)?	/	/			/	/		
(3) Was a verbatim transcript made (Article 19, UCMJ)?	/	/			/	/		
14. Did any person who acted as the accuser, investigating officer, military judge, court member, or a member of the defense in the same case, or as counsel for the accused at a pretrial investigation or other proceedings involving the same general matter, subsequently act as a member of the prosecution (RCM 502(d)(4))?		X				X		
15. If any member of the defense had acted as a member of the prosecution in the same case, was he/she excused (RCM 502(d)(4))?	/	/			/	/		
16. a. If any member of the defense had acted as the accuser, investigating officer, military judge, or member of the court, were his/her services expressly requested by the accused (RCM 502(d)(4))?	/	/			/	/		
b. If not, was he/she excused?	/	/			/	/		
17. a. If accused was an enlisted person, did he/she make a request that enlisted persons be included in membership of the court?	X				X			
b. If so, were at least one-third of the members who tried the case enlisted persons, or did the convening authority direct the trial without enlisted persons and provide a detailed written explanation which is appended to the record (RCM 503(a)(2))?	X				X			
c. Did any enlisted member of the court belong to the same unit as the accused?		X				X		
18. If a military judge was detailed to the court, was the accused informed of his/her right to request trial by military judge alone?	X				X			
19. Were the members of the court, military judge (if any) and the personnel of the prosecution and defense sworn or previously sworn?	X				X			
20. a. Was any person sitting as a member of the court, or military judge (if any), the accuser, a witness for the prosecution, the investigating officer, staff judge advocate, counsel, or convening authority, or upon rehearing or new trial was he/she a member of the former trial (RCM 902(b) and RCM 912(f))?	/	/			/	/		
b. If so, did the accused waive such disqualification (RCM 912(f)(4) and RCM 902(e))?	/	/			/	/		

COURT-MARTIAL DATA SHEET

SECTION A - PRETRIAL AND TRIAL PROCEDURE (CONTINUED)	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
21. a. Was each accused extended the right to challenge military judge (if any), and any member of the court for cause and to exercise one peremptory challenge?	/	/			/	/		
b. Was action by court upon challenges proper (RCM 902 and RCM 912)?	/	/			/	/		
c. Does the record show that a member excused as a result of a challenge withdrew from the court?	/	/			/	/		
22. a. Was the accused properly arraigned (RCM 904)?	X				X			
b. Do the following appear in the record: The charges and specifications, the name, rank and unit/command name of the person signing the charges, the affidavit, and the order of reference for the trial?	X				X			
c. Except in time of war, was the accused brought to trial (which includes an Article 39(a), UCMJ session) by general court-martial within five days (by special court-martial within three days) subsequent to service of charges upon him/her (RCM 602)?		X				X		
d. If so, did the accused object to trial?	/	/			/	/		
23. a. Were any charges or specifications affected by the statute of limitations (RCM 907(b))?		X				X		
b. If so, was accused advised of his/her right to assert the statute and was his/her response recorded (RCM 907(b))?	/	/			/	/		
24. Did the court take proper action with respect to motions raising defenses and objections (RCM 905-907)?	/	/			/	/		
25. a. Were pleas of accused regularly entered (RCM 910(a))?	X				X			
26. Does the record show that all witnesses were sworn?	X				X			
27. Did the military judge or president advise the court concerning the elements of each offense, each lesser included offense reasonably raised by the evidence, and the presumption of innocence, reasonable doubt, and burden of proof, pursuant to Article 51(c), UCMJ (RCM 920(e))?	X				X			
28. a. If trial was by military judge alone, did the military judge announce the findings (RCM 922)?	/	/			/	/		
b. If the trial was with members, did the president announce the findings (RCM 922)?	X				X			
c. If special findings were requested, were they made a part of the record?	/	/			/	/		
29. Were the findings in proper form (A10)?	X				X			
30. a. Was the evidence, if any, of previous convictions admissible and properly introduced in evidence (RCM 1001(b)(3))?	X				X			
b. Was the information from personnel records of the accused properly admitted (RCM 1001(b)(2))?	X				X			
c. Was the defense permitted to introduce evidence in extenuation and mitigation after the court announced findings of guilty (RCM 1001(c))?	/	/			/	/		
31. a. In a trial with members, did the president announce the sentence (RCM 1007)?	/	/			/	/		
b. If trial was by military judge alone, did the military judge announce the sentence (RCM 1007)?	/	/			/	/		

COURT-MARTIAL DATA SHEET

SECTION A - PRETRIAL AND TRIAL PROCEDURE <i>(CONTINUED)</i>	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
32. Was the sentence in proper form (A11)?	/	/			/	/		
33. Is the record properly authenticated (RCM 1104)?	X				X			
34. a. Did all members who participated in proceedings in revision vote on original findings and sentence (RCM 1102(e)(1))?	X				X			
b. At proceedings in revision, were a military judge (if one was present at the trial), the accused, and counsel for the prosecution and defense present (RCM 1102(e)(1))?	/	/			/	/		
35. Was each accused furnished a copy of the record or substitute service made on defense counsel (RCM 1104(b))?	X				X			
36. Was clemency recommended by the court or military judge?	/	/			/	/		
SECTION B - PROCEDURE AFTER TRIAL	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
37. Was the court convened by proper authority (RCM 504(b))?	/	/			/	/		
38. Did the court have jurisdiction of person and offense (RCM 202 & 203)?	X				X			
39. Does each specification state an offense under the code (RCM 907(b))?	X				X			
40. Did the accused have the requisite mental capacity at the time of trial and the requisite mental responsibility at the time of the commission of each offense (RCM 909 and RCM 916(k))?	X				X			
41. Is the evidence sufficient to support the findings?	X				X			
42. Is the sentence within legal limits (RCM 1112(d))?	/	/			/	/		
43. Is the action of the convening authority properly entered in the record and signed (RCM 1107(f))?	/	/			/	/		
44. If appropriate, is a proper place of confinement designated (RCM 1107(f)(4)(c))?	/	/			/	/		
45. a. Was the staff judge advocate's post-trial recommendation served on the defense counsel for comment (RCM 1106(f))?	/	/			/	/		
b. If the addendum to the recommendation contained new matters, was it served on the defense counsel for comment (RCM 1105(f)(7))?	/	/			/	/		
c. Did the accused submit matters for the convening authority's consideration in a timely manner (RCM 1105)?	/	/			/	/		
d. If yes, was the convening authority's action subsequent to the submission of the matters?	/	/			/	/		
e. If no, did the accused waive in writing the right to submit matters and was the action taken subsequent to the written waiver or did the time periods provided in RCM 1105(c) expire before the convening authority's action?	/	/			/	/		
46. a. Does the record indicate that the accused was advised of his/her appellate rights (RCM 1010)?	/	/			/	/		
b. Do the allied papers contain a statement indicating the desires of the accused with respect to appellate representation in the event his/her case is referred to a court of military review?	/	/			/	/		
c. Did the accused waive or withdraw appellate review and is the waiver or withdrawal in proper form and attached to the record of trial (RCM 1110, A19 & 20)?	/	/			/	/		

COURT-MARTIAL DATA SHEET

SECTION C - COURT-MARTIAL ORDERS (CMO)	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
47. Does the initial CMO bear the same date as the action of the convening authority who published it?	X				X			
48. Are all the orders convening the court which tried the case correctly cited in the CMO?	/	/			/	/		
49. Are the accused's name, rank, SSN, unit/command name and branch of service correctly shown in the CMO?	X				X			
50. Are all the charges and specifications (including amendments) upon which the accused was arraigned correctly shown in the CMO (RCM 1114)?	X				X			
51. Are the pleas, findings, and sentence correctly shown in the CMO (RCM 1114)?	X				X			
52. Does the CMO show the date the sentence was adjudged?	/	/			/	/		
53. Is the action of the convening authority correctly shown in the CMO?	X				X			
54. Is the CMO properly authenticated (RCM 1114)?	X				X			

55. REMARKS:

COURT-MARTIAL DATA SHEET

55. REMARKS (Continued):

56. TRIAL COUNSEL

a. TYPED NAME (Last, First, Middle Initial)	b. RANK	c. SIGNATURE	d. DATE SIGNED
FULLER, STEVEN	CPT <i>For</i>	<i>Steven Fuller</i>	22 Feb 2006

57. CONVENING AUTHORITY OR HIS/HER REPRESENTATIVE

a. TYPED NAME (Last, First, Middle Initial)	b. RANK	c. SIGNATURE	d. DATE SIGNED

58. STAFF JUDGE ADVOCATE OF GENERAL COURT-MARTIAL CONVENING AUTHORITY OR REVIEWING JUDGE ADVOCATE

a. TYPED NAME (Last, First, Middle Initial)	b. RANK	c. SIGNATURE	d. DATE SIGNED
BRODSKY, STEVEN M.	LTC	<i>Steven M. Brodsky</i>	22 Feb 2006

59. ACTION IN THE OFFICE OF THE JUDGE ADVOCATE GENERAL

a. ACTION:

b. INDIVIDUAL COMPLETING DATA SHEET

(1) TYPED NAME (Last, First Middle Initial)	(2) RANK	(3) SIGNATURE	(4) DATE SIGNED

DEPARTMENT OF THE ARMY
HEADQUARTERS, 4TH INFANTRY DIVISION (MECHANIZED)
FORT HOOD, TEXAS 76544

GENERAL COURT-MARTIAL ORDER
NUMBER 12

30 August 2005

Staff Sergeant Shane A. Werst, U.S. Army, Division Troops Company, Special Troops Battalion, Support Brigade, 4th Infantry Division (Mechanized), Fort Hood, Texas 76544, was arraigned at Fort Hood, Texas, on the following offenses at a General Court-Martial convened by the Commander, 4th Infantry Division (Mechanized).

Charge I. Article 118. Plea: Not Guilty. Finding: Not Guilty.


SPECIFICATION: Did, at or near Balad, Iraq, on or about 3 January 2004, with premeditation, murder another, by means of shooting him with a rifle. Plea: Not Guilty. Finding: Not Guilty.

Charge II. Article 134. Plea: Not Guilty. Finding: Not Guilty.

Specification 1: Did, at or near Balad, Iraq, on or about 3 January 2004, wrongfully endeavor to impede an investigation and influence the actions of two others, by directing them to alter their statements regarding the murder of another. Plea: Not Guilty. Finding: Not Guilty.

The findings were announced on 26 May 2005. All rights, privileges, and property of which the accused has been deprived of by virtue of these proceedings will be restored.

BY COMMAND OF MAJOR GENERAL THURMAN:


CHRISTINE A. COBB
SFC, USA
NCOIC, Criminal Law

DISTRIBUTION:

SSG Werst (1)

Military Judge (COL Dixon) (1)

Trial Counsel (1)

Defense Counsel (1)

Cdr, Division Troops Company, Special Troops Battalion, Support Brigade, 4th Infantry Division (Mechanized), Fort Hood, Texas 76544 (1)

Cdr, Special Troops Battalion, Support Brigade, 4th Infantry Division (Mechanized), Fort Hood, Texas 76544 (1)

Cdr, Support Brigade, 4th Infantry Division (Mechanized), Fort Hood, Texas 76544 (1)

Clerk of Court, ATTN: JALS-CC, 901 N. Stuart St., Suite 1200, Arlington, VA 22203 (10)

502d PSC, 4ID MILPO, ATTN: Records Section, Ft. Hood, TX 76544 (1)

F&AO, ATTN: Special Actions, Fort Hood, TX 76544 (1)

Cdr, U.S. Army Enlisted Records and Evaluation Center, ATTN: PCRE-FS, Fort Benjamin Harrison, IN 46249 (1)

Record Set (1)

Reference Set (1)

ARTICLE 32
INVESTIGATION
(GCM only)

INVESTIGATING OFFICER'S REPORT

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

1a. FROM: <i>(Name of Investigating Officer - Last, First, MI)</i> BIVIN, Kim T.	b. GRADE O4	c. ORGANIZATION Headquarters, Support Brigade, Fort Hood, TX 76544	d. DATE OF REPORT 8 Feb 05
2a. TO: <i>(Name of Officer who directed the investigation - Last, First, MI)</i> PERNA, Gustave F.	b. TITLE Colonel, Commanding	c. ORGANIZATION Headquarters, Support Brigade, Fort Hood, TX 76544	
3a. NAME OF ACCUSED <i>(Last, First, MI)</i> WERST, Steven A.	b. GRADE E6	c. SSN	d. ORGANIZATION HHC, 4ID STB

(Check appropriate answer)

4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)	YES	NO	
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)	X		
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)	X		
7a. NAME OF DEFENSE COUNSEL <i>(Last, First, MI)</i> SANTOS, Mark A.	b. GRADE O3	8a. NAME OF ASSISTANT DEFENSE COUNSEL <i>(If any)</i> N/A	b. GRADE N/A
c. ORGANIZATION <i>(If appropriate)</i> USATDS, III Corps and Fort Hood		c. ORGANIZATION <i>(If appropriate)</i> N/A	
d. ADDRESS <i>(If appropriate)</i> Fort Hood, Texas 76544		d. ADDRESS <i>(If appropriate)</i> N/A	

9. *(To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)*

a. PLACE	b. DATE
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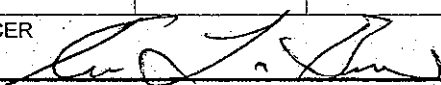
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.

c. SIGNATURE OF ACCUSED

10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: <i>(Check appropriate answer)</i>	YES	NO
a. THE CHARGE(S) UNDER INVESTIGATION	X	
b. THE IDENTITY OF THE ACCUSER	X	
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31	X	
d. THE PURPOSE OF THE INVESTIGATION	X	
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE	X	
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT	X	
g. THE RIGHT TO CROSS-EXAMINE WITNESSES	X	
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED	X	
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION	X	
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING	X	
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE <i>(If the accused)</i>	X	

b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL

NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c"). Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
Elliott, Matthew T.	SA	48th MI Det, Fort Carson, CO	X	
Foor, Joseph F.	E3	1/8 IN, Fort Carson, CO	X	
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.			X	
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)			
DD 458, Charge Sheet			X	
CID Investigation (multiple pages with sworn stmts)			X	
Certified ERB			X	
DA 268, Flag			X	
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)				X
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)			X	
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL			X	
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM			X	
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X	
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d)(1).)			X	
20. I RECOMMEND:				
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)				
There is no reason to believe that SSG Werst is not mentally responsible for his actions.				
22a. TYPED NAME OF INVESTIGATING OFFICER			b. GRADE	c. ORGANIZATION
KIM T. BIVIN			O4/MAJ	HQ, SPT BDE, 4ID (M), Fort Hood, TX 76544
d. SIGNATURE OF INVESTIGATING OFFICER				e. DATE
				14 FEB 05

The Article 32 Investigation in this case of United States v. SSG Shane A. Werst, Headquarters Company, 4th Infantry Division, (Mechanized), Fort Hood, Texas, opened at 0920 hours, 21 January 2005, at the 4th Infantry Division Courtroom Building 410, Fort Hood, Texas 76544.

Persons Present:

MAJ Kim T. Bivin, Investigating Officer
CPT Steven Fuller, Trial Counsel
CPT Matt Hover, Assistant Trial Counsel
CPT Mark A. Santos, Defense Counsel
SSG Shane A. Werst, Accused
SPC Kathy A. Ruddy, Reporter

Swearing in of Article 32 Officer and Recorder.

Reading of rights to SSG Shane A. Werst.

The investigating officer identified himself and stated what his authority was to be as the investigating officer.

Defense Counsel questions the Investigating officer, MAJ Bivin. MAJ Bivin has been in the military for 12 years, he is currently the rank of Major in the Signal Corps. His previous duty assignments include Korea, Georgia, Fort Sam Houston, TX and Fort Hood several times. MAJ Bivin stated that he had never been an Article 32 officer and had his briefing with CPT Henry, 4ID Admin Law and with CPT Nelson, III Corps Admin Law. In my understanding, the burden of proof is on the government to prove that the accused committed the act. I am to think as a Brigade Commander during this process and what they would want the result to be. As for the Rules of Evidence that apply to this case, the witness list was my first concern. Lack of witnesses on the government side to be specific. I understood that the distance of the witnesses that were requested by Defense as well as the witnesses invoking the 5th Amendment is why the witnesses requested were not brought to this Article 32. Defense argued that all their witnesses they are requesting aid to the process of Discovery and that MAJ Bivin should speak to their advisor to ensure that he has a general knowledge of the Rules of Evidence.

Defense noted for the record that MAJ Bivin should contact his legal advisor to clarify his understanding of the Rules of Evidence.

MAJ Bivin gave a 15-minute recess at this time to contact his legal advisor, CPT Nelson.

Defense asked MAJ Bivin if he knew what the Rules of Evidence are. MAJ Bivin stated that the Rules of Evidence are located in the MCM, 501-513, 301, 302, 305, and 412. Defense was satisfied that MAJ Bivin understood the Rules of Evidence.

CPT Hover defined for the record the reasonability of witnesses to attend the Article 32 hearing. He stated that due to the expense, difficulty, and the distance of the witnesses being over 100 miles from Fort Hood all contributed to their not being reasonably available. Defense objected to the refusal to produce witnesses because of reasonable availability. Defense stated that it was up to the Investigating Officer to determine reasonable availability and not Trial Counsel. The government could grant immunity to the witnesses so that they could appear to testify. Government argued that at this point in the investigation, granting of immunity is premature. Defense argued that the Article 32 is not just for the government interests. By denying the witnesses requested, Government is denying the discovery process. MAJ Bivin noted all objections for the record but stated that the Article 32 would proceed.

Defense counsel wished to waive the reading of the charges.

Staff Sergeant Shane A. Werst, was made aware of his rights to make sworn or unsworn statement on his behalf, which may be used as evidence against him in a trial by court-martial or to remain silent. Defense was willing to defer until the end of the questioning. Defense noted for the record that they wanted all their witnesses called because it was their Discovery.

Government produced a file for the Investigating Officer and a duplicate copy for Defense that included all statements that were made in the case by those who were not in attendance of the Article 32.

The following witness for the Government was called, sworn, and testified in substance as follows:

SA Matthew T. Elliott, 48th MI Detachment, Fort Carson, CO

DIRECT EXAMINATION

I have been with CID for 2 ½ years. I have worked a variety of larceny, sexual assault and death cases in Fort Carson. Previously, I was stationed in Bamberg, Germany, as a military police soldier. This case began at Edmonds Army Community Hospital where PFC Stewart told his psychologist about the act that occurred in Iraq. COL James A. Polo contacted CID with a report of a possible war crime that occurred in Iraq. He did not disclose anything other than the soldier had reported to him that his squad had possibly committed a war crime in Iraq. SA Armstrong and I went off post to get PFC Stewart's statement. A rights advisement was not initially given, he made a statement against self-interest, and then we continued the interview after advising him of his rights. We took a sworn statement – both handwritten by him and then typed in summary by me. In his narrative, PFC Stewart describes raids that occurred in the area of Balad, Iraq, and his and other's actions during them. He described separation of an Iraqi insurgent from the last house they went to that night. SSG Werst and PFC Stewart were alone with the insurgent in a back room where SSG Werst stated that he was going to kill the "mother-fucker". PFC Stewart and SSG Werst began to hit the Iraqi, Naser Ismail. At this time in the interview, CID gave PFC Stewart a rights advisal. PFC Stewart said that he had hit the Iraqi with his Maglite. SSG Werst told PFC Stewart to stop hitting him and to pull Mr. Ismail to his feet. As PFC Stewart got Naser Ismail to his feet, 2 or 3 rounds were shot off by SSG Werst and the Iraqi remained on his feet. SSG Werst shot a few more times, the Iraqi fell to the floor but was still breathing, so SSG Werst fired more shots into Ismail's body and he finally quit breathing. Five or six other individuals were also interviewed by CID. SPC Pannell's wife made a statement that was taken by SA Armstrong. Mrs. Pannell said PFC Stewart told her the same thing that he had told SA Elliott. SPC Pannell

was the squad leader. The members of the 43d Engineer Company that were on this raid were SSG Werst, PFC Stewart, Plato, Pannell, Pizer, Hillis and Foor. SPC Pannell was part of a secondary team, not the same as SSG Werst's. Pizer had stated that his team was part of the outer-cordon team. When CID spoke with CPT Daniel D. Maurer, the S1, SSG Werst wanted to get an award for SPC Pannell stating that he was involved in the engagement with the enemy with SSG Werst. SA Anderson took the statement of an award request. In a typed sworn statement by SSG Werst, SPC Pannell had acted with him. This statement was not in sync with the information we were getting from others.

At this time, Defense objected that Mr. Pizer, being a member of the IRR should have been provided to give his testimony at this hearing. Defense stated that the Army can compel him to appear.

Government stated that they can continue without referencing Mr. Pizer. Defense stated that Pizer should be at the hearing to testify. MAJ Bivin noted the objections and stated that he had the ability to contact him telephonically if his testimony is needed.

SA Elliott continued his testimony.

Defense objected for the record that the recollection of SA Elliott is not relevant because the statements taken by the individuals were in a file in front of the Investigating Officer.

MAJ Bivin stated that he had read the statements and that he was comparing notes of what statements PFC Stewart had given and SA Elliott's recollection.

SA Elliott continued his testimony. SPC Pannell's statement was taken in an effort to corroborate other statements. He said that he did not enter the residence. PFC Stewart stated what had happened that day, that a mortar attack had killed their company commander that morning. The team was originally pulled because of their emotionally being ready to do a raid.

Later it was decided to integrate them into the raid mission. A Co, 1/8 IN was getting support from the EN squad. A target list was used in the investigation. A Co, 1/8 Intelligence Officer was possibly the person who had generated this list. The global list was distributed to squads through a rock drill. The list was used at squad level to down brief their soldiers. PFC Stewart said that he had seen the list. PFC Stewart stated that he was told by SSG Werst that there were certain individuals "that were not coming back". PFC Stewart's recollection of the incident is not the same as others in the squad. The list was used as a means to identify target individuals. The ID papers that Iraqi's use are not in English. Translators were used on the raids. In this case, according to the statement that we received, an interpreter associated with the raid confirmed that Mr. Ismail was the name on the target list. PFC Stewart stated that Mr. Ismail was separated from the rest of his family. He heard SSG Werst say that "we are going to kill this mother-fucker". I believe that I had taken Plato's statement too. Plato referenced his knowledge of the incident and there were inconsistencies of what happened during the raid. Plato was with the outer-cordon team and not the entry team. The discrepancy most often with the statements were the number of times shots were fired – the folks heard 3 approximately shots and PFC Stewart stated that he had heard more. Stewart stated that one of the weapons fired was a non-U.S. military 9mm handgun. SSG Werst fired 1 or 2 rounds and then asked Stewart to place the gun in the hand of the victim to obtain prints. After he did that he put the weapon in his cargo pocket and had it in his possession until they returned to the FOB. SSG Hillis stated that he carried nonmilitary weapons and stated that he believed that SSG Werst did also. Following the incident, SSG Werst had guided the squad to agree upon a fabricated story of what had happened and to say that SPC Pannell had gone in with him. By what he did, SSG Werst was impeding our investigation and creating a cover-up. I will get a copy of the award request put in by SSG Werst to CPT Maurer and fax it from Fort Carson.

At this point of testimony, the media was instructed to leave the jury box because some classified information would be testified to.

SA Elliott continued his statement. Nasar Ismail was determined by A Co, 1/8 IN Intel Officer to be one of the persons killed in the raid that night. To narrow it down to names of possible insurgents, maps and intel was collected to cross-reference. Presently, this case is an ongoing investigation. A Request for Assistance (RFA) was put in to the CID in Balad, Iraq to attempt to identify the family members and find out the disposition of Mr. Ismail's body for possible exhumation. The EN squad was supporting an IN company. I believe that the soldiers were affected when their commander was killed – everyone liked him. He was a strong and approachable commander according to the soldiers questioned.

The media is allowed to return to hear the testimony.

SA Elliott continued his statement. Members of the EN squad were angered and understood that they were initially withheld from the raid due to fears of retaliation for the death of their Company Commander, CPT Paliwoda. When SSG Werst was approached, he assured the chain of command that his squad was ready. Once Mr. Ismail was killed, the squad removed the body from the building and it was then that SSG Werst put out the fabrication of what happened for the squad. There was a nonverbal "okay" from the squad members. In reviewing SSG Hillis' statement, PV2 Foor was told to tell the truth. Stewart was told to stick to the fabricated story. It is our understanding (CID) that while talking to others, SSG Werst briefed them on the statement that he would give and that SPC Pannell and SSG Werst were the ones involved in the shooting. When the Entry Team went into the house, they saw women and children huddled in a small area. The target had a handgun and it was then engaged in combat by Pannell and SSG Werst. This is in complete contradiction to what other statements given said that happened when CPT Maurer was given the award recommendation from SSG Werst. The award was not given because the story contradicted itself from various platoon

members. Then the accused PCSed to Grand Rapids, MI, to a recruiting station.

A luncheon break was given from 1130 to 1300 hours.

The Hearing reconvened at 1305 hours.

CROSS EXAMINATION

The media was escorted from the courtroom for a brief time while classified information was taken from SA Elliott.

The information on the list is limited because classified information is either destroyed or deleted from hard drives prior to returning to the U.S. Classified distinction is due to names of folks that have yet to be apprehended as insurgents. CID concluded that it was Nasir Ismail that was killed by comparing intel reports and information from the Intel Summary for that evening. Based on grid coordinates of the raids and weapons recovered from the scene, we are reasonably assured that the person that was killed was Nasir Ismail.

According to an Intel Summary, there were approximately 30 AK-47s and mortars recovered from the Ismail residence. The grid coordinates established his name. I am not directly aware of individuals that were detained that night. Based on statements given by other folks taken that night, their names became unclassified. There was a 15-6 Investigation on the death of a second individual. We were given that finding, as a review on our shooting. The other individual case resulted in death also.

The name of the soldiers being investigated under the 15-6 investigation, were SFC Perkins and SSG Ironeyes. Both soldiers are assigned to A Co, 1/8 IN. The 15-6 findings are part of the CID file on that investigation. Since both incidents occurred that same evening, we had to review them both. I don't remember who the I.O. was on the 15-6 Investigation, but approximately 5 or 6 individuals were interviewed. The findings of the 15-6 Investigation stated that the shooting appeared to

be justified. I am not actively pursuing classified information at this point, we have put in a request for 1/8 IN to purge as much as they can. We are assuming all information was deleted or destroyed and we aren't looking into high value targets. The unit following 1/8 IN would want to obtain information that was not used specific to this case.

The media returned to the room.

I graduated in 1990 from high school and in 1994 with a B.S. in Human Resources. I then received my Master's Degree in Forensic Science that included evidence collection and advanced investigation technique. I joined the Army in 1999 as an MP and then I went into the CID apprenticeship program approximately 2 ½ years ago. In my Forensic Science degree, my studies included Link Analysis and crime scene analysis. Link analysis includes modus operandi in a case. The Psychotherapist was interviewed by our SAC, Mr. Williamson. The Psychotherapist had been initially referred. I have not obtained any mental health records and did not ask PFC Stewart if he has or had any mental health problems. We asked him prior to our interview if he was on any medication. We were told that he was not. Post Traumatic Stress Syndrome (PTSS) was what he was initially referred to mental health for. We found this out secondary to this investigation. We have not looked further into PTSS. I sent the Maglite found in PFC Stewart's home, to the lab for biological material to be gleaned from it. I got a verbal report from the lab that said that they had found nothing on any DNA evidence. Stewart was the only person in the squad corroborating that SSG Werst said "nobody will come back alive". I have handled detainees and so has PFC Stewart. He contends that the only 2 persons in the room were himself, SSG Werst and the victim.

Handling detainees and SOP for High Value targets are handled by the same until the names are forwarded up the chain of command. The weapons I collected were a M4 and a 9mm. We have an independent report stating it is correct. We have asked the CID located over in Iraq to interview the family members. Our CID case file is available to you, it is still an

open case file. We collected the notes of SSG Werst and the flak vest. There was blood on the flak vest.

We would like to take DNA from Stewart. Also in the process of requesting exhumation of body. USACIL will typically get comparison samples and not generate a report. RFA we submitted has a exact date we asked for help, it is part of the CID File. Stewart got a defense counsel after that.

As I stated before, I have worked on death cases, I interviewed Mr. Pizer and CPT Mauer and SFC Cavellio.

Mr. Pizer currently lives in [redacted] I interviewed Lt Maurer and SSG Cabelo who were both in the office – by SA Sparrow.

REDIRECT

The SOP on detaining individuals – how was this incident different from the norm? It was that the targeted individual was not flexi-cuffed to have control over the detainee as soon as possible. The general idea of the SOP of getting insurgents is to locate, identify, detain and apprehend. After identifying him, rather than restraining him, they had him go back into the house.

RECROSS

I do not know if others were detained that night and collected for transport were flexi cuffed or not. I don't know of a specific written SOP for dealing with detainees.

Media is escorted from the courtroom.

After looking at the classified reports, our understanding was that weapons were taken and recovered from the victim's house. Based on the intel available, the individual had ties to weapons.

Media is escorted back into the courtroom.

SA Elliott was temporarily excused by the Investigating Officer and departed from the room.

The following witness for by the Defense gave telephonic testimony, was called, sworn, and testified in summary as follows:

PFC Joseph F. Foor, E Co, 1/8 IN, Fort Carson, CO

DIRECT EXAMINATION

I have been in the Army for over 2 years. I am 23 years old and used to work next to a recruiter's office. I had previously worked as a waiter, a retail clerk, and a cabinetmaker. I made a statement on 18 Nov 04 to CID of the events that happened in January 2004. I have a copy of the statement in front of me. CPT Wade Falkner is my legal counsel. On 6 Jan 03, I joined E Co, 1/8 IN. It was late December when I got to the company. I got orders in mid to late Nov 03 to deploy. I was new to the Army and this was my first mission that I had gone on – a raid. I was not in the house when the detainee was killed but I was with the squad prior to the incident and helped get the detainees. Nobody was put in restraints. SGT Phillips was a team leader. SGT Pizer was another team leader. I don't remember an interpreter being with us that night.

CROSS EXAMINATION

This was the 4th house that evening and I wasn't familiar with the route we had taken. Our mission was to look for individuals attacking FOB Eagle related to the death of a company commander. An Iraqi male was questioned about his name and if he had an ID. The squad leader verified who he was, the identification paper was referenced by SSG Werst. I went to pull security on the outside. SSG Werst went into the house with another member of the squad. After they went to the house, I had my NVGs on and could see another one of our squad elements across the street. I heard 3 shots, the first shot was loud and echoed. After the shots, someone came out and said that they needed a body bag for the house. SSG Werst asked if I understood what was happening and if I was okay. I had never had an NCO ask me a question like that, I was just out of Basic training. It was strange to me that someone would ask me this. I have only

been on 4 raids. Detainees were usually moved, a squad leader would make the decision to take them to the Detention Center at the FOB. The first raid was different because the subject didn't have restraints on and was told to go back into the house. I distinctly remember the first shot – it didn't sound like a handgun but an M16 shot. I can't tell the difference between an M4 or an M16 gunshot, they both sound the same to me. Nobody spoke about the raid and I didn't push the issue with the squad. I was a little leery about the whole thing, after other raids the soldiers would talk about the raids.

REDIRECT

From what I remember, several people from the squad went into the house. SSG Hillis was in the house. I only remember 3 shots being fired. Stewart and Plato came out of the house and said that they needed a body bag. I hear about a detainee running away from the 3d house that night. SSG Werst kept us informed on missions. I remained with B Co, 4th EN and didn't conduct any more raids with A Co, 1/8 IN. This was my first night on the job.

IO QUESTIONS

The three shots that I heard were distinct and not burst shots. They were separate shots. This was the last house of the night to investigate. There were individuals questioned but I am not sure if there were any detainees. I was security for the front of the house. I saw detainees in the first house there were 3 detainees all in zip ties. Nobody had their hands free, the SOP is to zip tie detainees.

A comfort break was given for 10 minutes.

At 1440 TDS did not wish to call Mr. Pizer nor did the Government. CPT Hover reiterated that the Government considers Mr. Pizer unavailable, even though he is in the IRR, he has not been recalled to active duty so is not bound to testify.

Government made closing arguments.

Defense made closing arguments.

The Hearing closed at 1530, 21 January 2004.

** The tapes are available for Defense to listen to them at the Support Brigade Legal Office between the hours of 0900-1700 Monday-Thursday. If either Government or Defense wants a verbatim script, they must contact the senior court reporter at III Corps to set up a time for the procedures to have a certified court reporter to transcribe the tapes.*

DEPARTMENT OF THE ARMY
Headquarters and Headquarters Company
Division Support Command, 4th Infantry Division (Mechanized)
Fort Hood, Texas 76544

AFYB-SC-S6

29 November 2004

MEMORANDUM THRU CPT Steven Fuller, Trial Counsel, 4th Infantry Division (Mechanized), Fort Hood, Texas 76544

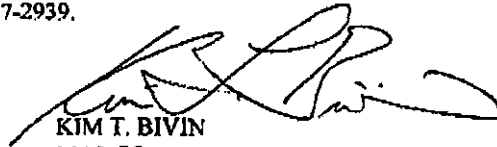
CPT Mark Santos, Trial Defense Counsel, Trial Defense Services, Fort Hood, Texas 76544

SUBJECT: Article 32(b) Investigation

1. The Article 32(b) Investigation in the case of U.S. v Werst is scheduled for 0900 hours, 3 December 2004. The hearing will be conducted in the 4th Infantry Division Court Room, Building 410. All other information contained in the original notification remains unchanged.

2. If you desire witnesses to testify during the Article 32(b) proceedings, then please notify me in writing by 1500 hours on 1 December 2004. A negative response indicates that the defense does not wish to call any additional witnesses.

3. POC is SPC Kathy A. Ruzky, Paralegal at 287-2939.




KIM T. BIVIN
MAJ, SC
Investigating Officer

ACKNOWLEDGEMENT OF NOTIFICATION

I acknowledge that I was informed on 30 NOV 2004 that my Article 32 hearing is set for 3 December 2004, in the 41D Courtroom, Bldg 410, Fort Hood, Texas 76544.

Dated: 30 NOV 04


SHANE A. WERST
SSG, Accused

DEPARTMENT OF THE ARMY
Headquarters, Division Support Command
4th Infantry Division (Mechanized)
Fort Hood, Texas 76544

AFYB-SC

10 December 2004

MEMORANDUM FOR

CPT Steven Fuller, Trial Counsel, 4th Infantry Division (Mechanized), Fort Hood, Texas 76544
CPT Mark Santos, Trial Defense Counsel, Trial Defense Services, Fort Hood, Texas 76544

SUBJECT: Article 32(b) Investigation

1. The Article 32(b) Investigation in the case of U.S. v Werst is scheduled for 0900 hours, 20 January 2005. The hearing will be conducted in the 4th Infantry Division Court Room, Building 410. All other information contained in the original notification remains unchanged.
2. If you desire witnesses to testify during the Article 32(b) proceedings, then please notify me in writing by 1500 hours on 11 January 2005. A negative response indicates that the defense does not wish to call any additional witnesses.
3. POC is SPC Kathy A. Ruddy, Paralegal at 287-2939.

BARRY A. DIEHL
LTC, OD
Commanding



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
FORT HOOD FIELD OFFICE
FORT HOOD, TEXAS 76544

REPLY TO
ATTENTION OF

AFZF-JA-TDS

13 December 2004

MEMORANDUM FOR

SUBJECT: Article 32(b) Investigation Delay Request -- SSG Shane Werst,
Headquarters and Headquarters Company, 4th Infantry Division, Fort Hood,
Texas 76544

1. The defense requests a delay in the Article 32 investigation from 3 December 2004 to 19 January 2005. The reason for the delay is to allow the defense adequate time to prepare for the hearing. This case involves serious charges that could result in a sentence of life with out possibility of parole. Preparation for this hearing will require substantial time prior to the Article 32 investigation.¹
2. Additionally, the Accused has retained civilian counsel, Mr. David Sheldon. SSG Werst is entitled to a reasonable delay so that Mr. Sheldon can be present for the Article 32 hearing. Mr. Sheldon has prior commitments that include travel to Iraq for another military justice action in the month of December 2004 and cases set for trial in early January 2005. A hearing set after 19 January will allow for his presence and is a reasonable request for delay given the nature of the charges in this case.
3. The defense will be credited with the delay.
4. POC is the undersigned at 287-9419. (Fax 287-4993).

// Original Signature //
MARK A. SANTOS
CPT, JA
Defense Counsel

¹ An accused at an Article 32 hearing is entitled to counsel who has had adequate time to prepare. United States v. Miro, 22 M.J. 509; United States v. Worden, 17 U.S.C.M.A. 486. An unprepared counsel is tantamount to no counsel at all. Id. Furthermore, unreasonable and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay is an abuse of discretion. United States v. Weisbeck, 50 M.J. 461.

PRETRIAL ALLIED
PAPERS

COURT-MARTIAL CHARGES TRANSMITTAL FORM

PART I

TO: Commander, Headquarters and Headquarters Company, 4th Infantry Division, Fort Hood, Texas 76544
FROM: OSJA, 4th Infantry Division
DATE: 24 Nov 2004

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 ERB) are attached as Enclosure 2. Soldier is not pending chapter action UP AR 635-200.

NAME: Werst, Shane Allen **RANK:** SSG **SSN:**

UNIT: Headquarters and Headquarters Company, 4th Infantry Division, Fort Hood, Texas 76544

Recommend:
 Summary Court-Martial Special Court-Martial
 BCD Special Court-Martial General Court-Martial

NAME OF COMMANDER **SIGNATURE OF COMMANDER**
 CPT LUIS E. GUARDA 

PART II

TO: Commander, 124th Special Troops Battalion, 4th Infantry Division, Fort Hood, Texas 76544
FROM: Commander, Headquarters and Headquarters Company, 4th Infantry Division
DATE: 24 Nov 2004

I have reviewed the attached charges, documents, and Article 32 (if applicable) and (*recommend*)(*direct*):
 Summary Court-Martial Special Court-Martial
 BCD Special Court-Martial General Court-Martial

NAME OF COMMANDER **SIGNATURE OF COMMANDER**
 MAJ JAY K. CHAPMAN 

PART III

TO: Commander, Division Support Command, 4th Infantry Division, Fort Hood, Texas 76544
FROM: Commander, 124th Special Troops Battalion
DATE: 15 Feb 05

I have reviewed the attached charges, documents, and Article 32 (if applicable) and (*recommend*)(*direct*):
 Summary Court-Martial Special Court-Martial
 BCD Special Court-Martial General Court-Martial

NAME OF COMMANDER **SIGNATURE OF COMMANDER**
 COL Gustavo F. Perna 

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.

RIGHTS TRAINING PROCEDURE/WAIVER CERTIFICATE

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

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 <i>Fort Carson Co</i>	2. DATE <i>18 NOV 84</i>	3. TIME <i>090844</i>	4. FILE NO.
5. NAME (Last, First, MI) <i>Pannell, Charles M.</i>	8. ORGANIZATION OR ADDRESS <i>E Company, 1-8th Infantry Battalion Fort Carson, Co 80913</i>		
6. SSN	7. GRADE/STATUS <i>E4/SP6</i>		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

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

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

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

- or -

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

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

5. COMMENTS (Continue on reverse side) *Q. Have you been advised of your rights as a suspect and request a lawyer in the past five years? NO CMP*

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. *cmp*

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE <i>[Signature]</i>
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR <i>[Signature]</i>
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME OF INVESTIGATOR <i>RUSSELL A. DAVIDSON</i>
2a. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR <i>48th MP Det CID Fort Carson, Co 80913</i>
b. ORGANIZATION OR ADDRESS AND PHONE		

Section C. Non-waiver

- I do not want to give up my rights
 I want a lawyer I do not want to be questioned or say anything

2. SIGNATURE OF INTERVIEWEE

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

SWORN STATEMENT

LOCATION	DATE	TIME	FILE NUMBER
Fort Carson, Co	18 NOV 04	103300P	
NAME	SSN	GRADE/STATUS	
Pannell, Charles M.		E4/SPC	
ORGANIZATION/ADDRESS:			
E Company, 1-8th Infantry Battalion, Fort Carson, Co 80913			

1. I, Charles M Pannell want to make the following statement under oath:

Around lunch time on January 2 2004 we were attacked with mortars. One of the mortar hit our company commander C-HOT & killed him & wounded several others that made me really sad & upset cause our company commander was a great guy. That evening we were suppose to go on a raid & we were told because of the casualty we will not going to go there around 10pm we were told that we were going to go & we got the op order on a community outside of Balad of known terrorist. There were several RAID that we had to perform. The was a list of males names we were looking for on one house we entered the fence in area & I was told to pull security on the outside of the house I heard several M16 BANG & a couple of pistol rounds

go off + I was told to
go get a body bag + I
bought it in the house + Sgt
Pizer + Stewart put the dead
body in the bag + we took it
to a Humvee. SSG Werst told me
that he + Hum killed the guy
+ that that is what happen
+ to write it on a sworn
statement. So I did + handed
it to Lt MAURER.

Q. SA DAVIDSON.

A. SPC Pannell.

Q. Did you write the aforementioned statement?

A. Yes

Q. You stated you were to go out on a raid, who
told you about the planned raids?

A. SSG Werst

Q. Who is SSG Werst?

A. My Squad Leader.

Q. How many people were in your raid team?

A. 7

Q. Who were those seven people?

A. SSG Werst, Sgt Hillis, Sgt Pizer, PFC STEWART,
PFC PIATO, PFC FORD, + myself

Q. What is SSG Werst's first name?

A. Not sure

Q. What is SGT Hilles' first name?

A Not sure

Q. What is SGT Pizer's first name?

A Jason

Q. What is PFC PLATO's first name?

A John

Q. What is PFC FOOE's first name?

A Not sure

Q. Where is SSG WERST now?

A Michigan Recruiting

Q. Where is SGT Hilles?

A Cleary getting ready to go to Ft Campbell

Q. Where is SGT Pizer?

A ETS

Q. Where is PFC PLATO?

A Ft Leonard Wood Gappa school

Q. Where is PFC FOOE?

A still in company

Q. You stated a list was provided with names of males. Who provided the list of names?

A SSG WERST was the only person I saw
it with

Q. Did SSG WERST say where he got the list?

A No

Q. How many names were on the list?

A Roughly 8 names

Q. were any of the names "highlighted"?

A. I was just AGAD the NAMES I
NEVER saw the list

Q. During the raids your squad concluded
how many Iraqi nationals were killed on
2 JAN 04?

A. ONE

Q. Do you know what the name of the
town was where the Iraqi was killed?

A. NO

Q. Do you know the name of the Iraqi that
was killed?

A. NO

Q. When your squad arrived at the house
where the man was killed, did you go
inside the house prior to the man's death?

A. I stepped foot in the house but
was told to go outside + pull
security I did not go through the
whole house

Q. Who told you to go out and pull security?

A. SSG Weast

Q. Who stayed in the house with SSG Weast?

A. PFC STEWART

Q. Where were the other squad members?

A. Myself Sgt Hillis + POOL were pulling
security I DONA know where Plato + Sgt Pizer were

Q. When you left the house how many Iraqis were in the residence?

A. I don't know

Q. ~~There~~^{Was} were any women or children present at the residence?

A. I saw several women + children after the shooting

Q. Where were the women and children after the shooting?

A. outside the house

Q. Was anyone watching the women and children?

A. I don't remember

Q. After you were told to leave the house how long was it before you heard shooting?

A. 2-3 min roughly

Q. What type of gun fire did you hear first?

A. M16

Q. How many rounds did you hear fired from an M16?

A. ~~5-10 rds~~^{estimated} couple of M16 rds + two a couple of 9mm rounds + two more M16 rds

Q. How do you know the other rounds fired were 9mm?

A. I saw the pistol

Initials of Person Making Statement cmj

Page 5 of 11 Pages cmj

Q When did you see the .9mm weapon?

A SSG Wiest had it after the shooting.

Q After the shooting when did you go into the residence?

A I don't remember who but somebody told me to go get a body bag & I got it from a Humvee & then took it into the house.

Q What did you see when you entered the house?

A A Det. Iraqi male.

Q Who else was in the house?

A Sgt Pizer, Stewart, SSG Wiest & Plato.

Q How was the Iraqi male wounded?

A I don't know I didn't stare at the body.

Q Who put the body in the body bag?

A I know Sgt Pizer & I'm not sure ~~if~~^{if} whether Plato or Stewart did it.

Q What did SSG Wiest say happened to the Iraqi male?

A He didn't say. He told me that he & him killed the Iraqi.

Q Where you present in the house when the Iraqi male was killed?

A NO

Q Did you shoot the Iraqi male?

Initials of Person Making Statement WJW

Page 6 of 11 Pages C-P

A. NO

Q. Do you know who shot the Iraqi?

A. SSG WENST

Q. What happened to the Iraqi's body?

A. WE PUT IT IN A HUMMER

Q. Do you know where the body was taken?

A. NO

Q. Do you know who was driving the Hummer?

A. NO ACCORDING TO WENST WAS DRIVING THE HUMMER

Q. Why did you agree with SSG WENST to make a statement saying you shot the Iraqi?

A. I WAS BLVD TO ~~IT~~^{ORF}

Q. When did you make your written statement to LT MAUER?

A. ROUGHLY 2-3 DAY AFTER

Q. Do you know if the Iraqi was armed at the time he was shot?

A. I DON'T KNOW

Q. What happened to the Pinn?

A. I DON'T KNOW

Q. Did you conspire with SSG WENST to kill the Iraqi national?

A. NO I HAD NOTHING TO DO WITH THIS

Q. Why did you not report to LT MAUER that SSG WENST told you to lie?

Initials of Person Making Statement CM

Page 7 of 11 Pages orp

A. I don't know.

Q. Do you understand what a lawful order is?

A. yes, doing the ^{morally} right thing with order you have a right to refuse them.

Q. Do you feel SSG Werst asking you to lie about the death of someone was a lawful order?

A. no.

Q. Do you know the name of the Iraqi that was killed?

A. no.

Q. Was anyone else killed during the raids your squad conducted on 2 JAN 04?

A. no.

Q. Who was the highest ranking person on your squad?

A. SSG WIST.

Q. Was anyone else present when SSG Werst told you to lie and say the Iraqi shot at you and SSG Werst?

A. I think the whole squad was there but not sure.

Q. What did you think when SSG Werst first told you to lie about the incident?

A. I didn't think much about it I just did it.

Q. Has anyone talked to you about this incident prior to today other than LT Maurice?

A. PFC Stewart ~~was~~^{was} asked me it the night of 2 Jan. I was in the tent sleeping + I said no.

Q. What time did the incident happen?

A. After midnight of 03 Jan 04.

Q. Do you mean it happened in the early morning hours of 3 Jan 04?

A. Yes.

Q. After the incident what happened to the residence?

A. We just left + we left the family.

Q. During the incident involving the death of the Iraqi did you fire any rounds from your weapon?

A. No.

Q. Did anyone other than SSG Weinst fire rounds from their weapons during the incident?

A. No.

Q. How do you know only SSG Weinst fired rounds?

A. Cause Stewart said he didn't.

Q. When you returned from your mission did you have to account for your rounds?

A. NO

Q. Do you wish to add anything else to your statement at this time?

A. I DO NOT HAVE A DRAWING OF MY WEAPON.
/// END OF STATEMENT /// CAP

Initials of Person Making Statement cap

Page 2 of 11 Pages cap

Statement of Charles M. Parnell, taken at the 48th MP Detachment, Fort Carson, CO, dated 19 NOV 04 01 P
Continued:

AFFIDAVIT

cf 1. Charles M. Parnell have read or had read to me this statement, which begins on page 1 and ends on page 10. I fully understand the contents of the entire statement made by me. The statement is true and I have initialed all corrections and 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.

[Signature]
(Signature of Person Making Statement)

WITNESS:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 18th day of NOVEMBER, 2004 at Fort Carson, CO 80913

(Signature of Witness)

[Signature]
(Signature of Person Administering Oath)

(Typed Name of Witness)

SA Russell A Davidson
(Typed Name of Person Administering Oath)

(Organization of Witness)

ART 136, UCMJ
(Authority To Administering Oath)

Initials of Person Making Statement cmf

Page 11 of 11 Pages cmf

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 <i>Ft Carson CO</i>	2. DATE ²⁰¹¹ <i>18 NOV 04</i>	3. TIME ^{SDH} <i>0915</i>	4. FILE NO.
5. NAME (Last, First, MI) <i>Hillis, Bryan D</i>	8. ORGANIZATION OR ADDRESS <i>4th ENL, 3 BDL</i>		
6. SSN	7. GRADE/STATUS <i>E-6/Active Ft Carson CO 80913</i>		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation and wanted to question me about the following offense(s) of which I am suspected/accused: Conspiracy and Accessory to Murder 11/20A

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

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

- or -

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

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have 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	
		<i>SA Jon Hawks</i>	
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR	
		<i>48th MP Det (CID)</i>	

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

LOCATION	DATE	TIME	FILE NUMBER
Ft Carson CO	18 NOV 04	1313	
NAME	SSN		GRADE/STATUS

Hillis, Bryan Douglas E-6 / Active
 ORGANIZATION/ADDRESS:

ACW 4th ENB, 3 BDE, Fort Carson CO 80913
 I, Bryan D Hillis, want to make the following statement under oath:

On 2 Jan 04, My squad 2nd squad 1st pl^{to} B^{co} 4th ENB was tasked out to A^{co} 1st INF BN to execute a RAID on a near by village which informants told us officials that housed persons responsible for a mortar attack earlier that day which took the life of our commander CPT. Palivoda. The raid was planned earlier than 2 Jan 04 for that particular village but with new information it was bumped on priority L&T. The original mission was to detain an arms dealer which live in the village and search for cache of weapons. Before mission kicked off we were told that the ones responsible for CPT Palivoda's death could be in this village. It was ~~questioned~~ questionable whether or not we should attempt this raid with regards to the commander's death and others injury's that day. Our Squad leader SSG West, Shann A. Reassured chain of command that we were professionals and we would handle our selfs professionally. They agreed to let us attend the mission. ~~For the~~

In the early morning hours we raided the village by Humvee's and searched the village house to house. Team Alpha (A) was a ~~Team~~ ^{Squad} of Inf & Team Bravo (B) was a Squad of Engineers. Team B was to search the west side of the village which consisted of 6-8 houses. We Detained several males which names had been

Initials of Person Making Statement BDH Page 1 of 1 Pages

ON a list given to us ^{by} ~~by~~ mission Commander. These people were wanted for questioning in arms dealing & attacks on U.S. Forces. We brought all detainees to the control point on the southern most road of the village. As we were proceeding back to our assigned section, one of the detainees escaped over a wall back into the middle section of ~~houses~~ ^{houses} ~~POH~~. A tm would be sweeping back thru ~~houses~~ so Btm Remains in a ^{POH} Security position on the west side of the village. After the detainees re-apprehension Tm B was instructed to search a house on the northern & western most corner of the village. The house was a one story house with a roof access in the center, it was surrounded by walls left in the front & 2 sides. A partial wall was to the rear of the house with a wooded area beyond that. My self and my team (Sec A) were to Gordon Security around the sides and in the courtyard ~~POH~~. I placed one soldier to the right of the house and one on the left to pull security and I remained in the courtyard by the front gate. The other section (Sec B) consisted of Squad leader SSG Worst and Btm leader SGT Pizer they were the clearing team. I saw them induce a soft entry by knocking on the door of the home. A gentle man opened the door, SSG Worst asked the gentle mans name. The gentleman happened to be one of the names on the list so SSG Worst brought him outside and asked him to stand by while himself read SGT Pizer searched the house. I had eyes on the gentle man gentleman while SSG Worst & SGT Pizer searched the house. ~~POH~~

~~was a 9mm~~ ^{BOB} ~~pistol~~ SSG West asked the man if he had weapons at his home the man replied with a "no" even after SSG West pointed to his weapon while asking the question and motioning in the home. The Results of search was a 9mm pistol with full magazine. SSG West showed pistol to the man and asked why he lied. The man replied with "im sorry", then offered SSG West a cigarette. He accepted and both smoked while SSG West questioned him about any other weapons or mortars. The man motioned inside SSG ~~West~~ ^{BDH} West asked, "what?" The man said, "please". So SSG West & SGT Pizer ~~went~~ ^{BDH} went inside of the home with the gentleman. His 3 wives and 8 or so children were brought out of the house. This put them in my control. I sat them down outside the front gate were a Berck was and additional security by the INF in a security position could help keep eye on them. Coming back in the gate the front door was closed. I heard gun shots from with in the house. I ran up to the door and SSG West & SGT Pizer were coming out carrying another 9mm pistol. SSG West told me the gentleman walked into a room grab something from a pile of rubble and pointed it at ~~me~~ ^{BDH} them and SSG West shot the man that he was dead. SSG West & SGT Pizer searched the house more thoroughly and had called LT Nelson over to house to explain situation. LT Nelson called it up to here we collapsed position.

Q - SA HAWKS

A - SSG Hillis

Q - Did you write this statement?

A - Yes

Initials of Person Making Statement BDH

Page 3 of Pages

Q - Who were the members of your squad?

A - SSG Wertz Saylor / SGT Hillis - SGT Price Tml DRS
PVT Foor / PFC Pannell / PVT Plato / ^{PFC Stewart} DONT BELIEVE PRESENT AT
TIME OF MISSION

Q - Has this team cleared houses together before this?

A - Yes, PVT Foor was a new member to squad and on first mission with squad. PVT Foor was part of (Sec A) ~~SW~~ Team.

Q - Do you know what happened to the list with the names to be searched?

A - When names were matched to body's at Controll Point and after mission the list should have been turned into ILT Nelson

Q - Were any of the names on the list distinguished by any means from other names on the list?

A - Check mark by apprehended & highlighted ~~primarily~~ suspected of living in the area.

Q - How many names were highlighted?

A - Two to three names

Q - Was the name of the individual that was shot highlighted?

A - Don't ^{BDH} Remember

Q - Where were you when the individual was shot?

A - At Front gate By Street Controll Vernon + Childers

Q - How many shots did you hear coming from the house?

A - 4 or 5 shots.

Q - Do you know what type of weapons were fired?

Initials of Person Making Statement BDH

Page 4 of Pages

A. M4 Carbine 5.56mm

Q - Did you hear shots from the 9mm?

A. Can not distinguish difference from 9mm or M16
inside a house behind a door with cushions + Blankets.

Q - Had you seen the 9mm that they brought from the house before?

A. No.

Q - Did SSG West talk to the Squad after the incident?

A. Yes, he explained what happened to keep Squad informed
AND told everyone in Squad good job with execution
of our part of the mission.

Q - Can you be more specific about what SSG West told the Squad?

A. Same as in statement only action is that SSG West
suggested PFC Parnell get credit for the shooting
in defense of the Squad.

Q - Did SSG West say or do anything that would lead you to believe it did not happen as you stated it?

A. No, he was confident and backed by Sgt Pizer.

Q - Did you discuss this situation with anyone after the incident?

A. Yes, SFC Caballo + 2Lt Maurer

Q - Have you discussed the situation with any of your soldiers since you returned from Iraq?

A - ~~Don't~~ believe so

Q - Having reviewed your statement is there anything you want to add to this statement?

A - ^{BDH} ~~The initial soft entry consisted of SSG West~~ ^{BDH}
~~PPC Stewart~~ ^{BDH} white

1.) SSG West was in charge of team entering house can't be sure of team members, constantly switching positions.

2.) I remember SSG West & another soldier re-entering house. ~~PPC Stewart~~ ^{BDH} PPC Stewart & SSG West re-entered house shots were fired. PPC Stewart & SSG West exited house carrying 9mm pistol man was DEAD.

PPC Stewart made a statement along the lines of "he wouldn't die so I had to beat him in the head" ^{paraphrase of PPC Stewart statement time}

~~NOT USED~~ ^{BDH}

3.) Both SSG West ^{and I} carried Iraqi 9mm pistols in our Camel Paks as a second weapon.

~~NOT USED~~ ^{BDH}

4.) I expressed concern of how SSG West handled the squad that night and over night to PSG & Lt and was advised by PSG that SSG West's leadership style and operational execution were different. ^{than mine} I also explained that PPC Parrish was not in the house that he was with me outside of the fence ^{BDH} at the time of the shooting ^{BDH} occurred as well as ^{PT} Fear. I did not write him ^{BDH} awarded for something he didn't do.

Initials of Person Making Statement BDH

Page 6 of Pages

A- NO

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

A- I am not purposely withholding anything for anybody.

Q- Do you have any thing to add to this statement

A- NO! !!! END STATEMENT !!!

Statement of _____, taken at the 48th MP Detachment, Fort Carson, CO, dated _____
Continued:

AFFIDAVIT

I, Bryan D Hillis, have read or 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 and I have initialed all corrections and 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.


(Signature of Person Making Statement)

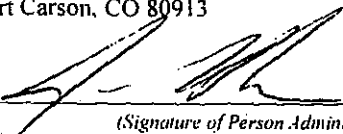
WITNESS:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 18 day of November, 2004 at Fort Carson, CO 80913

(Signature of Witness)

(Typed Name of Witness)

(Organization of Witness)


(Signature of Person Administering Oath)

SA Jon Hawks
(Typed Name of Person Administering Oath)

ART 136, UCMJ
(Authority To Administering Oath)

Initials of Person Making Statement BDH

Page 2 of Pages

**DEPARTMENT OF THE ARMY**

US ARMY TRIAL DEFENSE SERVICE
REGION IV, FORT HOOD FIELD OFFICE
1ST CAVALRY DIVISION BRANCH OFFICE
FORT HOOD, TEXAS 76544

REPLY TO
ATTENTION OF:

AFZF-JA-TDS

28 February 2005

MEMORANDUM THRU

CPT Steven Fuller, Trial Counsel, Office of the Staff Judge Advocate, 4th Infantry Division, Fort Hood, Texas 76544

CPT Thomas Schiffer, Chief of Military Justice, Office of the Staff Judge Advocate, 4th Infantry Division, Fort Hood, Texas 76544

LTC Tracy Barnes, Staff Judge Advocate, Office of the Staff Judge Advocate, 4th Infantry Division, Fort Hood, Texas 76544

FOR Commander 4th Infantry Division, Fort Hood, Texas 765444

SUBJECT: Request for Witness Immunity, United States v. SSG Shane Werst, Headquarters and Headquarters Company, 4th Infantry Division, Fort Hood, Texas 76544

1. IAW Rule for Court-Martial (R.C.M.) 704 the Defense in the above referenced case requests that the Convening Authority grant testimonial immunity to the following witnesses:

- a. PFC Nathan D. Stewart, E Co. 1/8 INF, Fort Carson, CO 80913;
- b. SPC Charles M. Pannell, E Co. 1/8 INF, Fort Carson, CO 80913;
- c. SGT Jason Pizer, E Co. 1/8 INF, Fort Carson, CO 80913; and
- d. SGT Bryan D. Hillis, E Co. 1/8 INF, Fort Carson, CO 80913.


2. The above requested individuals are relevant and necessary witnesses in the case of United States v. SSG Shane Werst. As of this date, they have all spoken with legal counsel and are currently exercising their right to remain silent in accordance with Article 31, Uniform Code of Military Justice (U.C.M.J.).

3. The Defense requests that grants of immunity for these witnesses be issued as soon as possible. SSG Werst's case was referred on 17 February 2005 and the Government has requested a trial date of 29 March 2005. Without a grant of immunity issued by the Convening Authority the Defense cannot currently question these individuals or adequately prepare for trial.

AFZF-JA-TDS

SUBJECT: Request for Witness Immunity, United States v. SSG Shane Werst,
Headquarters and Headquarters Company, 4th Infantry Division, Fort Hood,
Texas 76544

4. POC is the undersigned at (254) 287-9419/ DSN 737-9419/ FAX 287-4993.



Mark A. Santos
CPT, JA
Defense Counsel



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS 4TH INFANTRY DIVISION
FORT HOOD, TX 76544-5000

AFYB-CG

MEMORANDUM FOR Private First Class Nathan D. Stewart, _____, Company E, 1st Battalion, 8th Infantry Regiment, 3d Brigade, 4th Infantry Division, Fort Carson, Colorado 80913

SUBJECT: Grant of Testimonial Immunity and Order to Testify in the Courts-Martial of United States v. Staff Sergeant Shane Werst

1. As an officer empowered to convene general courts-martial, and pursuant to Rule for Courts-Martial (RCM) 704, Manual for Courts-Martial (2002 Edition), I make the following findings:

a. You possess information relevant and necessary to the court-martial pending against Staff Sergeant Shane Werst, specifically regarding the murder, and obstruction of justice charges. Your testimony is vital to justice and the good order and discipline of this command.

b. Absent immunity, you would have the right to decline to answer questions concerning your involvement with Staff Sergeant Shane Werst based upon your privilege against self-incrimination.

2. On the basis of these facts, pursuant to RCM 704(a)(2), you are ordered to appear and testify truthfully at any investigative hearings or courts-martial of United States v. Staff Sergeant Shane Werst concerning your knowledge of misconduct committed by Staff Sergeant Shane Werst. No statement, testimony, or other information given by you concerning the alleged misconduct by the accused, subsequent to this grant of immunity (or information directly or indirectly derived from such statement, testimony, or other information) in connection with this case shall be used against you in a later court-martial, except a prosecution for perjury, giving a false statement, or failing to comply with this order.

3. You shall also make yourself available to government investigating agencies, trial counsel, and defense counsel for Staff Sergeant Shane Werst to discuss the continuing investigation, deposition and court-martial proceedings. You will completely and truthfully answer all questions posed to you and provide all information known to you that is relevant to this case.

4. This order is effective when presented to you by the trial counsel or his representative.


JAMES D. THURMAN
Major General, USA
Commanding

MEMORANDUM FOR Commanding General, 4th Infantry Division, Fort Hood, Texas 76544

SUBJECT: Grant of Testimonial Immunity and Order to Testify in the Court-Martial of United States v. Staff Sergeant Shane Werst

I acknowledge receipt of a copy of the grant of testimonial immunity and order to testify in the court-martial of United States v. Staff Sergeant Shane Werst.

Date

NATHAN D. STEWART
PFC, USA



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS 4TH INFANTRY DIVISION
FORT HOOD, TX 76544-5000

AFYB-CG

MEMORANDUM FOR Specialist Charles M. Pannell, _____ Company E, 1st
Battalion, 8th Infantry Regiment, 3d Brigade, 4th Infantry Division, Fort Carson, Colorado
80913

**SUBJECT: Grant of Testimonial Immunity and Order to Testify in the Courts-Martial of
United States v. Staff Sergeant Shane Werst**

1. As an officer empowered to convene general courts-martial, and pursuant to Rule for
Courts-Martial (RCM) 704, Manual for Courts-Martial (2002 Edition), I make the following
findings:


a. You possess information relevant and necessary to the court-martial pending
against Staff Sergeant Shane Werst, specifically regarding the murder, and obstruction of
justice charges. Your testimony is vital to justice and the good order and discipline of this
command.

b. Absent immunity, you would have the right to decline to answer questions
concerning your involvement with Staff Sergeant Shane Werst based upon your privilege
against self-incrimination.

2. On the basis of these facts, pursuant to RCM 704(a)(2), you are ordered to appear and testify
truthfully at any investigative hearings or courts-martial of United States v. Staff Sergeant Shane
Werst concerning your knowledge of misconduct committed by Staff Sergeant Shane Werst. No
statement, testimony, or other information given by you concerning the alleged misconduct by
the accused, subsequent to this grant of immunity (or information directly or indirectly derived
from such statement, testimony, or other information) in connection with this case shall be used
against you in a later court-martial, except a prosecution for perjury, giving a false statement, or
failing to comply with this order.

3. You shall also make yourself available to government investigating agencies, trial counsel,
and defense counsel for Staff Sergeant Shane Werst to discuss the continuing investigation,
deposition and court-martial proceedings. You will completely and truthfully answer all questions
posed to you and provide all information known to you that is relevant to this case.

4. This order is effective when presented to you by the trial counsel or his representative.


JAMES D. THURMAN
Major General, USA
Commanding

MEMORANDUM FOR Commanding General, 4th Infantry Division, Fort Hood, Texas 76544

SUBJECT: Grant of Testimonial Immunity and Order to Testify in the Court-Martial of United States v. Staff Sergeant Shane Werst

I acknowledge receipt of a copy of the grant of testimonial immunity and order to testify in the court-martial of United States v. Staff Sergeant Shane Werst.

Date

CHARLES M. PANNELL
SPC, USA



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS 4TH INFANTRY DIVISION
FORT HOOD, TX 76544-5000

AFYB-CG

MEMORANDUM FOR Staff Sergeant Bryon D. Hillis,
Division, Fort Carson, Colorado 80913

3d Brigade, 4th Infantry

SUBJECT: Grant of Testimonial Immunity and Order to Testify in the Courts-Martial of
United States v. Staff Sergeant Shane Werst

1. As an officer empowered to convene general courts-martial, and pursuant to Rule for Courts-Martial (RCM) 704, Manual for Courts-Martial (2002 Edition), I make the following findings:

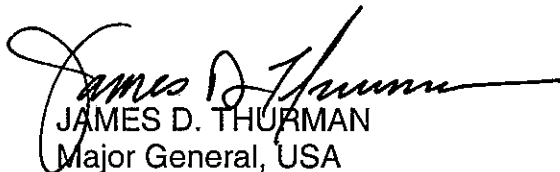
a. You possess information relevant and necessary to the court-martial pending against Staff Sergeant Shane Werst, specifically regarding the murder, and obstruction of justice charges. Your testimony is vital to justice and the good order and discipline of this command.

b. Absent immunity, you would have the right to decline to answer questions concerning your involvement with Staff Sergeant Shane Werst based upon your privilege against self-incrimination.

2. On the basis of these facts, pursuant to RCM 704(a)(2), you are ordered to appear and testify truthfully at any investigative hearings or courts-martial of United States v. Staff Sergeant Shane Werst concerning your knowledge of misconduct committed by Staff Sergeant Shane Werst. No statement, testimony, or other information given by you concerning the alleged misconduct by the accused, subsequent to this grant of immunity (or information directly or indirectly derived from such statement, testimony, or other information) in connection with this case shall be used against you in a later court-martial, except a prosecution for perjury, giving a false statement, or failing to comply with this order.

3. You shall also make yourself available to government investigating agencies, trial counsel, and defense counsel for Staff Sergeant Shane Werst to discuss the continuing investigation, deposition and court-martial proceedings. You will completely and truthfully answer all questions posed to you and provide all information known to you that is relevant to this case.

4. This order is effective when presented to you by the trial counsel or his representative.


JAMES D. THURMAN
Major General, USA
Commanding

MEMORANDUM FOR Commanding General, 4th Infantry Division, Fort Hood, Texas 76544

SUBJECT: Grant of Testimonial Immunity and Order to Testify in the Court-Martial of United States v. Staff Sergeant Shane Werst

I acknowledge receipt of a copy of the grant of testimonial immunity and order to testify in the court-martial of United States v. Staff Sergeant Shane Werst.

Date

BRYON HILLIS
SSG, USA



DEPARTMENT OF THE ARMY

HEADQUARTERS 4th Infantry Division
FORT HOOD, TEXAS 76544

REPLY TO
ATTENTION OF:

MEMORANDUM FOR Military Magistrate

21 November 2004

SUBJECT: Pretrial Confinement of SSG Shane Allen Werst, Headquarters and
Headquarters Company, 4th Infantry Division, Fort Hood, Texas 76544

1. I have probable cause to believe that SSG Werst, a soldier in my company, committed offenses triable by court-martial. Confinement is necessary for the following reasons: it is foreseeable that he will not appear at trial, pretrial hearing, or investigation, and less severe forms of restraint have been determined to be inadequate.
2. There is probable cause that SSG Werst has committed the following offenses as is evident by the attached document packet: Violation of Articles 81 (Conspiracy to commit murder and Conspiracy to Obstruct Justice), Article 118 (Murder), and Article 134 (Obstructing Justice).
3. I am concerned both that SSG Werst will absent himself from the unit rather than appear at any judicial proceeding and that his continued presence in my company poses a very real threat to the effectiveness, morale, discipline, and readiness of my company. In reaching this decision, I considered the nature and circumstances of the offenses that he is suspected of committing, the weight of the evidence against him, and his lack of any ties to the local area.
 - a. Nature and circumstances of the offenses: Murder. On or about 3 January 2004, while in Iraq, SSG Werst was a member of E Company, 1/8 Infantry, 3d Brigade, 4th Infantry Division. During the early hours of that day SSG Werst was a squad leader in an operation that was involved in the searching of several Iraqi homes at or near Balad, Iraq. During one of the searches an Iraqi male was located in a home with his family. During a breach on an Iraqi home an Iraqi citizen was detained, secured, and searched by SSG Werst and PFC Stewart. SSG Werst and PFC Stewart then took Ismail to a different room in the house, while the rest of the squad secured Naser Ismail's family. SSG Werst then directed PFC Stewart to assault Ismail and PFC Stewart complied. SSG Werst then directed PFC Stewart to stand Ismail up. SSG Werst then shot and killed Naser Ismail. SSG Werst then used an unauthorized pistol and fired multiple rounds into the wall and placed the pistol in the hand of Naser Ismail who was deceased.
 - b. Members of the squad confirm the pre-meditated murder of Naser Ismail by SSG Werst. Squad members also state that SSG Werst instructed the beating of Naser Ismail and obstructing justice by fabricating evidence relating to the 9mm pistol.
 - c. Conspiracy and Obstruction. After the murder of Ismail, SSG Werst and members of his squad agreed to cover up the murder by indicating that the killing was justified. During the discussion regarding the cover up, SSG Werst acknowledged that he murdered Ismail. This

MEMORANDUM FOR Military Magistrate


conspiracy to obstruct justice involves junior soldier in his squad and other members of 1/8 Infantry. This conspiracy to obstruct justice is ongoing and is being actively investigated. I have grave concerns that further acts, either by SSG Werst or directed at him, to obstruct will occur.

d. The weight of evidence against the accused is sufficient to warrant pre-trial confinement. There is overwhelming evidence to suggest that SSG Werst committed the offenses listed on the confinement order.

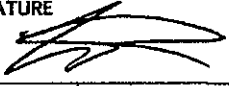
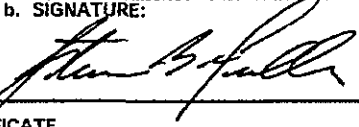
e. Lack of ties to local area is a concern for the command and is a reason for confinement. SSG Werst's was brought from a Michigan recruiting assignment to Fort Hood to face these charges. The recruiting command has given 4th Infantry Division jurisdiction over this case. SSG Werst is now attached to my company to face these charges. He has no local ties to the local area and I do not have the personnel assets to effectively ensure his continued presence and/or guard against future misconduct in the form of obstruction of justice.

4. If the unit is to use mere conditions on liberty, those conditions are only enforceable by moral persuasion on the confinee. Administrative restriction has been considered but I have determined that restriction alone is insufficient to prevent SSG Werst's absence. SSG Werst lacks any ties to the local area and the seriousness of the charges warrants confinement. For these reasons, I fear that SSG Werst will flee if he is not placed in pretrial confinement. Placing SSG Werst in pretrial confinement is the safest and most prudent option available to me.

5. The point of contact for this memorandum is the undersigned at 681-4800.


LUIS GUARDA
CPT/AV
Commanding

CONFINEMENT ORDER

1. PERSON TO BE CONFINED				2. DATE (YYYYMMDD)	
a. NAME (Last, First, Middle) Werst, Shane, Allen			b. SSN		20041121
c. BRANCH OF SERVICE ARMY	d. GRADE SSG	e. MILITARY ORGANIZATION (From): HHC, 4th Infantry Division			
TYPE OF CONFINEMENT					
a. PRE-TRIAL <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES			b. RESULT OF NJP <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES		
c. RESULT OF COURT MARTIAL: <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES					
TYPE: <input type="checkbox"/> SCM <input type="checkbox"/> SPCM <input type="checkbox"/> GCM <input type="checkbox"/> VACATED SUSPENSION					
4. OFFENSES/CHARGES OF UCMJ ARTICLES VIOLATED: Article 81 (Conspiracy), Article 118 (Murder), and Article 134 (Obstructing Justice)					
5. SENTENCE ADJUDGED:				b. ADJUDGED DATE (YYYYMMDD):	
6. IF THE SENTENCE IS DEFERRED, THE DATE DEFERMENT IS TERMINATED:					
7. PERSON DIRECTING CONFINEMENT					
a. TYPED NAME, GRADE AND TITLE: Luis Guarda, CPT/Commander		b. SIGNATURE 		c. DATE (YYYYMMDD) 20041121	d. TIME
8.a. NAME, GRADE, TITLE OF LEGAL REVIEW AND APPROVAL Steven B. Fuller, CPT/JA			b. SIGNATURE: 		c. DATE (YYYYMMDD) 20041121
MEDICAL CERTIFICATE					
9a. The above named inmate was examined by me at _____ on _____ and found to be <input type="checkbox"/> Fit <input type="checkbox"/> Unfit <small>(Time)</small> <small>(YYYYMMDD)</small> for confinement. I certify that from this examination the execution of the foregoing sentence to confinement <input type="checkbox"/> will <input type="checkbox"/> will not produce serious injury to the inmate's health.					
b. The following irregularities were noted during the examination (if none, so state):					
c. HIV Test administered on (YYYYMMDD): _____					
d. Pregnancy test administered on (YYYYMMDD): _____ <input type="checkbox"/> N/A					
10. EXAMINER					
a. TYPED NAME, GRADE AND TITLE:		b. SIGNATURE		c. DATE (YYYYMMDD)	d. TIME
RECEIPT FOR INMATE					
11.a. THE INMATE NAMED ABOVE HAS BEEN RECEIVED FOR CONFINEMENT AT: _____ <small>(Facility Name and Location)</small>					
ON _____ AND TIME: _____ <small>(YYYYMMDD)</small> <small>(Time)</small>					
b. PERSON RECEIPTING FOR INMATE TYPED NAME, GRADE AND TITLE:		c. SIGNATURE:		d. DATE (YYYYMMDD)	e. TIME

CHECKLIST FOR PRETRIAL CONFINEMENT

For use of this form, see AR 27-10; the proponent agency is TJAG

NAME Werst, Shane Allen	GRADE E-6	UNIT HHC, 4th Infantry Division
AGE 31	ETS 20120731	TOTAL SERVICE TO DATE 14 YRS 2 MONTHS
MARRIED Yes	WIFE/HUSBAND IN LOCAL AREA No	NUMBER OF CHILDREN 2

(Specify)

NUMBER OF ARTICLE 15's: **2**

DATE	OFFENSE	PUNISHMENT

NUMBER OF CONVICTIONS: **0**

--	--	--

NUMBER OF PRESENT OFFENSES: **4**

ARTICLE	DATE	DESCRIPTION OF OFFENSE (If AWOL, from-to, etc., and whether surrendered or apprehended)
Article 81 - Conspiracy	3 Jan 2004	See Attached Commander's Memorandum
Article 118 - Murder	3 Jan 2004	
Article 134 - Obstructing Justice	3 Jan 2004	

PRETRIAL CONFINEMENT IS APPROPRIATE BECAUSE:

a. There is probable cause to believe an offense has been committed by the accused. *(List specific reasons why it is believed an offense has been committed by the accused.)*

See Attached Commander's Memorandum

b. To ensure the accused's presence at trial, pretrial hearing or investigation. (List specific reasons why it is believed the accused may not be present and summarize the conduct of the accused which warrants pretrial confinement and tends to indicate the accused is not likely to be available for trial, pretrial hearing or investigation.)


See Attached Commander's Memorandum

c. To prevent foreseeable serious criminal misconduct including any efforts at obstructing justice. (List specific reasons why it is believed the accused may commit acts of serious criminal misconduct if not incarcerated, particularly if these acts pose a threat to others, the command or national security, and summarize the conduct of the accused which warrants pretrial confinement and tends to indicate the accused may commit future acts of serious misconduct.)

See Attached Commander's Memorandum

d. Lesser forms of restraint are inadequate. (List the alternatives that have proven inadequate or summarize the reasons why it is believed such alternatives would be inadequate.)

See Attached Commander's Memorandum

DATE	TYPED NAME, RANK, AND ORGANIZATION OF COMMANDER	SIGNATURE
21 NOV 04	Luis Guarda, CPT HHC, 4th Infantry Division, Fort Hood, Texas 76544	

DECISION OF MILITARY MAGISTRATE

TO: (Addressee(s))	DATE
Commander, 4th Infantry Division (Mechanized)	

On _____, I reviewed the circumstances concerning the continued pretrial confinement of
(Date)

. Based upon this review, I: (Check appropriate statement)

(Name)

Determine that continued pretrial confinement is warranted.

Determine that continued pretrial confinement is not warranted and order his/her release from pretrial confinement.

TYPED NAME, GRADE, AND BRANCH OF MILITARY MAGISTRATE	SIGNATURE
--	-----------



DEPARTMENT OF THE ARMY
HEADQUARTERS, SPECIAL TROOPS BATTALION
4TH INFANTRY DIVISION (MECHANIZED)
FORT HOOD, TEXAS 76544-5056

REPLY TO
ATTENTION OF

AFYB-STB-CDR


22 NOV 2004

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Assumption of Command By Authority of AR 600-20, Paragraph 2-8a

1. The undersigned assumes command of the 4ID Special Troops Battalion, Fort Hood, Texas, 76544, effective 0001 hrs, 23 NOV 2004 thru 2359 hrs, 5 DEC 2004.
2. Point of contact is the undersigned at DSN 287-3654.

VOICE OF THE IRONHORSE!


JAY K. CHAPMAN
MAJ, SC
Commanding



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
FORT HOOD FIELD OFFICE
FORT HOOD, TEXAS 76544

AFZF-JA-TDS

29 November 2004

MEMORANDUM FOR Military Magistrate, CPT Matthew Ward

SUBJECT: Pre-Trial Confinement Hearing Delay Request -- SSG Shane Werst,
Headquarters and Headquarters Company, 4th Infantry Division, Fort Hood,
Texas 76544

1. The defense requests a delay in the Pretrial Confinement Hearing in the above case from 29 November 2004 to 30 November 2004. The reason for the delay is to allow time for the Accused's civilian counsel to travel to Fort Hood and attend the hearing. The Accused's civilian counsel, Mr. David Sheldon, resides in Washington, D.C. and will be traveling to Fort Hood, via airplane, on 29 November 2004. He will be able to represent the Accused at the hearing on 30 November 2004.
2. The defense will be credited with the delay.
3. POC is the undersigned at 287-9419. (Fax 287-4993).

// Original Signature //

MARK A. SANTOS
CPT, JA
Defense Counsel



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS, 4TH INFANTRY DIVISION
FORT HOOD, TEXAS 76544


AFYB-JA-MM

22 November 2004

MEMORANDUM FOR Commander, HHC, 4th Infantry Division, Fort Hood, Texas 76544

SUBJECT: Probable Cause review under RCM 305(i)(1) for SSG Shane A. Werst,
HHC, 4th Infantry Division, Fort Hood, Texas 76544

1. I have reviewed the adequacy of probable cause to continue pretrial confinement and I believe that there is sufficient probable cause to continue SSG Shane A. Werst's pretrial confinement.
2. Point of contact for this memorandum is the undersigned at 287-1807 or by email at Richard.J.Henry@hood.army.mil.


RICHARD J. HENRY
CPT, JA
Military Magistrate

UNITED STATES ARMY TRIAL JUDICIARY
THIRD JUDICIAL CIRCUIT
FORT HOOD, TEXAS

UNITED STATES	§	MAGISTRATE'S DECISION
	§	RCM 305(i)(2) REVIEW
v.	§	
SSG Shane Werst	§	DISAPPROVAL OF CONTINUED
HHC,	§	PRETRIAL CONFINEMENT
4 th Infantry Division	§	
Fort Hood, Texas 76544	§	30 November 2004

1. On 21 November 2004, CPT Luis Guarda, the Commanding Officer Headquarters and Headquarters Company, 4th Infantry Division, ordered SSG Shane Allen Werst ("Accused"), into pretrial confinement (PTC) pursuant to Rules for Courts-Martial (RCM) 305.

2. CPT Richard Henry conducted the *48-Hour Review* on 22 November 2004 in accordance with RCM 305(i)(1). The memorandum attached to DA Form 5112-R delineates the command's rationale for imposing pretrial confinement upon the accused. A one day delay request by defense was granted so that the accused's Civilian Defense Counsel (CDC), Mr. David Sheldon could attend the hearing. After consulting with CPT Mark Santos, Defense Counsel (DC), the accused appeared for the *7-day Review* hearing with DC and CDC on 30 November 2004. Statements from CPT Steven Fuller, Government's Representative (GR), DC and CDC and documentary evidence were considered. The evidence presented does not support a finding of continued pretrial confinement. The documentary evidence consisted of a PTC packet submitted by GR. The PTC packet included the following information:

- a. DD Form 2707, Confinement Order;
- b. DA Form 5112-R, Checklist for Pretrial Confinement;
- c. Commander's Pretrial Confinement Memorandum;
- d. CID Investigation;
- e. Sworn statements from: Nathan Stewart (2), Alison Stewart, Charles Pannell, Byron Hillis, Joseph Foor, Anthony Cabello and Daniel Maurer;
- f. PCS orders from Great Lakes RBN 3rd RCTG BDE to 4th Infantry Division;
- g. Accused's Enlisted Record Brief; and
- h. DD Form 458 Charge Sheet.

3. The preponderance of the evidence supports the following factual findings upon which this decision is based.

a. The accused is a married, thirty-one year old soldier from California with two children and approximately fourteen years of military service. The accused has been brought to Fort Hood to face charges of premeditated murder and obstruction of justice. His family members are currently seeking on-post housing. There is no record of any

past misconduct by the accused. The accused has received thirty awards and decorations during his military service.

b. On or about 3 January 2003, the accused and his squad conducted a raid on an Iraqi village near Balad, Iraq. The raid consisted of a search for individuals who were involved in attacks on coalition forces. Specifically, Iraqi individuals were identified on a target list, and specific names on the list were highlighted. The highlighted names were individuals suspected of recent attacks on coalition forces; to include presumably, the mortar attack that killed the accused's company commander hours before the raid. During the raid of an Iraqi home, the accused and his squad found an individual Iraqi male whose name was highlighted on the list. A witness to the event, stated that the accused murdered the Iraqi male. Other statements tend to corroborate the events surrounding the incident.

4. A preponderance of the evidence suggests that a crime, premeditated murder, triable by court-martial has been committed, and that the accused committed that crime. However, to continue pretrial confinement, a preponderance of the evidence must show that: confinement is necessary because it is foreseeable that: a) the prisoner will not appear at trial, or the trial hearing, or investigation, or b) the prisoner will engage in serious misconduct, and c) less severe forms of restraint are inadequate. See RCM 305h(2)(B).

a. The only evidence suggesting that the accused *might* become a flight risk is the severity of the crime. The severity of the charges alone do not determine that the soldier is a flight risk. See RCM 305h(2)(B) Discussion. Aside from the severity of the crime, there is no indication that the soldier would be a flight risk. There is no past misconduct and his wife and two children have moved to Texas and are seeking on-post housing. This would give him sufficient ties to this community. The soldier has a stellar record with thirty awards and decorations. In his fourteen years of service, there is no evidence of any past misconduct. The evidence does not demonstrate that the accused will not appear at trial if released from pretrial confinement.

b. The evidence does NOT suggest that the accused is likely to engage in future serious criminal misconduct within the meaning of RCM 305, if released.

1. Obstruction of Justice: The mere possibility that the accused may obstruct justice by contacting or threatening other witnesses is not enough. Although there is evidence to suggest that the accused fabricated a story after the incident, there is no evidence showing that the accused ever intimidated or threatened any witnesses or squad members since the incident. Even so, all witnesses reside outside of the state of Texas.

2. Premeditated Murder: The facts and circumstances of these charges are unlikely to be replicated outside of a war zone. Aside from this event, and considering the accused exemplary fourteen year career with no past misconduct, the accused is unlikely to be a threat to the local community.

c. The evidence does not show that lesser forms of restraint are inadequate. Considering his honorable service for the past fourteen years, aside from this event, there is no reason to question the accused's ability to follow orders. There is no evidence to suggest that the lesser forms of restraint, such as restriction to post, will be inadequate.

5. Based on the above findings and conclusions, the continued pretrial confinement of SSG Shane Allen Werst is disapproved under RCM 305. Signed this 1st day of December 2004, at Fort Hood, Texas.

// ORIGINAL SIGNATURE //
MATTHEW O. WARD
CPT, JA
Military Magistrate

DISTRIBUTION:
COL Gross, Military Judge
CPT Guarda, Commander
CPT Santos, Trial Defense Service
CPT Fuller, 4th Infantry Division Trial Counsel
Provost Marshal's Office

AFYB-JA

12 MAY 2005

MEMORANDUM FOR Commander, 4th Infantry Division (Mechanized), Fort Hood,
Texas 76544

SUBJECT: Excusal of Court-Martial Panel Members

1. Purpose. To obtain your decision concerning requests for excusal submitted by court-martial panel members.
2. Recommendation. That you consider excusing the following members from Court-Martial Convening Orders Number 2 and 4 dated 9 July 2004.
3. Discussion.

a. Colonel (COL) Allen W. Batschelet is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. COL Batschelet requests excusals due to approved leave from 23-27 May 2005.

Approved PT / Disapproved _____

b. Lieutenant Colonel (LTC) Mark A. Huron is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. LTC Huron requests excusal due to reflagging ceremony on 24 May 2005 and a Hail and Farewell on 25 May 2005.

Approved _____ / Disapproved PT

c. Lieutenant Colonel (LTC) Steven D. Russell is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. LTC Russell requests excusal due to scheduled TDY from 26 - 29 May 2005, where he will be the guest speaker at the 22d Infantry Association Reunion in Kansas City on the evening of 28 May 2005.

Approved _____ / Disapproved PT

d. Lieutenant Colonel (LTC) Daryl Gore is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. LTC Gore requests excusal due to scheduled TDY from 14 - 24 May 2005, for a Leaders' Recon to Kuwait.

Approved PT / Disapproved _____

e. Major (MAJ) Eric Moore is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. MAJ Moore requests excusal due to approved PCS leave on 23 May 2005.

Approved PT / Disapproved _____

12 MAY 2005

f. Major (MAJ) Thomas E. Detrick is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. MAJ Detrick requests excusal because he is PCSing to United States Army Operational Test Command, Fort Hood, on 1 June 2005.

Approved _____/Disapproved JPT

g. Command Sergeant Major (CSM) Ernest Barnett is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. CSM Barnett request excusal due to Brigade and Battalion change of command ceremonies on 26 May 2005.

Approved JPT/Disapproved _____

h. First Sergeant (1SG) Ronald Dvorsky is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. 1SG Dvorsky requests excusal because of a scheduled deployment to Fort Carson, CO from 13 May 2005 to 10 June 2005.

Approved JPT/Disapproved _____


i. First Sergeant (1SG) Rene F. Rarangol is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. 1SG Rarangol requests excusal because he is transitioning from the Army and will start his terminal leave on 17 June 2005.

Approved _____/Disapproved JPT

j. First Sergeant (1SG) James Hayes is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. 1SG Hayes requests excusal because transitioning from the Army and will start his terminal leave on 12 June 2005.

Approved _____/Disapproved JPT

- 3 Encls
1. Decision Document
2. CMCO #s 2 and 4
3. Soldiers' request


TRACY A. BARNES
LTC, JA
Staff Judge Advocate

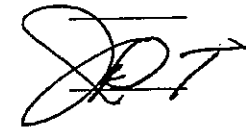
AFYB-CG

12 MAY 2005

MEMORANDUM FOR Staff Judge Advocate, 4th Infantry Division (Mechanized), Fort Hood, Texas 76544

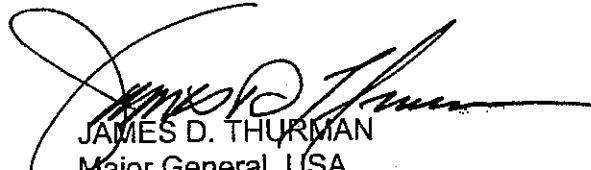
SUBJECT: Excusal of Court-Martial Panel Member

1. The requests for excusal are approved, in their entirety.
2. The requests for excusal are disapproved, in their entirety.
3. The requests for excusal are approved, in part, as indicated in the basic correspondence.



3 Encls

1. Decision Document
2. CMCO #s 2 and 4
3. Soldiers' Request


JAMES D. THURMAN
Major General, USA
Commanding

02 DEC 2004

MEMORANDUM FOR Commander, 4th Infantry Division, Fort Hood, Texas
76544

SUBJECT: Permanent Excusal of Court-Martial Panel Members

1. Purpose. To obtain your decision concerning requests for permanent excusal of court-martial panel members for the reasons indicated.
2. Recommendation. That you consider excusing the following member from Court-Martial Convening Orders Number 2 and 4 dated 9 July 2004.
3. Discussion.
 - a. COL James D. Moore, is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. Request that you permanently excuse COL Moore as a result of his death.

Approved _____/Disapproved _____


- b. CPT David W. Acker is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. CPT Ackers requests excusal due to permanent change of station.

Approved _____/Disapproved _____

- c. CPT Brandy M. Andrews is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. CPT Andrews requests excusal due to permanent change of station.

Approved _____/Disapproved _____

- 3 Encls
1. Decision Document
 2. CMCO #s 2 and 4
 3. Soldiers' Request


TRACY A. BARNES
LTC, JA
Staff Judge Advocate

AFYB-CG

02 DEC 2004

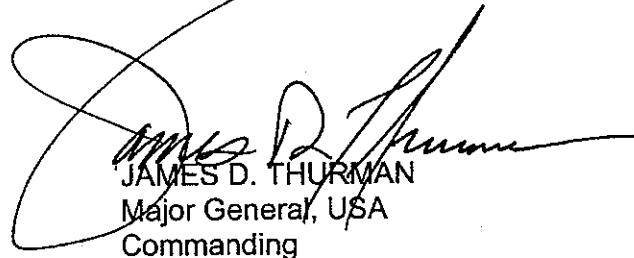
MEMORANDUM FOR Staff Judge Advocate, 4th Infantry Division, Fort Hood, Texas
76544

SUBJECT: Excusal of Court-Martial Panel Member

1. The requests for excusal are approved, in their entirety.
2. The requests for excusal are disapproved, in their entirety.
3. The requests for excusal are approved, in part, as indicated in the basic correspondence.

JDT

- 3 Encls
1. Decision Document
 2. CMCO #s 2 and 4
 3. Soldiers' Request


JAMES D. THURMAN
Major General, USA
Commanding

AFYB-JA

MEMORANDUM FOR Commander, 4th Infantry Division (Mechanized), Fort Hood, Texas
76544

SUBJECT: Excusal of Court-Martial Panel Members

1. Purpose. To obtain your decision concerning permanent excusal of court-martial panel members who are no longer within the 4th Infantry Division jurisdiction.
2. Recommendation. That you permanently excuse the following members from Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004.
3. Discussion.

a. Command Sergeant Major (CSM) Terry Alexander, is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. CSM Alexander was on orders to HHC, 1-66 AR but was reassigned to USA Garrison, Fort Hood.

Approved ✓ /Disapproved _____

b. First Sergeant (1SG) Jamie Garza is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. 1SG Garza has PCSed to Edmond, OK.


Approved ✓ /Disapproved _____

c. Sergeant First Class (SFC) Maria G. Galbraith is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. SFC Galbraith is on terminal leave with a retirement date of 31 October 2004.

Approved ✓ /Disapproved _____

2 Encls

1. Decision Document Excusal (TAB A)
2. CMCO #'s 2 and 4 (TAB B)


NATHAN W. RATCLIFF
MAJ, JA
Acting Staff Judge Advocate

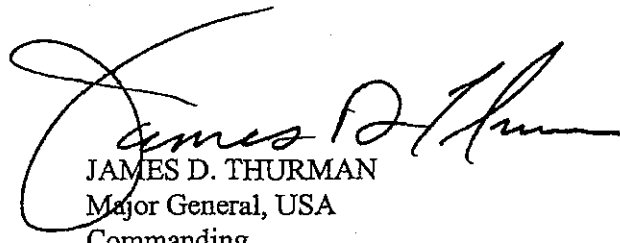
06 OCT 2004

MEMORANDUM FOR Staff Judge Advocate, 4th Infantry Division (Mechanized), Fort Hood,
Texas 76544

SUBJECT: Excusal of Court-Martial Panel Members

1. The excusals are approved, in their entirety.
2. The excusals are disapproved, in their entirety.
3. The excusals are approved, in part, as indicated
in the basic correspondence.

JPT


JAMES D. THURMAN
Major General, USA
Commanding

2 Encls

1. Decision Document Excusal (TAB A)
2. CMCO #'s 2 and 4 (TAB B)

14 APR 2005

MEMORANDUM FOR Commander, 4th Infantry Division (Mechanized), Fort Hood,
Texas 76544

SUBJECT: Excusal of Court-Martial Panel Members

1. Purpose. To obtain your decision concerning permanent excusal of court-martial panel members who are no longer within the 4th Infantry Division jurisdiction.
2. Recommendation. That you permanently excuse the following members from Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004.
3. Discussion.

a. Lieutenant Colonel (LTC) Conrad D. Christman, HHOC, 104th MI is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. LTC Christman has PCSd to Ill Corps.

Approved / Disapproved

b. Major (MAJ) David T. Vacchi, HHS, 2-20th FA is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. MAJ Vacchi will start PCS leave effective 14 May 2005.

Approved / Disapproved

c. 1SG Maurice Simmons, HHC, 588th EN, is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. 1SG Simmons will retire from active duty on 31 July 2005.

Approved / Disapproved

d. Master Sergeant (MSG) Zachary D. Harmon, HDC, 204th FSB is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. MSG Harmon has PCSd to Vicenza, Italy on 1 November 2004.

Approved / Disapproved

- 3 Encls
1. Permanent Excusal
 2. CMCO #'s 2 and 4
 3. Supporting Documents

TRACY A. BARNES
LTC, JA
Staff Judge Advocate

AFYB-CG

14 APR 2005

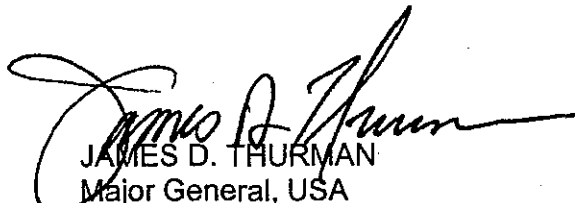
MEMORANDUM FOR Staff Judge Advocate, 4th Infantry Division (Mechanized), Fort Hood, Texas 76544

SUBJECT: Excusal of Court-Martial Panel Members

1. The excusals are approved, in their entirety.
2. The excusals are disapproved, in their entirety.
3. The excusals are approved, in part, as indicated in the basic correspondence.

DOT

- 3 Encls
1. SJA Recommendation
 2. CMCO #'s 2 and 4
 3. Supporting Documents


JAMES D. THURMAN
Major General, USA
Commanding



DEPARTMENT OF THE ARMY
HEADQUARTERS 4TH INFANTRY DIVISION (MECHANIZED)
FORT HOOD, TX 76544-5000

REPLY TO
ATTENTION OF:

AFYB-JA

09 JUL 2004

MEMORANDUM FOR RECORD

SUBJECT: Delegation of Authority to Excuse Court-Members before Assembly

As Convening Authority, I hereby delegate to the Staff Judge Advocate, 4th Infantry Division (Mechanized), or the Acting Staff Judge Advocate, during the Staff Judge Advocate's official absence, such as temporary duty or other circumstances that may constitute an official leave of absence including, but not limited to, ordinary and emergency leave, the authority to excuse individual members from court-martial duty. Pursuant to Rule for Courts-Martial 505(c)(1)(B) and Army Regulation 27-10, paragraph 5-18c, the Staff Judge Advocate may excuse court members without cause shown before the court-martial is assembled, but may not excuse more than one-third of the total number of members detailed by me to the court.

A handwritten signature in black ink, appearing to read "James D. Thurman", written over a large, stylized flourish.

JAMES D. THURMAN
Major General, USA
Commanding

CF:
Indiv Conc
Ofc Pers File
Duty Appt Bk
File

AFYB-JA

MEMORANDUM FOR Commander, 4th Infantry Division (Mechanized), Fort Hood,
Texas 76544

SUBJECT: Excusal of Court-Martial Panel Members

1. Purpose. To render my decision concerning requests for excusal submitted by
court-martial panel members.

2. Discussion.

a. Major (MAJ) Thomas E. Detrick is an alternate member on Court-Martial
Convening Orders Number 2 and 4, dated 9 July 2004. MAJ Detrick requests excusal
because he is PCSing to United States Army Operational Test Command, Fort Hood,
on 1 June 2005.

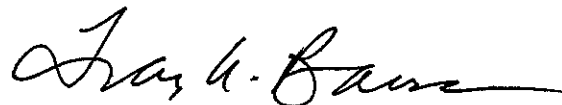
Approved TB Disapproved _____

b. First Sergeant (1SG) James Hayes is an alternate member on Court-Martial
Convening Orders Number 2 and 4, dated 9 July 2004. 1SG Hayes requests excusal
because transitioning from the Army and will start his terminal leave on 12 June 2005.

Approved TB Disapproved _____

3 Encls

1. Decision Document
2. CMCO #s 2 and 4
3. Soldiers' request



TRACY A. BARNES
LTC, JA
Staff Judge Advocate

23 May 2005

DEPARTMENT OF THE ARMY
HEADQUARTERS, 4TH INFANTRY DIVISION (MECHANIZED)
FORT HOOD, TEXAS 76544

COURT-MARTIAL CONVENING ORDER
NUMBER

2

9 July 2004

Pursuant to the authority contained in Article 23, UCMJ, a general court-martial is hereby convened. It may proceed at this headquarters to try such persons as may be properly brought before it. The court will be constituted as follows:

COL DONALD M. MACWILLIE, AV, HHC, 4TH BDE
COL ALLEN W. BATSCHELET, FA, HHB, DIVARTY
LTC MARK A. HURON, EN, HHC, 299 EN
LTC STEVEN D. RUSSELL, IN, HHC, 1-22 IN
LTC DARYL GORE, OD, HDC, 4TH FSB
LTC RICHARD J. MURASKI, EN, HHC, 588 EN
LTC JOSEPH M. MARTIN, AR, HHC, 1-67 AR
LTC CONRAD D. CHRISTMAN, MI, HHOC, 104TH MI
MAJ PAMELA S. HOLWERDA, OD, HDC, 4TH FSB
MAJ JESSIE ROBINSON, AR, HHC, 1-66 AR

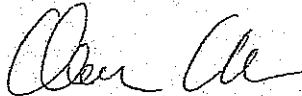
If the accused submits a request pursuant to Article 25(c), UCMJ, that enlisted members serve on the court-martial, the above named officer members not named below are excused and the court will be constituted as follows:

COL DONALD M. MACWILLIE, AV, HHC, 4TH BDE
COL ALLEN W. BATSCHELET, FA, HHB, DIVARTY
LTC MARK A. HURON, EN, HHC, 299 EN
LTC STEVEN D. RUSSELL, IN, HHC, 1-22 IN
LTC DARYL GORE, OD, HDC, 4TH FSB
✓ CSM ERNEST BARNETT JR., HHC, 1-67 AR
✓ CSM GABRIEL CERVANTES, HHC, 2-8 IN
✓ SGM TERRY ALEXANDER, HHC, 1-66 AR
✓ 1SG RONALD W. DVORSKY JR, A TRP, 1-10 CAV
MSG RENE F. RARANGOL, A CO, 404TH ASB

CMCO No. 2, DA HQ, 4th Infantry Division (Mechanized), Fort Hood, Texas 76544,
dated 9 July 2004 (continued)

All cases referred to the general court-martial convened by Court-Martial Convening
Order Number 3, dated 9 October 2003 in which the court has not yet been assembled,
will be brought to trial before the court-martial hereby convened.

BY COMMAND OF MAJOR GENERAL THURMAN:



CHRISTINE A. COBB
SSG, USA
NCOIC, Criminal Law Division

DISTRIBUTION:

Each Individual Indicated (1)
Command, 4th Infantry Division
(Mechanized) (1)
Staff Judge Advocate (1)
Record of Trial (1)
Record Set (1)
Reference Set (1)

**4th Infantry Division (Mechanized) Panel
Selected 9 July 2004**

Alternate panel members for Court-Martial Convening Order Numbers 2 & 4, dated 9 July 2004

ALTERNATE OFFICER MEMBERS

COL JAMES M. MOORE, OD, HHC, DISCOM
MAJ THOMAS E. DETRICK, OD, HHD, 704TH DSB
MAJ WILLIAM A. GEIGER, FA, HSB, 3-16 FA
MAJ ERIC MOORE, AR, 1-10 CAV
MAJ PAUL E. OWEN, EN, HHC, 588 EN
MAJ DAVID T. VACCHI, FA, HHS, 2-20TH FA
CPT DAVID W. ACKER, EN, C CO, 588 EN
CPT BRANDY M. ANDREWS, QM, HHC, DISCOM
CPT COLIN N. BROOKS, IN, HHC, 2-8 IN

ALTERNATE ENLISTED MEMBERS

CSM MILTON A. JONES, HDC, 4TH FSB
CSM MICHAEL E. WILLIAMS, HHB, 4-42 FA
1SG JAMIE GARZA, HHC, 1-22 IN
1SG JAMES F. HAYES, HHC, 4TH BDE
1SG MAURICE SIMMONS, HHC, 588 EN
MSG ZACHARY D. HARMON, HDC, 204TH FSB
SFC MARIA G. GALBRAITH, HHC, 4TH BDE
SFC DWIGHT D. RICHARD, HHB, DIVARTY
SFC WARREN P. STEVENS, HHC, DISCOM
SFC TYRONE C. WILLIS, HHC, 299 EN

12 MAY 2005

MEMORANDUM FOR Commander, 4th Infantry Division (Mechanized), Fort Hood,
Texas 76544

SUBJECT: Excusal of Court-Martial Panel Members

1. Purpose. To obtain your decision concerning requests for excusal submitted by court-martial panel members.
2. Recommendation. That you consider excusing the following members from Court-Martial Convening Orders Number 2 and 4 dated 9 July 2004.
3. Discussion.

a. Colonel (COL) Allen W. Batschelet is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. COL Batschelet requests excusals due to approved leave from 23rd - 27 May 2005.

Approved AP / Disapproved _____

b. Lieutenant Colonel (LTC) Mark A. Huron is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. LTC Huron requests excusal due to reflagging ceremony on 24 May 2005 and a Hail and Farewell on 25 May 2005.

Approved _____ / Disapproved AP

c. Lieutenant Colonel (LTC) Steven D. Russell is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. LTC Russell requests excusal due to scheduled TDY from 26 - 29 May 2005, where he will be the guest speaker at the 22d Infantry Association Reunion in Kansas City on the evening of 28 May 2005.

Approved _____ / Disapproved AP

d. Lieutenant Colonel (LTC) Daryl Gore is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. LTC Gore requests excusal due to scheduled TDY from 14 - 24 May 2005, for a Leaders' Recon to Kuwait.

Approved AP / Disapproved _____

e. Major (MAJ) Eric Moore is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. MAJ Moore requests excusal due to approved PCS leave on 23 May 2005.

Approved AP / Disapproved _____

AFYB-JA
SUBJECT: Excusal of Court-Martial Panel Members

12 MAY 2005

f. Major (MAJ) Thomas E. Detrick is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. MAJ Detrick requests excusal because he is PCSing to United States Army Operational Test Command, Fort Hood, on 1 June 2005.

Approved _____/Disapproved JPT

g. Command Sergeant Major (CSM) Ernest Barnett is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. CSM Barnett request excusal due to Brigade and Battalion change of command ceremonies on 26 May 2005.

Approved JPT/Disapproved _____

h. First Sergeant (1SG) Ronald Dvorsky is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. 1SG Dvorsky requests excusal because of a scheduled deployment to Fort Carson, CO from 13 May 2005 to 10 June 2005.

Approved JPT/Disapproved _____


i. First Sergeant (1SG) Rene F. Rarangol is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. 1SG Rarangol requests excusal because he is transitioning from the Army and will start his terminal leave on 17 June 2005.

Approved _____/Disapproved JPT

j. First Sergeant (1SG) James Hayes is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. 1SG Hayes requests excusal because transitioning from the Army and will start his terminal leave on 12 June 2005.

Approved _____/Disapproved JPT

- 3 Encls
1. Decision Document
2. CMCO #s 2 and 4
3. Soldiers' request


TRACY A. BARNES
LTC, JA
Staff Judge Advocate

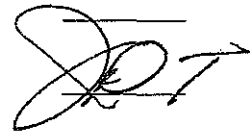
AFYB-CG

12 MAY 2005

MEMORANDUM FOR Staff Judge Advocate, 4th Infantry Division (Mechanized), Fort Hood, Texas 76544

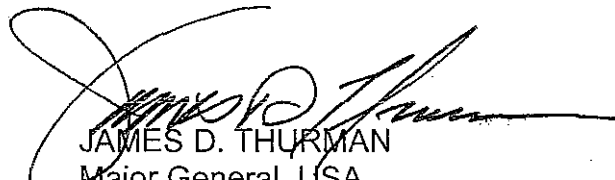
SUBJECT: Excusal of Court-Martial Panel Member

1. The requests for excusal are approved, in their entirety.
2. The requests for excusal are disapproved, in their entirety.
3. The requests for excusal are approved, in part, as indicated. in the basic correspondence.



3 Encls

1. Decision Document
2. CMCO #s 2 and 4
3. Soldiers' Request


JAMES D. THURMAN
Major General, USA
Commanding

14 APR 2005

MEMORANDUM FOR Commander, 4th Infantry Division (Mechanized), Fort Hood, Texas 76544

SUBJECT: Excusal of Court-Martial Panel Members

- 1. Purpose. To obtain your decision concerning permanent excusal of court-martial panel members who are no longer within the 4th Infantry Division jurisdiction.
- 2. Recommendation. That you permanently excuse the following members from Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004.
- 3. Discussion.

a. Lieutenant Colonel (LTC) Conrad D. Christman, HHOC, 104th MI is a primary member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. LTC Christman has PCSd to III Corps.

Approved /Disapproved

b. Major (MAJ) David T. Vacchi, HHS, 2-20th FA is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. MAJ Vacchi will start PCS leave effective 14 May 2005.

Approved /Disapproved

c. 1SG Maurice Simmons, HHC, 588th EN, is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. 1SG Simmons will retire from active duty on 31 July 2005.

Approved /Disapproved

d. Master Sergeant (MSG) Zachary D. Harmon, HDC, 204th FSB is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. MSG Harmon has PCSd to Vicenza, Italy on 1 November 2004.

Approved /Disapproved

- 3 Encls
- 1. Permanent Excusal
- 2. CMCO #'s 2 and 4
- 3. Supporting Documents

TRACY A. BARNES
LTC, JA
Staff Judge Advocate

MEMORANDUM FOR Staff Judge Advocate, 4th Infantry Division (Mechanized), Fort Hood, Texas 76544

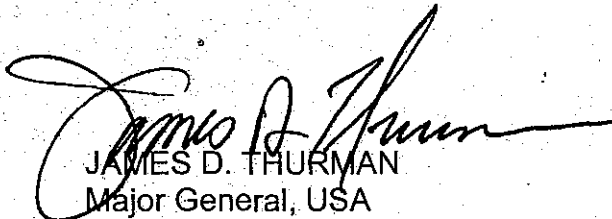
SUBJECT: Excusal of Court-Martial Panel Members

1. The excusals are approved, in their entirety.
2. The excusals are disapproved, in their entirety.
3. The excusals are approved, in part, as indicated in the basic correspondence.

JDT

3 Encls

1. SJA Recommendation
2. CMCO #'s 2 and 4
3. Supporting Documents


JAMES D. THURMAN
Major General, USA
Commanding

AFYB-JA

02 DEC 2004

MEMORANDUM FOR Commander, 4th Infantry Division, Fort Hood, Texas
76544

SUBJECT: Permanent Excusal of Court-Martial Panel Members

1. Purpose. To obtain your decision concerning requests for permanent excusal of court-martial panel members for the reasons indicated.
2. Recommendation. That you consider excusing the following member from Court-Martial Convening Orders Number 2 and 4 dated 9 July 2004.
3. Discussion.
 - a. COL James D. Moore, is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. Request that you permanently excuse COL Moore as a result of his death.

Approved _____/Disapproved _____


- b. CPT David W. Acker is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. CPT Ackers requests excusal due to permanent change of station.

Approved _____/Disapproved _____

- c. CPT Brandy M. Andrews is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. CPT Andrews requests excusal due to permanent change of station.

Approved _____/Disapproved _____

- 3 Encls
1. Decision Document
 2. CMCO #s 2 and 4
 3. Soldiers' Request


TRACY A. BARNES
LTC, JA
Staff Judge Advocate

AFYB-CG

02 DEC 2004

MEMORANDUM FOR Staff Judge Advocate, 4th Infantry Division, Fort Hood, Texas
76544

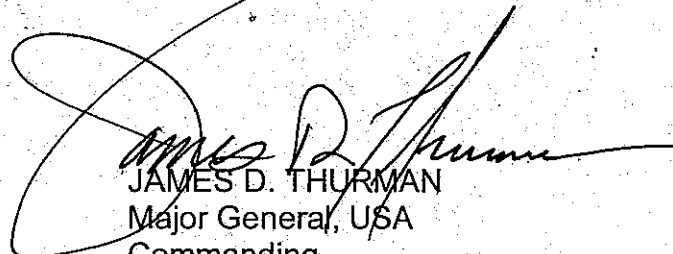
SUBJECT: Excusal of Court-Martial Panel Member

1. The requests for excusal are approved, in their entirety.
2. The requests for excusal are disapproved, in their entirety.
3. The requests for excusal are approved, in part, as indicated in the basic correspondence.

JDT

3 Encls

1. Decision Document
2. CMCO #s 2 and 4
3. Soldiers' Request


JAMES D. THURMAN
Major General, USA
Commanding

AFYB-JA

MEMORANDUM FOR Commander, 4th Infantry Division (Mechanized), Fort Hood, Texas
76544

SUBJECT: Excusal of Court-Martial Panel Members

1. Purpose. To obtain your decision concerning permanent excusal of court-martial panel members who are no longer within the 4th Infantry Division jurisdiction.

2. Recommendation. That you permanently excuse the following members from Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004.

3. Discussion.

a. Command Sergeant Major (CSM) Terry Alexander, is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. CSM Alexander was on orders to HHC, 1-66 AR but was reassigned to USA Garrison, Fort Hood.

Approved *JPI* / Disapproved

b. First Sergeant (1SG) Jamie Garza is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. 1SG Garza has PCSed to Edmond, OK.


Approved *JPI* / Disapproved

c. Sergeant First Class (SFC) Maria G. Galbraith is an alternate member on Court-Martial Convening Orders Number 2 and 4, dated 9 July 2004. SFC Galbraith is on terminal leave with a retirement date of 31 October 2004.

Approved *JPI* / Disapproved

2 Encls

1. Decision Document Excusal (TAB A)
2. CMCO #'s 2 and 4 (TAB B)


NATHAN W. RATCLIFF
MAJ, JA
Acting Staff Judge Advocate


06 OCT 2004

MEMORANDUM FOR Staff Judge Advocate, 4th Infantry Division (Mechanized), Fort Hood, Texas 76544

SUBJECT: Excusal of Court-Martial Panel Members

- 1. The excusals are approved, in their entirety.
- 2. The excusals are disapproved, in their entirety.
- 3. The excusals are approved, in part, as indicated in the basic correspondence.

JDT


 JAMES D. THURMAN
 Major General, USA
 Commanding

2 Encls

- 1. Decision Document Excusal (TAB A)
- 2. CMCO #'s 2 and 4 (TAB B)

AFYB-JA

MEMORANDUM FOR Commander, 4th Infantry Division, Fort Hood, Texas 76544

SUBJECT: Advice on Disposition of Court-Martial Charges UP RCM 406, MCM (2002 Edition), Staff Sergeant Shane A. Werst, Headquarters and Headquarters Company, 4th Infantry Division, Fort Hood, Texas 76544

1. I have reviewed the attached charge sheet and allied papers, and render this advice in accordance with the provisions of Article 34, UCMJ, and RCM 406, MCM (2002 Edition).

2. Legal Conclusions. After reviewing the attached charge sheet and allied papers, I have reached the following legal conclusions:

- a. Each specification alleges an offense under the UCMJ;
- b. The allegations in the specifications are warranted by the evidence; and,
- c. There is court-martial jurisdiction over the accused and all charged offenses.

3. Recommendations.

a. The chain of command recommends trial by General Court-Martial. 8 February 2005, MAJ Kim Bivin investigated the charges under the provisions of Article 32(b) and recommended trial by General Court-Martial.

b. I recommend trial by General Court-Martial. Accordingly, I further recommend you refer the charges to the General Court-Martial convened by Court-Martial Convening Order Number 2, dated 9 July 2004.

4 Encls

1. Referral Document
2. CMCO #2
3. Charge Sheet & Allied Papers
4. Article 32 Investigation



TRACY A. BARNES
LTC, JA
Staff Judge Advocate

16 Feb 05

AFYB-CG

17 FEB 2005

MEMORANDUM FOR Staff Judge Advocate, 4th Infantry Division, Fort Hood, Texas
76544

SUBJECT: Advice on Disposition of Court-Martial Charges UP RCM 406, MCM (2002
Edition), Staff Sergeant Shane A. Werst, Headquarters and Headquarters
Company, 4th Infantry Division, Fort Hood, Texas 76544

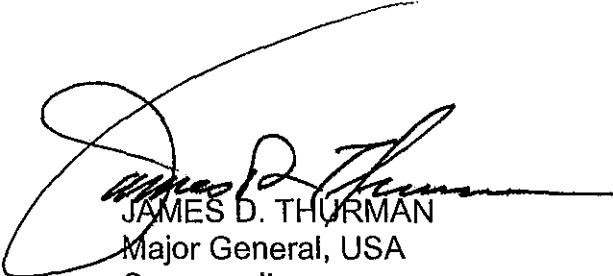
The foregoing recommendation of the Staff Judge Advocate is:

Approved. In the above case, I direct the charges be referred to the General
Court-Martial convened by Court-Martial Convening Order Number 2, dated 9 July
2004.

Disapproved.

Other.

- 4 Encls
1. SJA Advice
2. CMCO #2
3. Charge Sheet & Allied Papers
4. Article 32 Investigation


JAMES D. THURMAN
Major General, USA
Commanding

I, Staff Sergeant Shane A. Werst, _____, Headquarters and Headquarters Company, 4th Infantry Division, Fort Hood, Texas 76544, hereby certify that I am in receipt of a copy of the charge sheet referring my case to a General Court-Martial on 17 February 2005.



SHANE A. WERST
SSG, USA

DATE: 17 Feb 05

AFYB-CG

1.7 FEB 2005

MEMORANDUM FOR Staff Judge Advocate, 4th Infantry Division, Fort Hood, Texas
76544

SUBJECT: Advice on Disposition of Court-Martial Charges UP RCM 406, MCM (2002
Edition), Staff Sergeant Shane A. Werst, Headquarters and Headquarters
Company, 4th Infantry Division, Fort Hood, Texas 76544

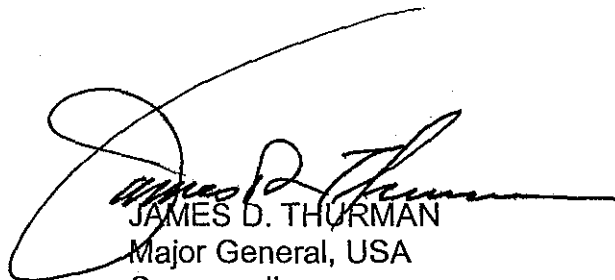
The foregoing recommendation of the Staff Judge Advocate is:

Approved. In the above case, I direct the charges be referred to the General
Court-Martial convened by Court-Martial Convening Order Number 2, dated 9 July
2004.

Disapproved.

Other.

- 4 Encls
1. SJA Advice
2. CMCO #2
3. Charge Sheet & Allied Papers
4. Article 32 Investigation


JAMES D. THURMAN
Major General, USA
Commanding

I, Staff Sergeant Shane A. Werst, _____, Headquarters and Headquarters Company, 4th Infantry Division, Fort Hood, Texas 76544, hereby certify that I am in receipt of a copy of the charge sheet referring my case to a General Court-Martial on 17 February 2005.



SHANE A. WERST
SSG, USA

DATE: 17 Feb 05

AFYB-CG

015 MAR 2005

MEMORANDUM FOR Staff Judge Advocate, 4th Infantry Division, Fort Hood, Texas
76544

SUBJECT: Advice on Disposition of Court-Martial Charges UP RCM 406, MCM (2002
Edition), Staff Sergeant Shane A. Werst, _____ Headquarters and Headquarters
Company, 4th Infantry Division, Fort Hood, Texas 76544

The foregoing recommendation of the Staff Judge Advocate is:

Approved. In the above case, I hereby withdraw the charges referred on 17
February 2005 from the General Court-Martial convened by Court-Martial Convening
Order Number 2, dated 9 July 2004, and re-refer the charges to the General Court-
Martial convened by Court-Martial Convening Order Number 2, dated 9 July 2004 with
instructions that it should be tried non-capital.

Disapproved.

Other.

- 4 Encls
1. SJA Advice
2. CMCO #2
3. Charge Sheet & Allied Papers
4. Article 32 Investigation


JAMES D. THURMAN
Major General, USA
Commanding

I, Staff Sergeant Shane A. Werst, _____, Headquarters and Headquarters Company, 4th Infantry Division, Fort Hood, Texas 76544, hereby certify that I am in receipt of a copy of the charge sheet referring my case to a General Court-Martial, on 5 March 2005.



SHANE A. WERST
SSG, USA

7 Mar 05

AFYB-JA

MEMORANDUM FOR Commander, 4th Infantry Division, Fort Hood, Texas 76544

SUBJECT: Advice on Disposition of Court-Martial Charges UP RCM 406, MCM (2002 Edition), Staff Sergeant Shane A. Werst, _____ Headquarters and Headquarters Company, 4th Infantry Division, Fort Hood, Texas 76544

1. I have reviewed the attached charge sheet and allied papers, and render this advice in accordance with the provisions of Article 34, UCMJ, and RCM 406, MCM (2002 Edition).

2. Legal Conclusions. After reviewing the attached charge sheet and allied papers, I have reached the following legal conclusions:

- a. Each specification alleges an offense under the UCMJ;
- b. The allegations in the specifications are warranted by the evidence; and,
- c. There is court-martial jurisdiction over the accused and all charged offenses.

3. Recommendations.

a. The chain of command recommends trial by General Court-Martial. On 8 February 2005, MAJ Kim Bivin investigated the charges under the provisions of Article 32(b) and recommended trial by General Court-Martial. The case was referred to a General Court-Martial on 17 February 2005. The previous referral of this case failed to specify that this case should be tried non-capital. Because SSG Werst is charged with premeditated murder, the UCMJ authorizes death as a possible punishment. However, if you refer this case non-capital, the maximum authorized punishment is life imprisonment without the possibility of parole. If found guilty of premeditated murder, SSG Werst would face a mandatory minimum sentence of imprisonment for life, with eligibility for parole.

b. I recommend that you withdraw the current charges against SSG Werst and re-refer them to a General Court-Martial with an instruction that the case shall be tried non-capital. Accordingly, I further recommend that you refer the charges to the General Court-Martial convened by Court-Martial Convening Order Number 2, dated 9 July 2004.

4 Encls

1. Referral Document
2. CMCO #2
3. Charge Sheet & Allied Papers
4. Article 32 Investigation



TRACY A. BARNES
LTC, JA
Staff Judge Advocate

3 Mar 05

RECORD OF
PROCEEDINGS OF
COURT-MARTIAL

RECORD OF TRIAL

WERST, SHANE ALLEN
(Name, Last, First, MI)

(Social Security Number)

Staff Sergeant
(Rank)

HHC, 4th Infantry Division
(Unit/Command Name)

U.S. Army
(Branch of Service)

Fort Hood, Texas 76544
(Station of Ship)

By

GENERAL COURT-MARTIAL

Convened by COMMANDER
(Title of Convening Authority)

Headquarters, 4th Infantry Division (Mechanized)
(Unit/Command of Convening Authority)

Tried at

Fort Hood, Texas 76544
(Place or Places of Trial)

on 26 April, 16 May, 23-26 May 2005
(Date or Dates of Trial)

COPIES OF RECORD

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

_____ copy(ies) of record forwarded herewith.

RECEIPT FOR COPY OF RECORD

I hereby acknowledge receipt of a copy of the above-described record of trial, delivered to me at _____ this _____ day of _____ 2005.

(Signature of accused)

I hereby acknowledge receipt of a copy of the above-described record of trial, delivered to me at _____ this _____ day of _____ 2003.

(Signature of accused)

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

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

CERTIFICATE IN LIEU OF RECEIPT

FORT HOOD, TEXAS

(Place)

On or about 30 August 2008

(Date)

I certify that on this date a copy of the record of trial in the case of the United States v. Staff Sergeant Werst, Shane A., was hand delivered to the accused, Staff Sergeant Shane A. Werst. at Fort Hood, Texas.

(Place/Mean of delivery)

and that the receipt of the accused had not been received on the date this record was forwarded to the convening authority. The receipt of the accused will be forwarded as soon as it is received.

Alvin T. Wilson

(Signature of post-trial NCO)

OR

The accused was not served personally because (he/she is absent without leave)

(_____).

(Other Reason)

Accused has no defense counsel to receive the record because (defense counsel has been excused under RCM 505(d)(2)(B))

(_____).

(Date)

(Signature of trial counsel)

CERTIFICATE IN LIEU OF RECEIPT

(Place)

(Date)

I certify that on this date a copy of the record of trial in the case of the United States v. was transmitted (delivered) to the accused, STAFF SERGEANT WERST, SHANE ALLEN, at _____

(Rank and name of accused: last, first, MI) (Place of delivery)

by _____
(Means of effecting delivery, i.e., mail, messenger, etc.)

and that the receipt of the accused had not been received on the date this record was forwarded to the convening authority. The receipt of the accused will be forwarded as soon as it is received.

(Signature of trial counsel)

OR

(Place)

(Date)

I certify that on this date a copy of the record of trial in the case of the United States v. STAFF SERGEANT WERST, SHANE ALLEN, was transmitted (delivered) to the accused's defense counsel, Captain Mark Santos at _____

by, _____ because (it was impracticable to serve the record of trial on the accused because he/she was transferred to _____)

- (the accused requested such at trial)
- (the Place sent to)
- (accused so requested in writing, which is attached)
- (the accused is absent without leave)

(_____) .
(Other reason)

(Signature of trial counsel)

OR

The accused was not served personally because (he/she is absent without leave)

(_____) .
(Other Reason)

Accused has not defense counsel to receive the record because (defense counsel has been Excused under RCM 505(d)(2)(B))

(_____) .

(Date)

(Signature of trial counsel)

PROCEEDINGS OF A GENERAL COURT-MARTIAL

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2
3 The military judge called the Article 39(a) session to order at
4 Fort Hood, Texas, at 0905, 26 April 2005, pursuant to the
5 following order:

6
7
8 Court-Martial Convening Order Number 2, Headquarters,
9 4th Infantry Division (Mechanized), Fort Hood, Texas, dated
10 9 July 2004.

11
12 **END OF PAGE**

DEPARTMENT OF THE ARMY
HEADQUARTERS, 4TH INFANTRY DIVISION (MECHANIZED)
FORT HOOD, TEXAS 76544

COURT-MARTIAL CONVENING ORDER
NUMBER 2

9 July 2004

Pursuant to the authority contained in Article 23, UCMJ, a general court-martial is hereby convened. It may proceed at this headquarters to try such persons as may be properly brought before it. The court will be constituted as follows:

COL DONALD M. MACWILLIE, AV, HHC, 4TH BDE
COL ALLEN W. BATSCHELET, FA, HHB, DIVARTY
LTC MARK A. HURON, EN, HHC, 299 EN
LTC STEVEN D. RUSSELL, IN, HHC, 1-22 IN
LTC DARYL GORE, OD, HDC, 4TH FSB
LTC RICHARD J. MURASKI, EN, HHC, 588 EN
LTC JOSEPH M. MARTIN, AR, HHC, 1-67 AR
LTC CONRAD D. CHRISTMAN, MI, HHOC, 104TH MI
MAJ PAMELA S. HOLWERDA, OD, HDC, 4TH FSB
MAJ JESSIE ROBINSON, AR, HHC, 1-66 AR

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

COL DONALD M. MACWILLIE, AV, HHC, 4TH BDE
COL ALLEN W. BATSCHELET, FA, HHB, DIVARTY
LTC MARK A. HURON, EN, HHC, 299 EN
LTC STEVEN D. RUSSELL, IN, HHC, 1-22 IN
LTC DARYL GORE, OD, HDC, 4TH FSB
CSM ERNEST BARNETT JR., HHC, 1-67 AR
CSM GABRIEL CERVANTES, HHC, 2-8 IN
SGM TERRY ALEXANDER, HHC, 1-66 AR
1SG RONALD W. DVORSKY JR, A TRP, 1-10 CAV
MSG RENE F. RARANGOL, A CO, 404TH ASB

**4th Infantry Division (Mechanized) Panel
Selected 9 July 2004**

Alternate panel members for Court-Martial Convening Order Numbers 2 & 4, dated 9 July 2004

ALTERNATE OFFICER MEMBERS

COL JAMES M. MOORE, OD, HHC, DISCOM
MAJ THOMAS E. DETRICK, OD, HHD, 704TH DSB
MAJ WILLIAM A. GEIGER, FA, HSB, 3-16 FA
MAJ ERIC MOORE, AR, 1-10 CAV
MAJ PAUL E. OWEN, EN, HHC, 588 EN
MAJ DAVID T. VACCHI, FA, HHS, 2-20TH FA
CPT DAVID W. ACKER, EN, C CO, 588 EN
CPT BRANDY M. ANDREWS, QM, HHC, DISCOM
CPT COLIN N. BROOKS, IN, HHC, 2-8 IN

ALTERNATE ENLISTED MEMBERS

CSM MILTON A. JONES, HDC, 4TH FSB
CSM MICHAEL E. WILLIAMS, HHB, 4-42 FA
1SG JAMIE GARZA, HHC, 1-22 IN
1SG JAMES F. HAYES, HHC, 4TH BDE
1SG MAURICE SIMMONS, HHC, 588 EN
MSG ZACHARY D. HARMON, HDC, 204TH FSB
SFC MARIA G. GALBRAITH, HHC, 4TH BDE
SFC DWIGHT D. RICHARD, HHB, DIVARTY
SFC WARREN P. STEVENS, HHC, DISCOM
SFC TYRONE C. WILLIS, HHC, 299 EN

CMCO No. 2, DA HQ, 4th Infantry Division (Mechanized), Fort Hood, Texas 76544,
dated 9 July 2004 (continued)

All cases referred to the general court-martial convened by Court-Martial Convening
Order Number 3, dated 9 October 2003 in which the court has not yet been assembled,
will be brought to trial before the court-martial hereby convened.

BY COMMAND OF MAJOR GENERAL THURMAN:



CHRISTINE A. COBB
SSG, USA
NCOIC, Criminal law Division

DISTRIBUTION:

Each Individual Indicated (1)
Command, 4th Infantry Division
(Mechanized) (1)
Staff Judge Advocate (1)
Record of Trial (1)
Record Set (1)
Reference Set (1)

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PERSONS PRESENT

COLONEL THEODORE DIXON, MILITARY JUDGE;
CAPTAIN STEVEN FULLER, TRIAL COUNSEL;
CAPTAIN THOMAS SCHIFFER, ASSISTANT TRIAL COUNSEL;
DAVID SHELTON, CIVILIAN DEFENSE COUNSEL;
CAPTAIN MARK SANTOS, MILITARY DEFENSE COUNSEL.

PERSONS ABSENT

MEMBERS.

The accused, Staff Sergeant Shane Allen Werst, U.S. Army, was present in court.

The detailed reporter, Kenn Costley, had been previously been sworn.

The trial counsel announced the legal qualifications and status as to oaths of all members of the prosecution and that they had been detailed by Captain Thomas Schiffer, Chief of Justice, 4th Infantry Division.

The trial counsel further stated that no member of the prosecution have not acted in a manner which might tend to disqualify them.

The military judge informed the accused of the rights concerning counsel as set forth in Article 38(b) and R.C.M. 901(d).

The accused responded that he understood the rights with respect to counsel and that he chose to be defended by David Shelton and Captain Mark Santos.

The defense counsel announced his legal qualifications and status as to oaths and that he had been detailed by Major Lorraine Rowbo, Senior Defense Counsel, Fort Hood, Texas.

The defense counsel further stated that he had not acted in manner which might tend to disqualify him.

David Shelton, the civilian defense counsel, was sworn.

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, Middle Initial) WERST, SHANE ALLEN		2. SSN	3. GRADE OR RANK SSG	4. PAY GRADE E-6
5. UNIT OR ORGANIZATION Headquarters and Headquarters Company, 4th Infantry Division, Fort Hood, Texas 76544			6. CURRENT SERVICE	
			a. INITIAL DATE 7/21/2004	b. TERM Indefinite
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED Pre-Trial Confinement	9. DATE(S) IMPOSED 11/20/2004 - 11/30/2004	
a. BASIC 2779.20 2685.30	b. SEA/FOREIGN DUTY NONE			

II. CHARGES AND SPECIFICATIONS

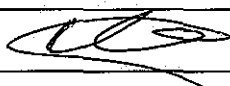
10. CHARGE I: **VIOLATION OF THE UCMJ, ARTICLE 118**

SPECIFICATION: In that SSG (E6) Shane A. Werst, U.S. Army, did, at or near Balad, Iraq, on or about 3 January 2004, with premeditation, murder Naser Ismail by means of shooting him with a rifle.

CHARGE II: **VIOLATION OF THE UCMJ, ARTICLE 134**

SPECIFICATION: In that SSG (E6) Shane A. Werst, U.S. Army, did, at or near Balad, Iraq, on or about 3 January 2004, wrongfully endeavor to impede an investigation and influence the actions of PFC Nathan Stewart and SPC Charles Pannell, by directing them to alter their statements regarding the murder of Naser Ismail.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, Middle Initial) LUIS E. GUARDA	b. GRADE CPT	c. ORGANIZATION OF ACCUSER Headquarters and Headquarters Company, 4th Infantry Division
d. SIGNATURE OF ACCUSER 		e. DATE (YYYYMMDD) 20041124

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 24th day of November, 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.

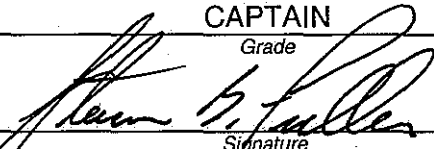
Steven B. Fuller
Typed Name of Officer

HHC, 4th Infantry Division
Organization of Officer

CAPTAIN
Grade

ARTICLE 136, UCMJ

Official Capacity to Administer Oath
(See R.C.M. 101-10.1)


Signature

APPELLATE EXHIBIT I