

# COURT-MARTIAL RECORD

NAME COMBS, JAMES E. III

PFC

SSN [REDACTED]

ACTIONS CODED:

INITIAL

ACCA

FINAL

COMPANION(S):

ASSIGNED TO:

PANEL

EXAM. DIV.

2

**RETURN THIS FILE TO:**

**OFFICE OF THE CLERK OF COURT**

**US ARMY JUDICIARY**

**901 NORTH STUART STREET, SUITE 1200**

**ARLINGTON, VA 22203-1837**

VOL II OF IV VOL(S)

PERMANENT  
FILE

ARMY

20050388

20050388

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

OF

COMBS, James E., III  
(NAME: Last, First Middle Initial)

[REDACTED]  
(Social Security Number)

Private First Class  
(Rank)

272d MP Co, 720th MP  
Bn, 42d MP Bde

(unit/Command Name)

US Army  
(Branch of Service)

Camp Cuervo, Iraq  
(Station or Ship)

BY  
GENERAL COURT-MARTIAL

CONVENED BY COMMANDING GENERAL  
(Title of Convening Authority)

HQ, Multi-National Corps - Iraq  
(Unit/Command of Convening Authority)

TRIED AT

Camp Victory, Baghdad, Iraq  
(Place or Places of Trial)

ON

20 Feb and 24 Mar 05  
(Date or Dates of Trial)

COMPANION CASES: None.

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

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



**ARTICLE 32  
INVESTIGATION**



REPLY TO  
ATTENTION OF:

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


1 NOV 04

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

SUBJECT: Appointment as an Investigating Officer

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

Encl  
Case File

  
DAVID D. PHILLIPS  
COL, MP  
Commanding

20050388

AFVP

SUBJECT: Article 32(b) Investigation

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



MARGARET L. COMPTON

MAJ, MP

Investigating Officer

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

S: 12 November 2004

AFVP (27)

9 November 2004

MEMORANDUM FOR Private First Class James E. Combs, III

SUBJECT: Article 32(b) Investigation

1. On 17 November 2004, at 1000 hours, in the 759<sup>th</sup> Military Police Battalion Classroom, located at Camp Cuervo, I will conduct an investigation pursuant to Article 32(b), UCMJ, to investigate the facts and circumstances concerning a charge preferred against you by CPT Jason L. Marquiss. The required uniform for the hearing will be DCU's. The charges against you are found on the DD Form 458 Charge Sheet that is included as an enclosure to this memorandum.
2. You have the right to be present during the entire investigation. Additionally, you have the right to be represented at all times during the investigation by legally qualified counsel. Counsel may be a civilian lawyer of your choice, provided at no expense to the United States; a qualified military lawyer of your selection, if reasonably available; or a qualified military counsel detailed by the Trial Defense Service. There is no cost to you for military counsel. You also have the right to waive representation by counsel. Send your decision to me by 12 November 2004.
3. The names of witnesses known to me, who will be asked to testify at the hearing are:
  - a. SPC Wade E. Cook
  - b. SGT Levi B. Duran
  - c. SFC Kenneth I. Pryor, II
4. As investigating officer, I will try to arrange for the appearance of any witnesses that you want to testify at the hearing. Send names and addresses of such witnesses to me by 12 November 2004. If, at a later time, you identify additional witnesses, inform me of their names and addresses.



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

REPLY TO  
ATTENTION OF:

FICI-JA-BFO

12 Nov 04

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

FOR Commander, 89<sup>th</sup> Military Police Brigade, Camp Victory, Iraq

SUBJECT: Request for Appointment of an Investigator to Assist in the Preparation of the Defense Case in United States v. PFC James E. Combs

1. In accordance with Article 46 of the UCMJ, Rule for Courts-Martial 703, and United States v. Toledo, 25 MJ 270 (CMA 1987), and UP AR 195-2, para. 3-20, the Defense hereby requests appointment of an investigator to the Defense team to assist in the preparation of the United States v. PFC James E. Combs.
2. The Defense requests, if available, the appointment of CW2 John Spann, 22d Military Police Battalion (CID), Victory Base, Iraq. However, if not available or permitted, any suitably qualified and competent investigator is acceptable, provided that he or she:
  - a. is willing to accept the assignment,
  - b. understands that their role will be to assist the Defense and agrees to be bound explicitly by the attorney-client privilege,
  - c. has sufficient available time to serve the many potential hours that would be required to conduct sufficient investigation for the Defense in this case,
  - d. has training and experience as a criminal investigator,
  - e. is not currently assigned to any office that is currently investigating this case, or in the rating chain of any CID agent that has been involved in the case investigation,
  - f. was not involved in any manner in the investigation of this case.
3. An investigator is needed because this case concerns complicated issues of fact and necessitates interviews with multiple potential witnesses whom the Defense is presently unable to contact but who could be vital to PFC Combs.
  - a. The Defense wishes to locate, contact and interview multiple Iraqis who were present at the time of the alleged shooting of the victim. Additionally, all Iraqis traveling with the victim to

SUBJECT: Request for Appointment of an Investigator to Assist in the Preparation of the Defense Case in United States v. PFC James E. Combs

Al Kindi [sic] and/or the Neurological Hospital at MB 4605 8856. Those interviews will likely lead to evidence relevant to the instant case.

b. The Defense wishes to contact and interview the multiple Criminal Investigation Division Special Agents, Iraqi doctors, medics and numerous Iraqi Police witnesses who may have evidence and vital information pertaining to the charge which PFC Combs faces.

c. The Defense wishes to contact and interview the acquaintances, neighbors, close friends and relatives of PFC Combs as well as soldiers who formerly served with PFC Combs to prepare a case in defense, extenuation and mitigation. Many of these individuals reside in CONUS. The Defense does not have the time, resources, or training to locate and interview all of these potential witnesses.

4. The above-mentioned areas require a great degree of investigative expertise that the Defense does not possess.

a. The investigative assistance will allow PFC Combs to gather exculpatory and mitigating evidence in this case, and attack the veracity of the testimony of the government's witnesses. The Defense is unable to do this on its own. A Defense Counsel cannot possibly adequately interview witnesses in CONUS and elsewhere, when it has taken several CID Special Agents and interpreters working on this case to collect the evidence.

b. The investigator will assist the Defense in rebutting any attack on PFC Combs' credibility, and to assist in the preparation of the Defense case and prepare adequate cross-examination for the government witnesses by providing evidence of untruthfulness and bias. Without this assistance, cross-examination will be less effective because the Defense will be unable to travel to these distant locations, or effectively interview witnesses to develop the basis for exculpatory, mitigating and character evidence.

5. Only the addition of an investigator, with the capability and resources to track down and interrogate witnesses and potential suspects can properly assist the preparation of the defense of PFC Combs.

a. For all of the Iraqi civilian witnesses, the Defense has little or no information regarding the addresses of these potential witnesses or any viable way of contacting them. The Defense has to rely entirely upon the government to provide transportation and/or communication. Moreover, the Defense cannot become expert investigators before trial, as it takes these professionals years of training and experience to excel at such skills. Thus, an investigator is vitally important to the Defense effort, and the denial of such an expert would result in a fundamentally unfair trial. See, e.g., United States v. Gonzalez, 39 MJ 459, (CMA 1994).



FICI-JA-BFO

SUBJECT: Request for Appointment of an Investigator to Assist in the Preparation of the Defense Case in United States v. PFC James E. Combs

b. The Defense points out that while the government has had several CID special agents, the Defense is only requesting one investigator. To deny the Defense this assistance will make effective representation of PFC Combs difficult, and denial at this early stage clearly will result in a fundamentally unfair trial, as PFC Combs will be unable to discover potentially exculpatory evidence by personally interviewing witnesses familiar with the allegations in this case.

c. The Defense is not qualified to conduct a crime scene analysis of the areas of the alleged offense. The area is in downtown Baghdad. The Investigator can conduct a crime scene analysis and, if necessary, assist any appointed expert in crime scene reconstruction. Additionally, the Investigator can review the current CID investigation and supplement any areas that have not been completed IAW CIDR 195-1.

6. The Defense respectfully requests that an investigator be appointed to assist the Defense. This investigator, and these additional interviews that he will conduct which may produce exculpatory evidence, evidence in defense, extenuation, and mitigation. The appointment of an investigator is relevant and necessary for the accused to be able to present a defense in accordance with the Compulsory Process Clause of the Sixth Amendment to the United States Constitution.

7. The Defense further requests that the investigator be bound by the attorney-client privilege under Military Rule of Evidence 502. The Defense requests that this individual assist in the investigation of the case, and be present with PFC Combs at the Article 32 investigation hearing and at trial as a member of the Defense team.

8. POC is the undersigned at 318-822-2866 or david.todd.scott@us.army.mil.

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

DEPARTMENT OF THE ARMY  
Headquarters, 89th Military Police Brigade  
Victory Base, Iraq  
APO AE 09342-1400

AFVP-JA

12 NOV 2004

MEMORANDUM FOR Commander, 89th Military Police Brigade, Victory Base, Iraq,  
APO AE 09342-1400

SUBJECT: Request for Appointment of Expert Assistance in United States v. Private First Class James Edwards Combs III – ACTION MEMORANDUM

1. Purpose. To obtain your decision on a request for the appointment of a confidential expert assistant to the Defense team in United States v. Private First Class James Edward Combs, 272d Military Police Company, 759th Military Police Battalion, 89th Military Police Brigade.

2. Background. On 20 October 2004, charges were preferred against Private First Class Combs for involuntary manslaughter for actions that occurred on 22 September 2004. (See Enclosure 1, Charge Sheet). On 2 November 2004, you appointed Major Margaret Compton to investigate the preferred charges under Article 32, UCMJ. (See Enclosure 2, Appointment Memorandum). The case is currently in defense delay until 1 December 2004. (See Enclosure 3, Delay Approval). Through counsel, PFC Combs has filed a request for appointment of a CW2 John Spann as an investigator to assist the defense in preparation for court-martial. If CW2 Spann is unavailable, the defense requests appointment of a qualified and competent substitute. (See Enclosure 4, Request for Assistance). The defense asserts investigative assistance is necessary "because this case concerns complicated issues of fact and necessitates interviews with multiple potential witnesses whom the Defense is presently unable to contact but who could be vital to PFC Combs." The request cites these bases to show necessity:

a. The Defense intends to "locate, contact and interview multiple Iraqis who were present at the time of the alleged shooting of the victim."

b. The Defense intends to "contact and interview the multiple Criminal Investigation Division Special Agents, Iraqi doctors, medics and numerous Iraqi Police witnesses who may have evidence and vital information pertaining to the charge which PFC Combs faces."

c. The Defense intends to "contact and interview the acquaintances, neighbors, close friends and relatives of PFC Combs as well as soldiers who formerly served with PFC Combs to prepare a case in defense, extenuation and mitigation."

AFZF-JA

SUBJECT: Request for Appointment of Expert Assistance in United States v. Private First Class James Edwards Comb III – ACTION MEMORANDUM

3. Applicable Law. Article 46 of the Manual for Courts-Martial (MCM) provides that the trial counsel and defense counsel shall have equal opportunity to obtain witnesses and other evidence. As a matter of due process, servicemembers are entitled to investigative or other expert assistance at Government expense when necessary for an adequate Defense. See United States v. Garries, 22 M.J. 288, 290 (1986). The necessity requirement exists because, unlike the civilian defendant, the military accused has the resources of the Government at his or her disposal. Id. A defense counsel must present more than an inkling that expert assistance is required. See United States v. Tornowski, 29 M.J. 578, 580 (1989). In demonstrating necessity, the accused must demonstrate more than just the possibility of assistance from a requested expert, but instead must show that there exists a reasonable probability that an expert would be of assistance to the Defense and that the denial of expert assistance would result in a fundamentally unfair trial. United States v. Gunkle, 55 M.J. 26, 31-32 (C.A.A.F. 2001). The highest military court has articulated three criteria for showing necessity:

First, why the expert assistance is needed. Second, what the expert assistance [would] accomplish for the accused. Third, why the defense counsel [is] unable to gather and present the evidence that the expert assistant would be able to develop.

United States v. Ndanyi, 45 M.J. 315, 319 (C.A.A.F. 1996) (emphasis supplied).

4. Discussion. Applying the three factors above, the defense has not shown that the requested investigative assistance is necessary:

a. The Defense has not shown why the requested CID agent is "needed." The Defense has access to the entire CID investigation as well as an AR 15-6 investigation of the 759th Military Police Battalion conducted by a reserve officer who works in law enforcement in his civilian capacity. This case has been thoroughly investigated by two independent authorities, so the Defense assertion that an agent is needed for mass canvassing interviews of Iraqi witnesses is without merit.

b. Similarly, the Defense has not shown why counsel is "unable" to obtain the evidence the requested Government investigator would help to gather and present. The Defense request discusses interviews with friends and family members of the Accused; this kind of routine discussion with willing witnesses is part of every defense case and does not justify the appointment of a CID agent to the defense team. The request does not give the name of any witnesses the Defense has unsuccessfully attempted to contact. Similarly, the Defense asserts there are "multiple Criminal Investigation Division Special Agents, Iraqi doctors, medics and numerous Iraqi Police witnesses who may have evidence and vital information", but does not list any witnesses they have attempted to contact without success. Ironically, on 6 and 13 November 2004, the government provided transportation and security to the defense from Camp Victory to Al Babal Shikh Police Station and to the Neurological Hospital at MB 4605 8856. On 13

AFZF-JA

SUBJECT: Request for Appointment of Expert Assistance in United States v. Private First Class James Edwards Comb III – ACTION MEMORANDUM

November 2004, the Defense Counsel, while at the police station, declined the opportunity to interview the victim's husband and other local fact witnesses or gather their contact information. There is also no proffer of what potential evidence these unnamed witnesses may provide, other than the broad assertion that the investigator will allow the defense to interview witnesses "who may have evidence and vital information pertaining to the charge which PFC Combs faces." Simply stated, there is no showing that the defense, before making this request, has attempted to contact any witness, CID agent, or soldier that could provide information or evidence in this case.

c. In essence, the Defense argues that it would be difficult and time-consuming for the counsel to complete the standard trial preparation required to adequately represent the Accused, to include interviewing family members, agents who investigated this case, and victims. The Defense request purportedly seeks investigative assistance, but the substance of the document is requesting an administrative assistant to assist with routine matters, including interviews with the accused's family members who are presumably willing to provide their assistance in this case.

5. Recommendation. The defense has not provided a legally-cognizable basis for appointment of an investigator. Further, the defense has equal access to the witnesses and documents available to the government. I recommend you disapprove the request for appointment of a CID investigator to assist the Defense.

6. POC is the undersigned at VOIP 693-1579.

Encls

1. Charge Sheet
2. Appointment Memorandum
3. Delay Approval
4. Defense Request for Investigative Assistance

  
C. CULLEN SHEPPARD  
CPT, JA  
Brigade Judge Advocate



REPLY TO  
ATTENTION OF:

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

FICI-JA-BFO

12 Nov 04

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

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

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

encl  
as

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



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

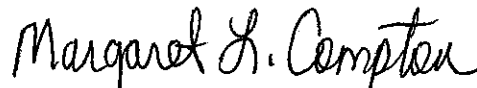
AFVP-IO (27)

13 November 2004

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

SUBJECT: Defense Request for Delay

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



MARGARET L. COMPTON  
MAJ, MP  
Investigating Officer

CF:  
Defense Counsel  
Government Counsel  
Legal Advisor



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

REPLY TO  
ATTENTION OF:

FICI-JA-BFO

16 Nov 04

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

FOR Commander, 89<sup>th</sup> Military Police Brigade, Camp Victory, Iraq

SUBJECT: Request for Appointment of a Translator/Linguist to Assist in the Preparation of the Defense Case in United States v. PFC James E. Combs

1. In accordance with Article 46 of the UCMJ, Rule for Courts-Martial 703 and United States v. Toledo, 25 MJ 270 (CMA 1987), the Defense hereby requests appointment of a Translator/Linguist (T/L) to the Defense team to assist in the preparation of the United States v. PFC James E. Combs.

2. Additionally, the Defense requests a T/L that is as qualified as the T/L used by the Convening Authority and provided to the Government Prosecutor. However, if not available or permitted, any suitably qualified and competent T/L is acceptable, provided that he or she:

- a. is willing to accept the assignment,
- b. understands that his role will be to assist the Defense and agrees to be bound explicitly by the attorney-client privilege,
- c. has sufficient available time to serve the many potential hours that would be required to conduct sufficient investigation for the Defense in this case,
- d. is not currently assigned to work for with the Convening Authority as T/L,
- e. was not involved in any manner in the investigation of this case.

3. A T/L is needed because this case concerns complicated issues of fact and necessitates interviews with multiple Iraqi witnesses whom the Defense is presently unable to adequately communicate with.

- a. The Defense wishes to locate, contact and interview multiple Iraqis who were present at the time of the alleged shooting of the victim. Additionally, all Iraqis traveling with the victim to Al Kindi [sic] and/or the Neurological Hospital at MB 4605 8856. Those interviews will likely lead to evidence relevant to the instant case.

SUBJECT: Request for Appointment of a Translator/Linguist to Assist in the Preparation of the Defense Case in United States v. PFC James E. Combs

b. The Defense wishes to contact and interview Iraqi doctors, medics and numerous Iraqi Police witnesses who may have evidence and vital information pertaining to the charge which PFC Combs faces.

4. The above-mentioned case preparation requirements require a great degree of Linguistic expertise that the Defense does not possess.

a. The T/L will allow PFC Combs to gather exculpatory and mitigating evidence in this case, and attack the veracity of the testimony of the government's witnesses. The Defense is unable to do this on its own. The Government has a T/L that regularly works directly with the Convening Authority. A T/L appointed to the Defense team will help ensure the Convening Authority can remain impartial during the pretrial investigation and the referral process.

b. The T/L will assist the Defense in the preparation of the Defense case and prepare adequate cross-examination for the government witnesses by allowing accurate interviews. Without this assistance, cross-examination will be less effective because the Defense will be unable to adequately prepare for the questioning of Iraqi witnesses.

5. Only the addition of a T/L, with the capability and resources to participate in the location and interrogation of witnesses and potential suspects, can properly assist the preparation of the defense of PFC Combs.

a. For all of the Iraqi civilian witnesses, the Defense has little or no ability to communicate with them. Thus, a T/L is vitally important to the Defense effort, and the denial of such an expert would result in a fundamentally unfair trial. See, e.g., United States v. Gonzalez, 39 MJ 459, (CMA 1994).

b. The Defense points out that the Government has an exceptionally qualified T/L at its disposal. The Defense is only requesting similar support. To deny the Defense this assistance will make effective representation of PFC Combs difficult, and denial at this early stage clearly will result in a fundamentally unfair trial, as PFC Combs will be unable to discover potentially exculpatory evidence by adequately interviewing Iraqi witnesses and reviewing Iraqi Documents that are relevant to this case.

6. The Defense respectfully requests that a T/L be appointed to assist the Defense. This T/L, and the additional interviews that he will conduct, may produce exculpatory evidence and evidence in defense, extenuation, and mitigation. Finally, the appointment of a T/L is relevant and necessary for the accused to be able to present a defense in accordance with the Compulsory Process Clause of the Sixth Amendment to the United States Constitution.

7. The Defense further requests that the T/L be bound by the attorney-client privilege under Military Rule of Evidence 502. This will allow the Defense to protect Attorney Work-Product

FICI-JA-BFO

SUBJECT: Request for Appointment of a Translator/Linguist to Assist in the Preparation of the Defense Case in United States v. PFC James E. Combs

and defense strategy. Additionally, the Defense requests that this individual assist in the investigation of the case, and be present with PFC Combs at the Article 32 investigation hearing and at trial as a member of the Defense team.

8. The Defense requests that the Convening Authority order the Government's current T/L to not discuss information learned during his duties as a T/L with anyone other than the Prosecution and Defense.

9. POC is the undersigned at 318-822-2866 or david.todd.scott@us.army.mil.

A handwritten signature in black ink, appearing to read 'D. Scott', with a horizontal line extending to the right.

DAVID T. SCOTT  
CPT, JA  
Defense Counsel



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

AFZF-JA-TDS

17 December 2004

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. POC is the undersigned at 822-2866.

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

Cf:

MAJ Compton, IO

UNITED STATES

v.

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

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

19 November 2004

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice of alibi, if applicable;

Notice of lack of mental responsibility, if applicable;

Notice of innocent ingestion, if applicable;

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


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

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

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

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

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

  
C. CULLEN SHEPPARD  
CPT, JA  
Trial Counsel

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

  
C. CULLEN SHEPPARD  
CPT, JA  
Trial Counsel

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


AFVP-CO

19 NOV 2004

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

SUBJECT: Request for Appointment of an Investigator to Assist Defense.

Your request for Appointment of an Investigator to assist in the Preparation of the Defense Case in United States v. Private First Class Combs III is denied. Pursuant to RCM 702, the defense has equal access to all witnesses, documents and evidence that is available to the government. You have not provided a legally cognizable basis for appointment of an investigator.

  
DAVID D. PHILLIPS  
COL, MP  
Commanding

DEPARTMENT OF THE ARMY  
Headquarters, 89th Military Police Brigade  
Victory Base, Iraq  
APO AE 09342-1400

AFVP-JA

19 NOV 2004

MEMORANDUM FOR Commander, 89th Military Police Brigade, Victory Base, Iraq,  
APO AE 09342-1400

SUBJECT: Request for Appointment of Linguist Assistance in United States v. Private First Class James Edwards Combs III– ACTION MEMORANDUM

1. Purpose. To obtain your decision on a request for the appointment of a confidential linguist assistant to the Defense team in United States v. Private First Class James Edward Combs, 272d Military Police Company, 759th Military Police Battalion, 89th Military Police Brigade.

2. Background. On 20 October 2004, charges were preferred against Private First Class Combs for involuntary manslaughter for actions that occurred on 22 September 2004. (See Enclosure 1, Charge Sheet). On 2 November 2004, you appointed Major Margaret Compton to investigate the preferred charges under Article 32, UCMJ. (See Enclosure 2, Appointment Memorandum). The case is currently in defense delay until 1 December 2004. (See Enclosure 3, Delay Approval). Through counsel, PFC Combs has filed a request for appointment of a linguist to assist the defense in preparation for the Article 32 and, if necessary, court-martial. (See Enclosure 4, Request for Assistance). The defense asserts linguist assistance is necessary "because this case concerns complicated issues of fact and necessitates interviews with multiple Iraqi witnesses whom the Defense is presently unable to adequately communicate with." The request cites these bases to show necessity:

a. The Defense "wishes to locate, contact and interview multiple Iraqis who were present at the time of the alleged shooting of the victim."

b. The Defense intends to "contact and interview Iraqi doctors, medics and numerous Iraqi Police witnesses who may have evidence and vital information pertaining to the charge which PFC Combs faces."

c. The Defense asserts a linguist "will allow PFC Combs to gather exculpatory and mitigating evidence in this case and attack the veracity of the testimony of the government's witnesses."

3. Applicable Law. Article 46 of the Manual for Courts-Martial (MCM) provides that the trial counsel and defense counsel shall have equal opportunity to obtain witnesses and other evidence. As a matter of due process, servicemembers are entitled to



AFVP-JA

SUBJECT: Request for Appointment of Linguist Assistance in United States v. Private First Class James Edwards Combs III– ACTION MEMORANDUM

investigative or other expert assistance at Government expense when necessary for an adequate Defense. See United States v. Garries, 22 M.J. 288, 290 (1986). The necessity requirement exists because, unlike the civilian defendant, the military accused has the resources of the Government at his or her disposal. Id. A defense counsel must present more than an inkling that expert assistance is required. See United States v. Tornowski, 29 M.J. 578, 580 (1989). In demonstrating necessity, the accused must demonstrate more than just the possibility of assistance from a requested expert, but instead must show that there exists a reasonable probability that an expert would be of assistance to the Defense and that the denial of expert assistance would result in a fundamentally unfair trial. United States v. Gunkle, 55 M.J. 26, 31-32 (C.A.A.F. 2001). The highest military court has articulated three criteria for showing necessity:

First, why the expert assistance is needed. Second, what the expert assistance [would] accomplish for the accused. Third, why the defense counsel [is] unable to gather and present the evidence that the expert assistant would be able to develop.

United States v. Ndanyi, 45 M.J. 315, 319 (C.A.A.F. 1996) (emphasis supplied).

4. Discussion. Applying the three factors above, the defense has not shown that the requested linguist assistance is necessary:

a. The Defense has not shown why an assigned linguist is “needed” as a confidential member of the defense team. On 6 and 13 November 2004, the Government provided transportation and security to the Defense from Camp Victory to Al Babal Shikh Police Station and to the Neurological Hospital at MB 4605 8856. On 6 November 2004, the government provided a Category 1 linguist to the Defense who provides regular services to the 272d Military Police Company at the Al Babal Shikh Police Station, where the alleged offense occurred. On 13 November 2004, the government again provided the Defense a Category 1 linguist. The Defense Counsel declined use of the Category 1 linguist, implying that the Category 1 linguist used by the trial counsel during interviews was a more qualified linguist because he worked for the Brigade Commander. In an attempt to remedy the concern by Defense Counsel that he had been provided an inferior linguist, the trial counsel offered the use of its linguist who normally provides services to the brigade headquarters. The Defense Counsel declined the use of this linguist because the government’s linguist often provided support to the brigade commander. The charges preferred against the Accused are currently before the brigade commander. The brigade will continue to provide support to the Defense from many of the qualified linguists who support the brigade.

b. Similarly, the Defense has not shown why counsel is “unable” to obtain the evidence a designated linguist would help to gather and present. While it is understood that the Defense Counsel cannot be expected to learn Arabic before the Article 32 hearing, the Defense has not shown it is “unable” to “interview Iraqi doctors, medics and

AFVP-JA

SUBJECT: Request for Appointment of Linguist Assistance in United States v. Private First Class James Edwards Combs III– ACTION MEMORANDUM

numerous Iraqi Police witnesses” with a linguist who is not specifically assigned to the defense team. On 6 and 13 November 2004, the government provided transportation and security to the defense from Camp Victory to Al Babal Shikh Police Station and to the Neurological Hospital at MB 4605 8856. As mentioned above, the government provided linguist support on each occasion. The Defense, with the linguist support provided by the unit, should be able to “interview Iraqi doctors, medics and numerous Iraqi Police witnesses.”


c. The Defense broadly asserts that denial “clearly will result in a fundamentally unfair trial.” This is simply incorrect. A denial will not impede access to the witnesses. The Government has already facilitated Defense access on two occasions to witnesses who may be difficult to reach. On 13 November 2004, the Defense, while at the police station and in the presence of two linguists employed by Titan Corporation, declined the opportunity to interview the victim’s husband and other local fact witnesses or even gather their contact information. The Defense has had equal access to the witnesses and may use the many qualified linguists who currently support the brigade. The unit will continue to facilitate access to these difficult to reach witnesses.

5. Recommendation. The Defense has not provided a legally-cognizable basis for appointment of a linguist. Further, the Defense has equal access to the Iraqi witnesses and documents available to the government. I recommend you disapprove the request for appointment of a linguist to assist the Defense. I also recommend you continue to make linguists who support the brigade available to the Defense.

6. POC is the undersigned at VOIP 693-1579.

Encls

1. Charge Sheet
2. Appointment Memorandum
3. Delay Approval
4. Defense Request for Linguist



C. CULLEN SHEPPARD  
CPT, JA  
Brigade Judge Advocate

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


AFVP-CO

20 NOV 2004

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

SUBJECT: Request for Appointment of a Linguist to Assist Defense.

Your request for Appointment of a Linguist to assist in the Preparation of the Defense Case in United States v. Private First Class Combs III is denied. Pursuant to RCM 702, the defense has equal access to all witnesses, documents and evidence that is available to the government. You have not provided a legally cognizable basis for appointment of a linguist.

  
DAVID D. PHILLIPS  
COL, MP  
Commanding



REPLY TO  
ATTENTION OF:

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

FICI-JA-BFO

28 Nov 04

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

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

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

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

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

AFVP-CO


01 DEC 2004

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

SUBJECT: Defense Request for Delay.

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

CF:  
Trial Counsel  
Defense Counsel  
Accused  
Article 32 Officer

  
DAVID D. PHILLIPS  
COL, MP  
Commanding

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

S: 13 December 2004

AFVP (27)

9 December 2004

MEMORANDUM FOR Private First Class James E. Combs, III

SUBJECT: Change of Article 32(b) Investigation Date

1. On 18 December 2004, at 1000 hours, in the 759<sup>th</sup> Military Police Battalion Classroom, located at Camp Cuervo, I will conduct an investigation pursuant to Article 32(b), UCMJ, to investigate the facts and circumstances concerning a charge preferred against you by CPT Jason L. Marquiss. The required uniform for the hearing will be DCU's.

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

- a. SPC Wade E. Cook
- b. SGT Levi B. Duran
- c. SFC Kenneth I. Pryor, II
- d. Special Agent Brian Dugger
- e. Special Agent Irene Cintron
- f. Mr. Jalil Abass Ali
- g. Master Saef Mezher Al Zubide
- h. Mr. Muzher Mohamed
- i. SGT Levi Duran

3. As investigating officer, I will try to arrange for the appearance of any witnesses that you want to testify at the hearing. Send names and addresses of such witnesses to me by 13 December 2004. If, at a later time, you identify additional witnesses, inform me of their names and addresses.

AFVP-IO

SUBJECT: Change of Article 32(b) Investigation Date

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

*Margaret L. Compton*  
MARGARET L. COMPTON  
MAJ, MP  
Investigating Officer

DEPARTMENT OF THE ARMY  
Headquarters, 42d Military Police Brigade  
Victory Base, Iraq  
APO AE 09342

10 DEC 2004

AFZH-MP

MEMORANDUM FOR Defense Counsel for United States v. Private First Class James Edward Combs III, 272d Military Police Company, 759th Military Police Battalion, 42d Military Police Brigade, III Corps, Victory Base, Iraq, APO AE 09342-1400

SUBJECT: Defense Request for Delay.

1. Applicable Law: Rules for Courts-Martial §§ 405(c)(2)(C) and 707(b).
2. On 20 October 2004, the unit commander, CPT Jason Marquiss preferred charges against the accused. On 1 November 2004, Colonel David D. Phillips directed MAJ Margaret Compton to conduct an Article 32 investigation. On 13 November 2004, MAJ Compton granted a delay in the proceedings from 17 November 2004 until 1 December 2004.
3. On 28 November 2004, PFC Combs' defense counsel, CPT Scott, submitted another delay request based on the accused's request for a reasonable amount of time to obtain civilian counsel. CPT Scott requested a delay until 16 December 2004.
4. I grant a delay in the proceedings from 11 December 2004 until 17 December 2004 to give the accused reasonable time to obtain and have the civilian counsel present for the Article 32 investigation. Please be advised that I do not intend however, to unduly disrupt these proceedings in accordance with Rules for Courts-Martial § 405 (c)(2)(c)
5. POC is Captain Pawloski at VOIP 242-0256.

CF:  
Trial Counsel  
Defense Counsel  
Accused  
Article 32 Officer



RICHARD W. SWENGROS  
COL, MP  
Commanding





DEPARTMENT OF THE ARMY

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

REPLY TO  
ATTENTION OF:

13 DEC 2004

AFZF-JA

MEMORANDUM FOR Major Margaret L. Compton, Investigating Officer

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

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

AFZF-JA

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

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



CHRISTOPHER L. PAWLOSKI  
CPT, JA  
Trial Counsel

CF:  
Defense Counsel  
Legal Advisor

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

AFZF-IO (27)

13 December 2004

MEMORANDUM FOR Private First Class James E. Combs, III

SUBJECT: Ruling on Government Witness List

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

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

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

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

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

AFZF-IO

SUBJECT: Ruling on Government Witness List

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

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

CF:  
Defense Counsel  
Government Counsel



DEPARTMENT OF THE ARMY  
HEADQUARTERS, 231<sup>ST</sup> MILITARY POLICE BATTALION  
CAMP FALCON  
APO AE 09310

XBDAAXO

02 January 2005

MEMORANDUM FOR Commander, 42<sup>nd</sup> Military Police Brigade, Camp Victory, Baghdad,  
Iraq, APO AE 09310

SUBJECT: Article 32 (b) Investigation -- PFC James E. Combs, III, 272<sup>nd</sup> Military Police  
Company

1. Upon careful consideration, I find reasonable grounds exist to believe that PFC James E. Combs, III committed the alleged offense. I have no doubt that he fired his weapon but I do not believe that he did so planning to harm anyone. All testimony heard states that soldiers scan their weapons while on tower duty at the police stations. PFC Combs took his weapon off safe and scanned the area and then fired his weapon.
2. The defense raised Article 31 warning issue because the team leader and a platoon sergeant asked the accused "what he was doing" prior to the issuance of rights. I think this was a normal procedure due to the circumstance. The government felt that Combs should be charged with false official statements. I feel that at the time, Combs not did not give false statements on purpose because he was scared and very confused.
3. Point of contact is the undersigned, VOIP 242-5300.

3 Encls  
DD Form 457 w/encls  
Chronology of Investigation  
Original Investigation Officer's Report

*Margaret L. Compton*  
MARGARET L. COMPTON  
MAJ, MP  
Investigating Officer



REPLY TO  
ATTENTION OF:

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

FICI-JA-BFO

21 Dec 04

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

SUBJECT: Article 32(b) Investigation Defense Objections List

1. A summary of Defense Objections at the December 18-19 Article 32 is as follows:
  - a. Objection: All statements by the accused should be suppressed due to violation of Article 32b, UCMJ.
  - b. Objection: The Government did not lay any foundation for the admission of the Accused's statements.
  - c. Objection: A delay should be granted for the Government's failure to make timely discovery of several different items of documentary and physical evidence.
  - d. Objection: Neither SGT Dugger or SA Cintron should be allowed to testify due to their lack of physical presence.
  - e. Objection: The telephonic testimony was insufficient to allow proper cross-examination of SGT Dugger or SA Cintron.
  - f. Objection: The Arabic documents and the translated versions of the Arabic documents (medical/autopsy records) offered by the government were inadmissible due to the failure to provide any foundation for the documents.
  - g. Objection: The translated versions of the Arabic documents (medical/autopsy records) offered by the government were inadmissible due to the failure to show that the translator had been sworn before completing the translation.
  - h. Objection: The SGT Dugger and SA Cintron did not have a complete copy of the case file in front of them to reference during cross-examination.
  - i. Objection: The Defense should be allowed to argue last at the closing of the Article 32 hearing. Defense was forced to go first.
2. The summary of Defense Objections in paragraph 1 is not intended to be a verbatim list of objections. The Defense requests that the Reporter review the Article 32 tapes and provide a complete list of the Defense objections to the IO.

FICI-JA-BFO

SUBJECT: Article 32(b) Investigation Defense Objections List

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

4. POC is the undersigned at 822-2866.

*//ORIGINAL SIGNED//*

DAVID T. SCOTT

CPT, JA

Defense Counsel

## SUMMARIZATION OF TESTIMONY UNITED STATES V. PFC COMBS

The investigating officer was appointed by memorandum, Headquarters, 89<sup>th</sup> Military Police Brigade, dated 1 November 2004.

The accused was referred to this hearing by memorandum, Headquarters, 89<sup>th</sup> Military Police Brigade, dated 1 November 2004.

The following persons were present:

MAJ Margret Compton	Investigating Officer
CPT Josh Toman	Trial Counsel (TC)
CPT Christopher Pawolski	Trial Co-Counsel (TC)
CPT David Scott	Defense Counsel (DC)
1LT Stanley Martin	Defense Co-Counsel (DC)
PFC Combs	Accused
SSG Carlsson	Reporter
SGT De Anna Allas	Reporter

The following persons were absent:

None.

The Article 32(b) investigation opened at 1011 hours, 18 December 2004, at the 759<sup>th</sup> Military Police Battalion Day Room, Camp Cuervo, and Baghdad, Iraq. The investigating officer (IO) identified herself and stated that she had been appointed by COL David D. Phillips. She stated that the accused had been informed of the hearing time and date.

The IO informed the accused of his right to civilian counsel, military counsel of his own selection or a detailed military counsel. She further reflected that CPT Scott and 1LT Martin was present as the accused detailed counsel.

The IO stated her role as the Article 32 investigating officer.

DC waived reading of the charges to the accused.

The IO advised the accused of his right to remain silent, his right to make a sworn or unsworn statement, and the right to present evidence in his own behalf.

The IO stated the names of the witnesses who were scheduled to testify.

The IO asked if the accused understood his rights and the accused stated that he did.

The IO asked if the defense requested any additional witnesses.



DC: We object that the government is going to pursue or ask you to pursue in accordance with 107, mandatory misconduct charge, we would like it to be put on the record that we would be willing to delay the 32 to allow the government to prefer an additional charge under Article 107 if they choose to at this time instead of using Article 32 to look into misconduct, so that if the government wants to pursue additional charges the defense will not object at this point. In doing that, we will certainly agree to the government that we can delay a reasonable amount of time for them to do that.

IO: What is the 107?

TC: It is a false official statement that the accused made to several parties; however, the scope of your investigation is to also look into appropriate, not only of the charges, but rather misconduct or was the case properly investigated. So, the government's position is that we need the testimony today of those who appear and the message we receive, we would ask you to consider whether it is appropriate to make a recommendation to charge him with a false official statement based on his acts during the investigation. So technically I don't see that there is a base for objection to offer here today to delay or not to delay. The case has already been delayed and the faster we get to that evidence we will also provide you excerpts from DA PAM 27-9.

DC: Ma'am, we would actually object to that based on the fact that the Uniform Code of Military Justice provides that at the time of charging the government should charge all of the offenses. In this case, they have known since he provided his statements to CID and at that time they could have chosen to make that charge. I know that there has been a change in prosecutors so I think it would be appropriate before we go forward with the 32 that if the government believes that there is a viable charge then go ahead and prefer it instead of having you inquire into that. If they believe there is another charge, the defense, does not object to them preferring today, or in the next thirty minutes, thus making this 32 go that much quicker.

IO: So you're saying that you want a delay right now of this 32?

DC: Ma'am, yes for thirty minutes or however long it takes them to draw up their charge, if they want to move forward on that.

IO: (To trial counsel) You say what?

TC: I would say Ma'am that we haven't had adequate time to investigate the full nature of what was said under oath to those individuals that would assist us in drafting those charges and also having discovery for those purposes, therefore,

we also ask to have the inclusion of the evidence today so that the government has an adequate basis to support those additional charges against PFC Combs. Then we will proceed and prefer, however, this forum can adequately investigate those circumstances even without those charges being preferred because it is all one transaction, a part of this investigation. It is not that we are asking you to go out and look for something not covered within the investigation that are within the parameters of this 32.

IO: So do you want me to delay for 30 minutes right now?

TC: No ma'am.

DC: Can I just say one thing ma'am and that is that those statements that the government is stating that they did not have time to investigate were made at the very latest, well it started on September 22 and then occurred on up to October 10<sup>th</sup> I believe. That is almost, I believe, well it is almost two months ago. The government has known about this the entire time. They are just attempting to get you to look at something else and I understand that there has been a change in prosecutors, but they've had those statements since October and to say that they haven't had time to investigate it. Since prosecutors are pun gable, where they can be switched out at any time, I don't believe it is correct. If they wanted to prefer that charge they should have preferred it already. Two months is more than enough time of notice. I think your legal advisor could give you some excellent guidance regarding the appropriate time to prefer charges, whether or not the government in this case has all of the evidence of the false official statements-which they already have in their possession.

DC: Ma'am, The defense requested some time ago, about a month ago, discovery regarding monetary payments made to the family of the alleged victim. To date defense has not received any of that evidence. The defense also requested platoon, company, and battalion SOP some time ago, the 19<sup>th</sup> of November. Again, as of right now we have not received any of those-any of that information. The defense also requested the Iraqi investigation file from the Iraqi police. The government has had that; it's been in the Iraqi hands since October. We just received that the night before last. So, it is insufficient time for the defense to go through that, confer with someone who can allow us to interview the Iraqi police regarding their investigatory file. Also the defense requested information regarding the location of the alleged victim's remains and the names of the agencies and individuals who transported her and examined the body. Haven't received that information. Additionally the defense requested lab results and results of scientific testing for ammunition, weapons, and ammunition that allegedly killed this woman. We haven't received any of that information as well. We do not have a complete copy of the CID file; the entire left side of the CID file hasn't been produced to us. That was information that was requested on 19 November. So the defense would request a delay until that information, which is material to the defense, is provided to us or the alternative that when you are

going through your findings, recommendations and conclusions that you concur that that information must be exculpatory to the defense and give it that appropriate inference or grant the defense a delay.

IO: (To defense counsel) Anything else?

DC: No ma'am.

TC: Ma'am, the governments response would be that we will make all ---- required by the code in a timely fashion required by the code. Lab results, once they are in the United States possession we will turn over anything you wanted to see upon receipt.

IO: Anything else?

DC: I have one more objection ma'am. I object to it being so cold in here. It will affect the nature of the proceedings. I think a brief delay should be granted until we can find a more suitable room.

TC: I will join with the defense objection. These proceedings required a degree of formality worthy of the significance of their proceedings. We've have asked that the Battalion provide us with a place with facilities including the ability to use telephonic communication within the battalion classroom. We have been denied that opportunity and those resources.

IO: At this time I am going to call my legal advisor.

The hearing recessed at 1026 hours, 18 December 2004.

The hearing reconvened at another location, the Chapel, at 1148 hours, 18 December 2004. All parties who were present before the recess were again present.

IO: All objections are noted for the record at this time.

TC: At this time we have enclosures that we want entered to the record.

Enclosure 1 – Summarized transcript of Proceedings

Enclosure 2 – ERB of defendant

Enclosure 3 – DD form 458, dated 20 October 2004-12-19

Enclosure 4 – Excerpt from DA PAM 27-9, Art 107, 119, 134

Enclosure 5 – Transmittals, Commanders recommendation

Enclosure 6 – Memorandum of Appointment

Enclosure 7 – Memorandum of notification

Enclosure 8 – Defense Request for Continuance

Enclosure 9 – Investigating officer's ruling on Defense Continuance Request

Enclosure 10 – Special Courts Martial Convening Authority response to Continuance Request.  
Enclosure 11 – Defense Request for Witnesses  
Enclosure 12 – Government Response to Witness Request  
Enclosure 13 – Investigation officer's ruling on government Witness request  
Enclosure 14 – Defense Request for Discovery and Addendum  
Enclosure 15 – Government response to Witness Request  
Enclosure 16 – Is reserved for Defense Objections

DC: Ma'am, I think the record should be noted that several of these exhibits that the government is attempting to be introduced have subsections to them, a., b., and c. The defense does have an objection to the last page of Exhibit 4c, which appears to be a page from DA PAM 27-9 concerning the impersonation of a commissioned, warrant, noncommissioned, or petty officer and it has the elements in there.

TC: We would withdraw that and subscribe that to government error. There is no basis for that.

DC: That is it ma'am.

DC: Ma'am, one other thing before we get started. On the defense objections, just to clarify as to whether you are going to consider one of them. Are you going to consider that or not?

IO: The objection is noted at this time

DC: You will consider it?

IO: Yes.

DC: Okay.

TC: So, for clarification, minus the withdraw of the one page of exhibit 4c, which had an improper page, the 15 enclosures minus one, the script – the summarized transcripts for these proceedings, have been admitted as enclosures?

IO: That's right.

TC: Okay.

TC: Ma'am, next the government has some documentary evidence we would like to introduce.

First we would like to offer for the record Prosecution Exhibit number 1, DA Form 3881/DA Form 2823, PFC Combs, dated 23 September 2004.

Prosecution Exhibit number 2, DA Form 3881/DA Form 2823, PFC Combs, 23 September 2004.

Prosecution Exhibit number 3, DA Form 3881/DA Form 2823, PFC Combs.

Prosecution Exhibit number 4, DA Form 3881/DA Form 2823, PFC Combs, 9 October 2004.

Prosecution Exhibit number 5, Crime scene sketch from the 15-6 investigator 1LT Watkins.

Prosecution Exhibit number 6, photograph taken at the portal at IHP number 6, Crime scene photograph, view number 1, IHP bunker.

Prosecution Exhibit number 7, photograph of the alley facing the south side from the window, crime scene photograph, view number 2, IHP portal.

Prosecution Exhibit number 8, photograph of the alley, crime scene photograph, view number 3, Alleyway.

Prosecution Exhibit number 9, photograph of Mrs. Babba Hussein in the hospital of the front, crime scene photograph, view number 4, victim front.

Prosecution Exhibit number 10, photograph of Mrs. Babba Hussein in the rear, crime scene photograph, view number 5, victim back.

Prosecution Exhibit number 11, Medical examination of the victim in Arabic.

Prosecution Exhibit number 12, is the English translation of the previous document. Medical examination of victim – English translation.

Prosecution Exhibit number 13, the death certificate in Arabic

Prosecution Exhibit number 14, the same as the previous document translated into English. Death Certificate – English translation.

DC: Defense objects to prosecution exhibits one, two, three, and four. Under 405g the persons who took these sworn statements should be allowed to testify today and authenticate those statements into the record.

IO: You said one, two, three?

DC: One, two, three, and four. Defense would also proffer, ma'am that those statements were all taken without PFC Combs being given his rights waiver through Article 31.

DC: If I could expand a little on that objection, ma'am. The defense is going to illicit evidence that PFC Combs was questioned without a rights warning waiver upon the onset and everything that came after that was done without a proper cleansing statement, thus it is inadmissible and in violation of Article 31.

IO: You're saying that at the time of these statements, that he was not afforded his rights?

DC: Ma'am, the defenses position is that at the time of the incident a noncommissioned officer by the name of Sergeant First Class Prior came to the roof after being notified that there was an accidental discharge. He then

questioned this young man regarding the actual discharge without a rights warning waiver, thus all the statements made after that are inadmissible, and then he was not given a proper cleansing statement after his rights were violated. The second objection, ma'am, was the rights warning, the first one was that there has been no testimony here of a witness to authenticate those sworn statements. That objection actually ties into the second one. Witness will testify that PFC Combs was not given the mandating cleansing statement.

IO: I am going to allow these to stay.

TC: Ma'am just for confirmation, prosecution exhibits one through four are admitted into evidence at this time.

IO: They are.

DC: Ma'am, the defense objects to five, which, on its face looks to be some sort of strip map.

TC: Ma'am, before they even get to that, we have only offered these exhibits, we have not attempted to admit these into evidence at this time. If there only objection is sufficiency of that one, I believe that Sergeant Duran can lay the proper foundation of that as a fair and accurate representation of the alley as it looked on 22 September when the victim was shot and killed.

DC: The defense would still object ma'am. We have photographs available of the crime scene, or the alleged crime scene. So a sketch isn't really relevant or useful when there is better evidence that will accurately portray what the government claims the crime scene looks like. We're referring actually to the prosecutions exhibit seven and eight.

IO: I don't think we need this.

TC: Ma'am if we may, we ask you to reserve that because we haven't laid the foundation. In addition, I believe what they are trying to say is that it is cumulative because the photographs show the picture but as you can see the pictures are just a limited scale of the entire scope of what PFC Combs saw when he was in the tower that day. So that with the sketch coupled with the photographs you can get a better approximation of the events which is what you are required to do in this investigation. So the sketch is merely to assist you in determining the factors that PFC Combs saw and the others saw when they conducted their investigation afterwards. It is not in anyway trying to supplant those photographs but to supplement them since we can not visit the crime scene in this area.

DC: I guess that I would address that as it is not to scale.

TC: No objection to that.

DC: The person that made the sketch to come in and testify as to the sketch. It is not a cumulative objection ma'am. We're just saying that there is better evidence portrayed as to what the scene looked like. That's making out objection under 405g5a2.

IO: Well, maybe we do need to leave it in. I'm going to admit it.

TC: So prosecution exhibit 5 is admitted into evidence at this time?

IO: Yes. Are there any more objections?

DC: Yes ma'am. Prosecution exhibit number six, seven, eight, nine, and ten. There has been absolutely no foundation as to what these photographs are photographs of, what they represent, what they represented at the time they were taken and whether or not they represented the crime scene at the time of this alleged crime. I understand the government's earlier argument that they haven't been given the opportunity for a foundation to be laid but since you are admitting other evidence in without the foundation the defense would make an objection.

IO: I'll allow that they stay.

TC: So at this time, ma'am, the remaining prosecution exhibits six through fourteen are accepted at this time?

DC: Ma'am, we only objected up to ten.

TC: I'm sorry, ten.

IO: Yes.

DC: We do have an objection as to exhibit eleven. It's a document that appears to be in same sort of foreign language. I don't think anyone here can testify or explain what that means, what the document is, what it purports to say, who drafted it. Therefore it's of little if any relevance to these proceedings.\

IO: I'll allow it to stay.

DC: The defense objects to prosecution exhibit twelve, ma'am. The government has represented that is an English translation of prosecution exhibit eleven. Under DA PAM 27-17, when testimony is given through an interpreter, such as a translated document, that interpreter must first be sworn. We are not aware that the interpreter who interpreted that document is going to come here today and testify or that they were sworn. That's 3-3 of DA PAM 27-17.

IO: I'll allow it.

DC: We would have the same objection to prosecution exhibit number 13. Again it is a document that appears to be in some sort of foreign language. No foundation, nobody here can say what that document says or who drafted it, what it is.

IO: I'll accept it.

DC: To prosecution exhibit fourteen, the same objection. Under DA Pam 27-17, 3-3, that when testimony is given through an interpreter, such as an interpreted document, the interpreter must be sworn. That's not the case here.

IO: I'll let it stay.

TC: To confirm your rulings, prosecution exhibits one through fourteen have now been offered and admitted into evidence with the noted defense objections those exhibits are admitted into evidence at this time?

IO: Yes.

DC: Ma'am, I would just like to close the loop on our objection with you letting that in over the procedural guide for Article 32.

IO: Objection is noted at this time.

Sergeant Levi B. Duran, 272<sup>nd</sup> Military Police Company, 759<sup>th</sup> Military Police Battalion, Camp Cuervo, Baghdad, Iraq, was called as a witness, duly sworn and testified in substance as follows:

#### DIRECT EXAMINATION

I am a team leader for 2<sup>nd</sup> platoon, sector squad, Charlie team. I have been a team leader for this squad since March of last year. I arrived in Iraq in April of 2004. PFC Combs has been a member of my team since March of 2004. When we first got to Iraq our mission was to teach at the Baghdad Public Service Academy, where we taught the Iraqis to be Iraqi police officers. We then moved to Camp Cuervo where we took over the IPS. Our mission was to go evaluate Iraqi police stations and while we were doing that we would pull force protection. When we get to the IPS stations the NCOs would go inside and meet with the station commanders to determine what they need as far as supplies, what they need as far as training, we would do arms room count, we count the detainees and question them pending on what they have done, and that is about it. On 22 September 2004 we were conducting one of these missions. Around 1300 hours we were conducting force protection on the roof because it was my teams turn to



go on the roof. I would usually post one guy in one guard tower and the other guy in another guard tower. On that day there were two Iraqi police officers in one guard tower so I put PFC Combs in one guard tower and Specialist Cook and I stood outside. I didn't give my soldiers any instructions prior to posting them on guard duty before shift. There is not a SOP as to how we should sit in the towers. Prior to going to IP 10 we did receive an intelligence brief and we were not told of any threat or anything that was going on at IP 10, as far as I know. I have been to IP 10 six to seven times previously. I have never known there to be a threat at IP 10. On 22 September I posted my guards. Specialist Cook was not in a tower because there were two IP's in a tower. Combs was located in the tower at the corner of Main and Pennsylvania, I believe facing south, inside the tower. I had seen PFC Combs in the tower about 10 minutes prior to the incident. At that time I believe his weapon was either in his lap or at the low ready. After I checked on Combs I went outside and was talking to Specialist Cook. At approximately 1345 hours I heard a gunshot. I immediately looked to the right toward the tower and I saw smoke or dust being blown out of the firing port facing Main Street. I ran inside the tower and saw Combs, I don't remember if he had his magazine in his hands or if he was taking it out of the weapon. He was looking at me and I said "what the fuck, Combs," and he said that it just went off. I then asked him where his weapon was pointed and what happened. He said it just went off. I asked where it was pointed and he said out there. He indicated towards the alley and I said okay find the shell casing. Cook was right behind me when I ran in and I told him to help Combs find the shell casing. Cook went outside the tower to see if the shell casing might have ejected outside the window on the roof, Combs was searching on the floor inside the tower. I looked outside the tower and I saw a small crowd gathering down the alley. I heard some yelling down the alley. A couple of men ran across the street towards the IP station and talked to the IP's by the perimeter wall. I looked around a little bit and then looked back out and I saw either one man or two men carrying a body toward a blue truck. They put the body in the truck and they drove off. There were approximately fifteen to twenty people in the crowd that was in the alley.

When I first saw Comb's weapon it was on safe. I did a functions check on the weapon when we returned to Camp Cuervo. The weapon was properly functioning.

As I understand the ROE you are able to engage a target when you are threatened, or when someone else in your unit is threatened. That situation never happened to me at IP 10.

TC handed the witness a diagram drawn by 1LT Watkin of the crime scene, marked at prosecution exhibit number 5.

### DIRECT EXAMINATION

This looks like a diagram of IP 10 at Main Street and Pennsylvania. I recognized where the decedent was when she was shot. I would characterize this as a fair and accurate representation of the scene.

I can not tell you who the IP was that was with Combs prior to the shooting. I did not hear any other shots at all after I heard PFC Combs' shot. I did not hear any shots prior to PFC Combs' shot. I did not think that PFC Combs had committed a crime prior to entering the tower.

There was not a radio in the tower available to PFC Combs. I do not know of any incidents or situations prior to this incident.

### CROSS EXAMINATION

I have no training in crime investigations. I have never worked with MPI. I have been a MP for just over three years. I have done a little bit of road work.

I went into the tower to see PFC Combs after I heard the shot. At that time PFC Combs told me he had an accidental discharge. At that time I grabbed a radio and called downstairs that PFC Combs had had an accidental discharge. SFC Prior came up to the roof but I don't remember what he said to PFC Combs.

I don't know if the person that I saw being carried was alive or dead. I couldn't tell if it was a child or a man or a woman.

It is possible that this incident happened a little later than 1345 hours. I think that 1355 hours would be more accurate.

There were no bino's in the tower that day. We are not required to use bino's. I know what scanning with the weapon is, it would be similar to carrying the weapon at the high carry, at the ready. Soldiers in the guard tower are allowed to scan with their weapons, there is no prohibition.

When you see a threat it is safe to turn your selector switch to fire. If it turns out that it isn't an actual threat then you need to turn your selector switch back to safe. If you left it off of safe it would be bad.

I have scanned with my weapon before. It's a good way to stay alert.

I understand what running scenarios are. This is when you are doing a little what if in your head. What if this was a car bomb instead of a regular car, what if this crowd of people was hostile and not just a group of kids. I do not do that when I

scan, but I think that some soldiers do. There is not a prohibition on that. It's a good way to stay alert, of self training.

We have had other negligent discharges in our company. We have had quite a few, more than any other company in the battalion. I believe that the other soldiers who had negligent discharges received summarized Article 15's. I do not know what happened to officers.

IP 10 does have a nickname called the Wild West. It's called that because it is in the western part of our sector where there is a large market. It is not uncommon to hear gunfire from the surrounding areas, it is dangerous. We hear gunshots there quite often. I'm not sure who the gunshots are coming from, just that we hear gunshots.

The weather on the day of the incident was hot and sunny. It was over a hundred I believe. PFC Combs was on his shit for about fifty minutes. It gets pretty hot in the tower.

There was no heightened threat that day but we were briefed that a general would be coming out to visit the IP station that day. We were told to be on our toes. PFC Combs knew about the general coming to visit.

I could not tell what the figure was when it was being carried down the alley. Initially some IP's said that a child had been hit on the side. Then they said that it had been a girl that was shot. The station commander told us that he wanted us to leave.

When I first went into the tower after the gunshot PFC Comb's demeanor was scarred, shaken and in shock. Neither SPC Cook nor I pointed our weapons out the window that day. It would be hard for anyone in the alley to see SPC Cook or myself on the roof, but I guess it's possible. They wouldn't be able to see us from behind the tower.

DC handed the witness prosecution exhibit number 5 and instructed the witness to mark where he and SPC Cook stood on the day of the incident.

Where I marked shows us to be right behind the tower. No one from the alley could have seen us where we were standing behind the tower. It wouldn't be true if people in the alley said that they saw MP's on the roof pointing weapons toward the alley. When I walked into the tower to check on Combs I was not standing in front of the port, so it would be impossible for anyone in the alley to see me. They could not see me when they looked in from the alley. If some Iraqi's said there were two people in the tower it wouldn't be true.

I have been Combs team leader since March. I see him everyday. When we got here, our first mission was teaching at the Public Service Academy. We were

teaching basic police skills. PFC Combs taught a class of thirty Iraqi's. He did very well.

I have done a lot of Convoys with PFC Combs, he was a driver. He is the best driver I have had. He is not a good gunner because he wasn't loud enough and didn't have enough aggression. He has had problems in the past in garrison but not over here. He is a good combat soldier. I would take him back today, I want him back.

TC objected to the relevance of whether or not SGT Duran wanted PFC Combs back on his team.

The IO noted the government's objection for the record.

#### RE-DIRECT EXAMINATION

When I went into the tower to check on PFC Combs after the incident took place he looked shocked. It was only a matter of a few seconds that I walked into the tower after hearing the shot. I had not formed an opinion at that time about the legitimacy of PFC Combs firing that round. I did not hear any shots before or after hearing PFC Comb's shot. I knew it was a negligent discharge when I went in and he said it was on safe and it just went off. I walked in and I said what the fuck, Combs, and that was his response. I asked him that because I didn't know what went on. I was under the impression that it was one of my military duties to ask him what happened because I was in charge of security. So I was performing my security duties when I asked him that.

By the time that I got in there he was either taking the magazine out of the weapon or he had it out already, I don't recall. By the time I was given the weapon it was on safe. He did not hand me the weapon right away. I didn't ask for it until we got back. When I walked into the tower he had the weapon in his hand and either he was ejecting the magazine or it was already out and the weapon was on safe.

It depends on how far you are aiming down the alley as to whether or not you have to stand up in the tower to aim your weapon out the port.

TC handed the witness prosecution exhibit number 5 and asked him to testify if the arrow on the sketch was an approximate location of where he saw the commotion or where he witnessed the body being carried.

When I saw the body being carried they were already out of the alley and into the front street.

TC handed the witness prosecution exhibit number seven, crime scene photo, view number two of the portal.

I have been in that bunker about once a week since September. This is how the alley looked on 22 September 2004. I saw the body being carried in the street scene in this picture. I saw people carrying the body less than a minute after I entered the tower.

As soon as I heard the shot I ran into the bunker. It was about ten feet from where I was standing. It took about two to three seconds before I was in the tower. It was a couple seconds after I entered the tower that I looked out. It's fair to say that it was closer to ten seconds before I looked out the window after entering the tower. It was then that I saw the commotion in the alley. I saw the body the second time I looked out the window. After I looked out the window the first time I told Combs and Cook to look for the shell casing and I looked around the ground a little bit myself. Then I looked out and that was when I saw the body. I would say it was closer to thirty seconds later before I looked out the window the second time.

I'm not sure how high your weapon would have to be held if you were sitting in the tower to aim it out the portal, I imagine pretty high. I would think you would need to be standing to at least get the weapon level. I have scanned with my weapon at both the ready and the low ready. I do not scan with my weapon on fire because it is not safe. I do not scan with my weapon on burst. I never have my weapon on fire or burst if I run scenarios. I don't do it because it is not safe. I don't do it because it is not safe for anyone. I think it's a foreseeable consequence that a round might leave the chamber if your finger is on the trigger. Your finger on the trigger does not cause the round to leave the chamber; you would have to pull the trigger before that happened. You would have to squeeze the trigger, not just pull it. The four fundamentals of marksmanship are breathing, trigger squeeze, position, and sight picture. A slow squeeze on the trigger would cause the round to go straight to where the weapon is aimed. If you have good breath control the round will go straight and not move up or down. A good sight picture will cause the round to hit where you want it to. A good sight picture is where we align the front and the rear sight post.

I saw them carrying a body approximately twenty to thirty seconds after the incident took place. The only round that I heard emulate, was from PFC Comb's weapon.

The IP's asked us to leave the station because they were concerned that the crowd would cause some trouble. I do not know why they were concerned. I did not hear any other indication that someone besides a small child had been shot before we left.

I have never ran scenarios with my weapon because I was bored. None of my soldiers have ever asked me to run scenarios with their weapon because they were bored. I would allow them to run scenarios with their weapon. I would not let them run scenarios with their weapon if they were bored on burst, because it

is not safe. It is not safe for the person on the other end of the barrel. It isn't safe because they could get shot and if they get shot they could die.

#### RE-CROSS EXAMINATION

You can not actually stand up in the tower. I can stand up but anyone any taller than me can not stand up in there. You can see all the way down the alley sitting in the chair. If your weapon was standing high it could be pointed down that alley.

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

The hearing recessed at 1247 hours.

The hearing reconvened at 1345 hours. All parties who were present before the recess were again present.

Specialist Wade E. Cook, 272<sup>nd</sup> Military Police Company, 759<sup>th</sup> Military Police Battalion, Camp Cuervo, Baghdad, Iraq, was called as a witness, duly sworn and testified in substance as follows:

#### QUESTIONS BY THE INVESTIGATING OFFICER

PFC Combs is not on my team but sometimes we mix things up a little bit to change up the monotony. It was not normal for him and me to be on the roof together but it was normal to be on the roof. I've worked with Combs in the rear on several occasions and here a few times. Him not being in my team, usually I work with PFC Merle who is in my team and is my gunner. So, I'm usually with him. I really couldn't tell you if this was the first time that I had worked with PFC Combs on the roof because we change and we are up there with different people a lot so I really couldn't tell you yes, or no. I did not notice PFC Combs acting differently from any other day. He didn't seem upset or anything like that.

#### DIRECT EXAMINATION

After the round was fired PFC Combs looked really scared. He seemed to be real nervous. It scared him like it was unexpected. I went into the bunker after the round went off and he was scared, he was pale and shaky, nervous, weapon in one hand with his magazine in the other. He didn't make any statements to me as to what happened. We never talked about the incident. I wasn't told about anyone being injured as a result of a round going off until way after the fact. I overheard an IP come up and tell SFC Prior that someone, a female, had been injured and that she was at the hospital. That was all that I had heard

about the whole thing. That happened while I was at the station, immediately after the shot. They said she was wounded. That was all I knew about the whole thing until I was talked to way later after I had left the station.

#### CROSS EXAMINATION

I have given two statements regarding this case. I also did a few drawings.

DC handed the witness exhibit 5 from the CID file to confirm that it was a drawing done by him.

#### CROSS EXAMINATION

This is what I drew for CID. The drawing shows SGT Duran and me behind the tower on the opposite side of the alley. It was not possible for anyone to see us from the alley when we were on that side of the tower.

I have been a MP for three and a half years. I have worked with MPI. I have done some criminal investigations.

During the actual work week IP 10 is very, very busy. Traffic is usually backed up really heavily in that intersection. To my understanding, I've been told that it is one of the transportation points for goods in and out of the shopping zone there. There is criminal activity in the area. The whole block that is adjacent to the IP station is nothing but criminals is what we are told. Starting from where that alley is down the whole block. We do hear gunfire out of that area. We hear gunfire from across the street, the big parking lot across the street. Up the street we hear gunfire; we'll hear gunfire from behind us. At any given day we are hearing shots. We did hear shots earlier in that day. That areas nick name is the Wild, Wild West. It is a pretty wild area.

We probably worked in that specific IP station for a few weeks before this happened. It was a change in mission. About five months in we came off the academy and we took over for fourth platoon. We were in the classrooms instructing IP's in the classroom on how to do their jobs. We taught them everything from bookwork to hand to hand combat, how to show batons and weapons, how to shoot, how to basically do their job. During those five months we did not stand guard on the towers at the IP stations. What we would do was on Thursdays and Fridays which was their weekend we wouldn't run classrooms so we would volunteer to go outside the wire. I know personally I went outside the wire several times in those five months. The IP station was a new mission. I was not afraid going out to the Wild West the first time. I'm here to do a job and I put my fear in God as long as he has it, I don't have anything to worry about. I've seen other soldiers scared.

There was heavy traffic and crowded streets in that area on that day. I drive a lot around there. I have been to IP station 11 and to some of the hospitals.

An IP came up on the roof after the incident and said that there was a female that was at the hospital. I don't see how they could have gotten anyone to the hospital that fast from the time that the round went off to the time the IP told us that a female had been taken there. They told us that they had taken her to the hospital across from IP station 11. For us to get from station 11 to station 10 it takes us 25 to 30 minutes most of the time to make that distance. When we are driving we start with hand and arm signals, verbal with hand and arm signals, and if they continue to aggressively come toward us or swerve into our convoy we do then point our weapons at them to get them to move out of the way. I think our convoys make better speed than regular traffic.

I have been to IP 10 a lot. I carry a M249, a M9, and a shotgun. There are not always binos up on the roof.

I was on the north side of the tower. I could not see if there was any type of threat in front of the tower from where I was standing. If there was a threat SGT Duran and I would not have been able to see it. The IP's in the other tower would not have been able to see a threat in that area either. I was not aware of any threat. We are always at a certain level of awareness. It was no more than usual on that day. To my knowledge I don't remember being briefed that there was going to be a general in the area that day. I don't remember that.

When I am in the guard tower I usually open the bipods on my M249 and set it up on the windowsill. The weapon is pointing out of the window. It is possible to sit at high carry in the guard tower. I've seen it done.

You can take your weapon off safe if you feel that there is a threat. If you feel that your life is in danger or your other soldiers' lives are in danger you can take your weapon off safe until the situation distinguishes then you need to put it back on safe. I have taken my weapon off of safe before a lot of times. I have never taken my weapon off of safe and fired it. All the times that I took my weapon off of safe the threat would usually go away. When the threat went away I put my weapon back on safe. If I had forgotten to put my weapon back on safe it could be bad because it would be dangerous.

On that day I was never aiming a weapon down that alley. Before that incident there is no way anyone could have seen me looking down into that alley. I was never in the guard tower on that day with PFC Combs. Nobody would have seen me in there with him prior to the incident. If someone said that they saw two people up in the tower that would be incorrect. I did go check on him but still no one would have been able to see me. The way that the guard tower is positioned there is an entranceway and a secondary entrance way into the tower, the cut out for the window is after the entranceway. The only way that someone could



have seen me is if they were across in the far parking lot not even in that alley area. Not in the south but in the east. No one down in the alley could have seen me.

I did give a statement to 1LT Watkin. When I made my statement I said I didn't understand how they could have gotten the female to the hospital that fast. Basically because the traffic is so dense that I don't understand how they could have gotten across from station 10 to station 11 in that amount of time. Especially coming from that alley, taking the girl and putting her in a car, then coming out of that, then you have to cross that five way intersection, then you have to end up getting down there. Then there is a choke point when you start getting close to station eleven to where it drops down to one lane right in front of the station.

I did give a statement to Special Agent Irene Cintron. In that statement I said the shooting occurred around 1355 hours. I was there on the roof and had worked with PFC Combs since he came to the deuce, which was about 2 years ago. I would work with him again and I want him back on my team.

The TC objected as to the relevance of whether SPC Cook would work with or wanted PFC Combs back on his team.

The IO noted the objection for the record.

#### CROSS EXAMINATION

I would take him back today.

There have been a few negligent discharges in my company. I don't know if my company leads the battalion in negligent discharges, I just know there have been a few. I have heard that these negligent discharges have resulted in Article 15's, reductions in rank, those are the main two that I have heard of.

#### QUESTIONS BY THE INVESTIGATING OFFICER

I did go in and check on PFC Combs in the tower before the incident. It is something we regularly do to make sure that everyone is up. I have a rule that as long as I am checking on people I know that my butt is covered.

#### RE-DIRECT EXAMINATION

What we do when we see a threat depends on what kind of threat it is. In the military police corps there is several things we can do. It elevates as it goes. When traveling we can start with hand and arm signals and move on from there.

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

TC: At this time the government offers prosecution exhibits 15 and 16 into evidence. Defense has previously been provided a copy. Prosecution exhibit 15 is an excerpt from FM 3-22, specifically in paragraphs 4-3. Prosecution would also like to offer prosecution exhibit 16, which is a standard form 1034, public voucher for purchases. You see the payees name in claims. This prosecution exhibit 16 would be identified as claim 39BCT-521; it consists of a total of three pages. It is the 1034, supplement agreement, and a memorandum for record dated 18 November 2004.

DC: Defense objects to prosecution exhibit 15 because it was just provided to us today and I have not had the opportunity to review the rest of the evidence to determine if there is any relevant information. I don't know if it is current, there is no date, and the original is not here. Second, I object to PE 16 on the basis that there is no foundation for these documents. I don't know where they came from, who signed them, and that perhaps there are underlying documents that are missing.

IO: I'll agree with that I don't think we need these.

TC: If I may address that, ma'am. There is no need to provide notice of these types of regulations. They are used to assist in the findings factor and determining the validity of the pre-trial investigation. Regarding PE 16, that was provided to the defense approximately five minutes after we had received it. Additionally the documents are relevant in that it shows the United States government did make a payment to the husband who lost his wife who was the victim in this case due to gunshot wounds on 22 September 2004. In essence, these two documents, one being a government regulation, has sufficient foundation for you to consider the contents when making your determination of the sufficiency of the facts here to base your determination as to appropriate disposition.

IO: I will not allow prosecution exhibit number 15.

PFC Allen Pepple, 272<sup>nd</sup> Military Police Company, 759<sup>th</sup> Military Police Battalion, Camp Cuervo, Baghdad, Iraq, was called as a witness, duly sworn and testified in substance as follows:

#### DIRECT EXAMINATION

I am in first platoon, Wolverines. I have been in the army for two and a half years. My job is to go out to the IP stations and help the IP's to pull security for

the IP stations and make sure that they are not overran. I do not do convoys but I do drive out to the IP stations. It is dangerous.

I have never worked with PFC Combs.

I have been to the Iraqi Neurological Hospital one time. I escorted CPT Scott to the hospital for this investigation. It is dangerous by the hospital; you could say that it is dangerous pretty much everywhere out there. Outside the wire.

The TC objected to the relevance of the condition of the hospital.

The IO allows the questioning to continue.

#### DIRECT EXAMINATION

I went up to the hospital with CPT Scott and I escorted him inside. At the hospital there was a little bit of trash outside, not much. It is just a basic Iraqi hospital not to the standards of US standards. There were a lot of people sitting out in the hallways. I was present when CPT Scott interviewed a few people. The doctor who treated the alleged victim in this case. I can't recall his name. Dr. Hamin does ring a bell.

The doctor said that the wound entered one side near the temple and out the other side and that the caliber of the round was bigger than a 7.62. The doctor said that he had dealt with over a hundred head wound patients during the ground war portion of the war. He said that he had a lot of experience with head wounds. He said that the wound was caused by a bullet bigger than a Kalishnakof.

#### CROSS EXAMINATION

The doctor said that the bullet was bigger than a 7.62 or a M4. I don't know where the doctor went to medical school. I do not know how long he had been a doctor. I do not know how many head shot wounds he had treated.

I was tasked out to escort CPT Scott to wherever he needed to go and to pull security at the hospital. When we got to the hospital he asked me to sit in with him during the interviews. Interpreter Rommi, 1LT Martin, CPT Scott, myself and the doctor were in the room during the interview. I was not pulling security; I was listening in on the conversation. I would say that they started talking about these wounds right away once we entered the room. The doctor said that he had seen a lot of gunshot wounds from before. He did not specify as to whether or not he had examined head wounds from elderly women or males, he just stated that he had dealt with over one hundred gun shot wounds. He didn't tell me how many were head shots. He did not talk to me about gunshot pathology. He did not tell me that the entrance wound is smaller than the exit wound. Normally the exit

wound is bigger than the entrance wound. He did talk about how things like the distance of the shot can affect the size of the wound. I don't recall if he talked about the effects of ricochet. He did talk about angle of impact of the round to the wound and how it could distort the size of the wound. I believe he considered all of these as factors of the size of the wound. The doctor did not indicate that this was a close range shot with a pistol. I do not recall him mentioning anything around the point of entry of the wound. He didn't mention anything about gunpowder or the wound looking dirty. He didn't say that this wound was caused by a really big gun; he just said that the size of the wound appeared to be from a bigger gun. He didn't mention anything about ammo wadding in the wound.

#### RE-CROSS EXAMINATION

The doctor did review the autopsy while we were there.

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

The hearing recessed at 1442 hours.

The hearing reconvened at an alternate location at 1452 hours. All parties who were present before the recess were again present, with the exception of the recorder SGT De Anna L. Allas.

DC: At this time, ma'am, the defense would object to the non physical production of two of the key witnesses for the governments case. These are the two CID agents that were requested for production by both the government and the defense. I would propose that this venue is not suitable method of getting direct, and more importantly, cross examination in such a serious case.

IO: Notes the objection and allow the telephonic examination to proceed.

Sergeant Brian Duggar, 38<sup>th</sup> Military Police Detachment, 22<sup>nd</sup> Military Police Battalion, Fort Hood, Texas, was called as a witness, duly sworn and testified in substance as follows:

#### DIRECT EXAMINATION

I was notified of this case on 23 September and I went down range to conduct interviews. That is when I went to Camp Cuervo.

The DC objected to the quality of the communications and requested a delay of two hours in order for the government to provide better communications.

The IO concurred to resume the telephonic interview in two hours.

The hearing recessed at 1515 hours, 18 December 2004.

The hearing reconvened at the chapel at 1530 hours, 18 December 2004. All parties that were present before the recess were present again including the recorder, SGT De Anna L. Allas.

Staff Sergeant Steven S. McQuerry, 272<sup>nd</sup> Military Police Company, 759 Military Police Battalion, Camp Cuervo, Baghdad, Iraq, was called as a witness, duly sworn and testified in substance as follows:

#### DIRECT EXAMINATION

I am a Military Policeman, 31B, and have been in the Army for just a little over 18 years. I have been in the military police corps since 1986, I have performed duties in Korea, Fort Monroe, Virginia, Panama, back to Korea, Fort Knox, back to Korea, Fort Knox to Manheim, Germany, where I am currently stationed and deployed down here to Iraq. I have performed team leader, squad leader, Platoon Sergeant, Military Police Investigator, and currently I am a Platoon Sergeant with 272<sup>nd</sup> Military Police Company. I have been in the 272<sup>nd</sup> Military Police Company since August of 2002. So, almost two and a half years.

I have known PFC Combs since he came into the unit. I'm not exactly sure when he came into the unit but I have known him since then. I was a squad leader in his platoon, but not his squad leader when he came into the unit. We were in third platoon at the time. I went to second platoon in July of 2003. I have been in Iraq for nine months, getting ready to go home.

Since I have been in theater I was the NCOIC of the Baghdad Public Service Academy for six months where I overseen thirty seven instructors. I'm sorry I overseen forty instructors, thirty seven language assistants, and seventeen Iraqi Police Nationals that were in the class room. I was the NCOIC of each classroom which was an eight week class. I oversaw between five hundred to six hundred students that came through to become police officers. I am currently a platoon sergeant and we are manning IP stations. IP 10 is one of those.

PFC Combs did not work for me at the schoolhouse he worked for my counterpart who oversaw the opposite side. It was like we had the Alpha class and the Bravo class, five hundred in mine and five hundred in his. He was in the Bravo side. I did not sit in on any of PFC Combs classes. His squad leader did, his team leader did, but I did not. I did get feedback from his squad leader and team leader that he did do a good job while teaching. I never had any complaints about him teaching because me and SGT Turney sat in the same office so I never had any complaints about his teaching. We did a relief in place when we took over the IP stations, squad for squad. I took a squad from fourth platoon

over there to start them into the academy mission, we sent a squad over to Camp Cuervo to do the IP station mission, and then they were going to go on and do ASV training. PFC Combs came over here with the first squad that came over and he was learning how to do the IP station mission. I did not have an opportunity to be with him then either.

I have been out to IP station 10 probably six or seven times. It's in the middle of a market place area with a major thoroughfare that runs right in front of it.

I have given ROE training to my platoon. We did extensive weapons training and ROE training prior to coming down here to Iraq. We have done follow on training when we have been both down in Kuwait, and we have at done training at least, formalized training, once a quarter but it is also given out periodically while the missions are going on everyday. It's usually given out prior to them going out on mission.

There are not always binoculars in the towers at the IP stations. The soldiers are not required to use binoculars. I know what scanning and high carry is. Scanning is when you are holding the weapon at high carry and are looking out over the weapon. It is permissible to do in a guard tower. I can be a good thing to do. Running scenarios is a good thing to do because it keeps you alert and ready for any action that might come up. I would consider that good training; it keeps the soldiers ever watchful.

In our training the only time that a soldier should be turning his weapon from safe to semi would be if they see a threat or a potential of a threat. It is possible for a soldier to see a threat and place his weapon on semi and for the potential threat to go away and then put the weapon back on safe. I have done that. There was a situation where we were at the Baghdad Police Academy when we came under a threat con delta on several occasions. There were shots fired in our general vicinity while we were on the tower. I happened to be on the tower at that time and my battle buddy on the tower stated that there was a vehicle coming down and to keep an eye on that vehicle so at the time I placed the weapon from safe to semi while I was watching down there. The shots that we had heard had come from the same direction as the vehicle. It was the same color vehicle that we had gotten a report over the radio that shots had been fired from. So I kept an eye on the vehicle. The vehicle went on by without engaging us so I put my weapon back on safe and continued on with our duties. It would definitely be an error to forget to put your weapon back on safe. It would be worse to forget about it and let it stay that way until something bad happens. To place your weapon from safe to fire is an individual decision you don't have to ask for permission. It is also an individual responsibility to place that weapon back to safe. We have had more than a couple negligent discharges in our company. I don't know if our company is leading the battalion in negligent discharges. My knowledge of what happens in the case of a negligent discharge is that they get an Article 15.

I do not know if IP 10 has a nick name. I have not heard it called the Wild, Wild West.

The TC objects to IP 10 being dangerous on the grounds that it is cumulative testimony.

The IO noted the objection for the record but allowed line of questioning.

#### DIRECT EXAMINATION

IP 10 can be dangerous, it's a major thoroughfare right there in front of the station.

I have been trained in military police investigations and have a military police investigations background. I have done some crime scene investigation and I have worked with CID.

The TC objected to the relevance as to what happens at a crime scene.

The DC responded to the objection that this is relevant since the government is calling CID agents to testify as to their investigation.

The IO noted the objection and allows line of questioning.

CID never asked us to escort them to the crime scene. I would have escorted them to the crime scene.

The TC objected to the relevance of how many times and who was escorted to the crime scene.

The IO allowed the line of questing.

#### DIRECT EXAMINATION

I would have escorted them to the crime scene. I could have secured the area across the street to allow them to investigate the crime scene.

The TC objected to the relevance of whether or not SSG McQuerry would like PFC Combs back in his squad.

The IO allowed the line of questioning.

## DIRECT EXAMINATION

I would like him back in my squad today.

## CROSS EXAMINATION

For most of the negligent discharges in our company most people had just gotten Article 15's. Someone who has had a negligent discharge is punished because they have been trained to keep their weapon on safe. They know that every time they pick up their weapon that it could potentially have a round in the chamber and that they should always be monitoring that weapon and keeping it in a safe way. It is foreseeable that a negligent discharge could happen and could cause death or serious injury. It is an individual responsibility to put a weapon on semi and to replace it to safe. It is an individual responsibility to ensure that your weapon is on safe if you are scanning and if you are bored and are scanning. It is an individual responsibility that if you are scanning or bored and if your weapon is on semi or burst to not pull the trigger.

When we were at the academy I received good feedback from PFC Combs team leader and squad leader. I was told that he was late to teach some of his classes and that he sometimes left early or didn't return after lunch which left one instructor at the academy. There is a policy that in the afternoon that if one instructor wanted to stay and that instructor gave the other instructors the opportunity to go back and do other things they could do that. He has left for lunch and not come back in the afternoon without his team leader authority but he did have his fellow instructors who was a fellow soldier, but not in our company. He performs as a PFC.

## RE-DIRECT EXAMINATION

I do trust PFC Combs.

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

Sergeant Robert David Martin Everly, 272<sup>nd</sup> Military Police Company, 759 Military Police Battalion, Camp Cuervo, Baghdad, Iraq, was called as a witness, duly sworn and testified in substance as follows:

## DIRECT EXAMINATION

My MOS is a 31B. I have been a MP for five years, since August of 1999. I have been in 272<sup>nd</sup> the whole time. I'm currently in first platoon. I do not PFC Combs



personally, but I have known him since he arrived at the unit. It was more of passing by and seeing him here or there, as a fellow soldier.

I was not at IP 10 on the date of the incident in question. I was at IP 6 at the time it happened. We would go out there on a daily routine. We would go out there to get the numbers of IP's working detainee count. Pretty much a base assessment then we pull force protection until it's time to move on to our next mission. I received a radio call I believe approximately an hour to an hour and a half after the incident had happened to go to the hospital in search of the individual that had been shot to see about her information and status. When I first arrived at the hospital I talked to a security guard at the hospital and he told me that no females had come in that had been shot. That there may be another hospital. He sent me in search of another hospital across the river. I found that there was no other hospital with the same name. I stopped at two other hospitals, met up with an IP patrol who said they would guide me to another hospital and they escorted me back to the original hospital that I was at first at. It was the same hospital that told me that no females had been brought in that had been shot. This time when I arrived I talked to a doctor inside the hospital. He told me that a female had been shot by the IP station. She had been transported there with a head wound and had been briefly treated but immediately sent over to the Neurology Hospital. He informed me that she was already brain dead and probably would not have survived. I then had a security guard with a vehicle take me over to the other hospital to show me where it was. It wasn't even one click away. When we arrived at the Neurology Hospital we were met by family members who asked us why it happened. I told them that I was not out there when it happened that I was only at the hospital to get the information and find out her status. I asked to see the victim and he escorted me into her room. When I got to the room I talked to the doctor on duty. The way he addressed himself he appeared to be the doctor of the patient directly. He told me that her status was brain dead and that her heart was real weak and she probably wouldn't survive much longer. He said that she was shot on the right side of her head and that there was no exit wound. Her family told me that when she was shot that she had been shopping for dresses in the marketplace. They also told me that the MP's that were on top on the IP station were aiming their weapons at people in the crowd.

When I was at the hospital I had the opportunity to observe an interview that CPT Scott had with Dr. Hammed, I believe his name was. He addressed himself as the actual doctor that treated the victim. He said the other doctor was just a doctor that was in the room and that he takes care of all patients, but that he was her direct doctor. He addressed the bullet size and said that it was bigger than an Iraqi bullet. I believe he said a Kalishnakof, but I can't be a hundred percent on that. He did say bigger than an Iraqi bullet.

I have done guard duty on top of towers. I have pulled guard at IP 10. When I was at IP 10 we had no guard towers we had sandbags up there. We are allowed to scan with our weapon while we are on guard.

## CROSS EXAMINATION

They told me that the woman that I saw laying there was the woman that had been shot earlier in the day. I know there were other head wounds at the hospital that day but I do not know if they were from gunshots. SGT Gills was the other person there with me that day and he had a camera with him. He took photographs of the woman that we saw.

The TC handed the witness photographs of the victim, marked as prosecution exhibits 9 and 10.

The woman in these pictures is the woman that we saw. There was a breathing machine like a respirator in her nose. There were no other instruments hooked up to her when we were there. When we left the woman was dead. The doctor had checked her pulse while we were standing there. By the time that we left we knew that the woman was dead. I took notes while I was there so there is no doubt in my mind that the woman in the picture was the woman that they had brought in from across the street of the police station, and that she was dead based on the injuries that she received outside of that police station. The doctor told me that she had a fractured skull and massive loss of bleeding and that was the main cause of her death. She was brain dead. When I witnessed the interview with CPT Scott I talked to a different doctor and he said the round appeared bigger than a 7.62. There are many types of ammunition bigger than a 7.62 like a .50 cal. I have never fired a .50 cal.; I have never been to a .50 cal. range. I have never seen the effect of a .50 cal. impact on a person, but I have seen it hit buildings. It leaves quite a hole and goes through the wall.

The DC objects to line of questioning due to the government already entering the autopsy report which shows the diameter of the wound.

The IO allows the line of questioning.

## CROSS EXAMINATION

The .50 Cal. would have made much more damage to her head than what you see in the photograph. I have not seen the impact of a round on a person that has not already been addressed. I have fired my weapon since I have been in Iraq. I have seen tracer rounds ricochet. When a round ricochets it goes off to a different direction than where you were aiming. It starts to tumble, so it could possibly make a bigger wound than a straight shot.

When the doctor relayed to us that the victim had died he did so discreetly and quietly so that the family didn't hear. In my opinion he did it that way so that there would not be an incident inside the room. He was afraid there would be an

incident because we were in the room and the incident had been caused by US forces and that they would try to take it out on us.

#### RE-DIRECT EXAMINATION

There were other head wounds in the hospital. I don't know the extent of the other injuries. If the family changed their story from the victim shopping for dresses to selling vegetables it would cause me to question their story. I would question their story if no MP's had been aiming weapons into the crowd like they said they were.

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

The hearing recessed at 1548 hours.

The hearing reconvened at an alternate location at 1700 hours.

The recorder telephonically reconnected with Sergeant Brian Duggar.

The TC instructed the witness that he was still duly sworn and would not be sworn in again.

#### DIRECT EXAMINATION

On 22 September when SGT Cintron was notified about the case I went with her on the convoy to Camp Cuervo to do interviews. I interviewed SGT Duran, SFC Prior, and SGT Everly. Agent Cintron interviewed SPC Charles and we coordinated with the company commander CPT Marquiss. Agent Cintron was getting ready to leave the area but I never took over the lead. I came in to clear up some loose ends for Agent Cintron when she had to return to the states. At this time I interviewed PFC Combs on the 9<sup>th</sup> of October. Prior to this interview I had reviewed all the prior statements given by PFC Combs.

The DC renews its objection to the admissibility to the sworn statements of PFC Combs due to violation of Article 31.

The IO allows the testimony.

During this interview PFC Combs told me that he had placed the weapon on burst. This statement was inconsistent with the other statements he had made. He did not say this in any of his previous statements. So, all of his previous statement were false. He said he made these false statements because he was

tying to cover for himself. I asked him if it was proper to lie to a NCO and he said that it was okay to lie that everyone lies.

I am no longer a special agent with CID. My losing accreditation as a CID agent does not have anything to do with crimes of moral turpitude or false statements.

The DC renews its objection to the quality of the telephonic interview on the basis that it does not allow him to properly conduct a cross examination in order to protect the rights of his client.

The IO notes objection for the record and lets the telephonic interview continue.

### CROSS EXAMINATION

I went to the crime scene but I did not go down the alley because it was too dangerous.

The DC reenters his objection to the quality of the telephonic interview on the grounds that it does not allow him to conduct a proper cross examination.

The IO instructs the DC to try calling back one more time to see if they can get a better connection.

### CROSS EXAMINATION

I went to the crime scene and documented it. I did not go into the alley it was too dangerous. The IP station commander was there and requested that the US forces didn't go into the alley because they were scared of retaliation. I hadn't asked them to secure the crime scene. Normally it is common practice to secure the crime scene but trying to conduct an operation in a hostile theater of operations we were not able to. I did not do a crime scene investigation of where the victim was. We took photographs at the lookout of the line of fire. Pictures that are 200 meters away are not the typical way of photographing a crime scene. We did not know the exact location of where the victim was, we do not know exactly how far away she was and we did not go into the alley to look for a bullet because, like I said, of the threat in the area. I would not surprise me if the unit had been willing to go down and secure the area of the crime scene but it was Op Com'd to the investigators on location that it was not necessary. It was not worth the threat to US forces to go down into the alley and do a crime scene investigation. PFC Combs had already admitted that his weapon had fired the bullet. He stated that he did not see the person that was shot until they were carrying her body to the truck. He did not admit that he shot a person. He admitted that he fired a round from his weapon. The only photographs of the victim were taken at the hospital by SGT Everly, so we did not have a good photograph of the wound. We talked to several people that were in the area. Agent Cintron interviewed them but we did not go down into the alley and knock

on doors. We talked to one individual that Agent Cintron interviewed that I believe was a shop owner from right there on the corner. I do not recall his name. Those witnesses were provided to us by the IP's. The IP station commander did not ask me if anyone was going to get paid. I don't know if he said anything to Agent Cintron or not. I reviewed all the statements that I took in this case. I was in the area when Agent Cintron was interviewing the local nationals. I am familiar with the crime scene handbook. I believe that the handbook says that you have only one chance to process the crime scene to make sure you do it right the first time. We did not actually go down and do the crime scene in that alleyway. I do not have the crime scene handbook on me so I can not tell you if it says that you must obtain a doctors opinion as to the cause of death. I was not aware that the attending physician said that the victim had been shot by a round bigger than an AK-47 round. That would definitely be important to my investigation. I would definitely want to investigate that. We did not search for the bullets because we did not go down into the alleyway. When we went back ten days later we ended up staying in the IP station for approximately an hour to an hour and a half, I'm not sure exactly. At that time we still did not feel comfortable going down the alleyway, because of the threat to the alleyway. We did not ask the unit to provide security for us. When we went back the second time we went with a MP squad out of 545<sup>th</sup> MP Company. We never asked anyone to secure the area for us so that we could examine it. Agent Cintron talked briefly with the Iraqi investigators and the IP's. I have not received or reviewed the IP report. We wanted to do an accurate and thorough investigation without the Iraqi investigators. Agent Cintron and I sat down with CPT Sheppard and discussed how the case would be charged. I do not believe that I ever discussed with anyone in the 89<sup>th</sup> MP Bde that this was a negligent homicide. I don't recall saying that, I guess it's possible. I don't recall briefing COL Phillips in this case. My B's and C's were taken away by the Provost Marshall General of the Army for off duty misconduct. In Iraq we were on duty twenty four seven. I have never had any allegation regarding my investigative skills. I have had an allegation concerning my personal misconduct, which was separate from the misconduct that relieved me from CID. I had no other misconduct other than what I was relieved for here in Iraq.

#### REDIRECT EXAMINATION

CPT Martinez at Camp Cuervo had told us that the station commander at IP 10 had requested that US Forces not come to the IP station for a while due to the threat. We weren't given a specific number of days or a time frame. Once we got down into the IP station and looking at it, that intersection with a high traffic area we really didn't have any way to secure the area where we wouldn't be just a huge footprint. It was decided that it was not worth the risk to US forces to go down in and try to block that off. The IP station commander is the one who said the threat was as high as it was. He would know better than the unit would as to the threat that was in that area. The unit might not have been acting on the best information if it was willing to go down into that alley to secure it. I believe that

the IP's talked to people down in the alley and brought them up to talk to us. It would be consistent with the information that we had that the IP's had canvassed the alley. I'm not sure how COL Phillips received his information; it's possible that he came to that conclusion after talking to CPT Sheppard without talking to the agents. Whether he was briefed by my superior or by CPT Sheppard I don't know, but I never sat down and talked to COL Phillips directly. I don't believe that Agent Cintron sat down and talked to COL Phillips or not, but I'm not sure.

#### RE-CROSS EXAMINATION

Agent Cintron interviewed some Iraqi witnesses. I interviewed SGT Duran. SGT Everly was the one that talked to the family members. I do not have the case file in front of me because it is in Iraq.

The DC objected to the witness not having access to the case file

The IO noted the objection for the record.

Special Agent Irene Cintron, 38<sup>th</sup> Military Police Detachment, 22<sup>nd</sup> Military Police Battalion, Fort Hood, Texas was called as a witness, duly sworn and testified in substance as follows:

#### DIRECT EXAMINATION

I was actually notified of this case on the night of the 22 going into the 23rd of September, by the commander of HHD, 89<sup>th</sup> MP Brigade. I was then notified that PFC Combs had unlawfully discharge his weapon. The very next day on the 23<sup>rd</sup> of September I went to Camp Cuervo to begin the investigation and conducted interviews there. I first spoke with CPT Marquiss and SPC Cook. I also spoke with PFC Combs. When I asked him if his weapon was on safe, semi, or burst he told me that the weapon was on safe. We went to the tower a few days after that. By the time we arrived to the crime scene PFC Combs had admitted that he did fire his weapon. So at the crime scene all we were doing was documenting the scene and I wanted to take a look at the alley and see if the distance was correct. We were getting different distances as to where she was shot. It was anywhere between a hundred and twenty five meters to a hundred and seventy five meters. So, we went into the rooftop into the bunker and took some photographs from the window of the bunker from where he shot the weapon into the alley and came up with approximately a hundred and thirty five meters. I did not go down into the alley. When looking down into the alley you could see that to the entrance of the alley from the window where the weapon was shot was at least a hundred meters away just by looking at it and she was found somewhere mid-way up the alley. The distance would be somewhere between one twenty five to one thirty five meters. We determined where her body was found by interviewing the witnesses at the crime scene who had seen her body being carried into the blue truck or blue vehicle that she was being carried to. I

remember interviewing a gentleman, I believe, on the 3<sup>rd</sup> of October, one man's first name was Osam. Other than that I really don't remember all the names off the top of my head because I don't have the case file with me. I did receive an email with the AIR on it. I spoke to the grandson a Master Saef, a Mr. Abass, who was a neighbor; I spoke to a Mr. Assam, which was the guy that drove the vehicle from the crime scene. I also spoke to the daughter and the husband. The daughter was a Miss Al 'tamene. I did speak to the husband.

The grandson was the person with the victim when she was shot while they were walking through the alley. She had just bought a dress and they were walking in the direction of the tower at the time of the shooting. He said that he saw a soldier in the window and he specifically said an afro-American soldier. He said he saw this person scanning with a weapon and the next thing he knew he saw his grandmother lying on the ground having been shot.

After being shot she was initially taken to one hospital and then was transferred to a neurology hospital because due to the sever injury she had she could not be treated at the first hospital. I spoke to the doctor that treated her at the Neurology Hospital on the 30<sup>th</sup> of September. I spoke to a doctor and he stated that Dr. Ramsey, who we were initially told was the primary physician, was not available. He stated that Dr. Hammed was the primary physician. He told us that neither doctor was available so we went back on 3 October. At that time we were able to speak to both Dr. Ramsey and Dr. Hammed. They told me the initial cause of death was a gunshot wound to the head. I specifically asked the doctor if he could tell what type of caliber weapon could have caused the injury and he specifically said no, that he had no idea. He said that he could not tell if it was a .556 or a .762, he wasn't able to tell me. I do not know anything about the doctor's credentials.

I did not go down the alley because PFC Combs had already admitted to charging the weapon and it really wasn't an issue to identify. I know there was an issue with the round, trying to figure out where everything was, but at that time we were not going with murder. If the charge had been murder than of course I would have probably taken the risk to go the extra mile to figure out exactly where she was shot and if there was anything else in the alley or the bullet. I did ask the family if they looked for a bullet. They told me that they did look for a bullet after they realized that, from what the doctor told them, that there was no bullet in the woman's head. They went back to the alley and searched and they said that they did not find one. So ten days later I didn't see the need to risk myself going into the alley to look for a bullet fragment because the charge was involuntary manslaughter, which is just severe negligence. I do not need to prove the intent so that is why we didn't go into the alley. We didn't think it was necessary to take that risk.

Initially I went to the palace on south Victory and spoke to a CPT Neil. He and I sat down, this was before the initial report went out to CID, and we looked at the

UCMJ and went through all the charges for a negligent homicide, involuntary manslaughter, and murder. The one that seemed to fit the most, because he knew, well, initially we didn't know that he knew the weapon was on burst but we all assumed that he did know that he was just covering, which it seems is what really occurred. Being that he shot the weapon and the weapon is something that could cause deadly force which is a severe negligence we felt that involuntary manslaughter fit the crime better than negligent homicide.

PFC Combs did tell me that his weapon was on safe when it went off. He never told me that he switched his weapon from burst to safe after the weapon went off; he told that to Agent Duggar in his statement. Since the crime had already occurred, PFC Combs' act of switching his selector switch from burst to safe could be considered tampering with evidence. I believe that he turned his selector lever back to safe to cover himself which is exactly what he told Agent Duggar when he spoke to him. In a case like this the weapon is a piece of evidence.

The DC renews his objection on the basis of the witness not having the case file.

The IO instructs the DC to go ahead with his cross examination.

#### CROSS EXAMINATION

I do not have my final copy of my AIR. This one has draft written across the top. It looks close to complete, I think it just needs a little editing but it is not the final copy.

Before this case I have not investigated any homicide cases. I have investigated murder in Iraq but not this type of crime. I did not go to the scene of the crime on the day of the shooting; I wasn't notified until that night. I only went to Camp Cuervo on the 23<sup>rd</sup> of September. I requested to go to IP 10 and was told that it was unsafe and that the soldiers were not even allowed to go at that time. I didn't actually go to IP 10 until 30 September. I was on the roof of IP 10 for ten to fifteen minutes max. Based on the information that we had from the suspect there several leads that were not followed because it was felt unnecessary, it would have been undo risk because the facts were already there. We didn't need to that there was a bullet in the alley or if there was a ricochet or a second shot because we were not going after murder or intent. We never thought that the shot was not made by PFC Combs, which was never an issue.

I interviewed SPC Cook. I never discussed with SPC Cook that he was concerned with the time line that it took to get the victim to the hospital. He didn't mention to me that he didn't think they could have gotten her there in that time frame during our interview. I did not review his statement made during the 15-6. When I went to get a copy of the 15-6 all they would give me is the copy of PFC Combs statement. They said they were not authorized to give me the 15-6 until it



had gone to the battalion and had been adjudicated so I never got the full copy of the 15-6. They only gave me the statement that I needed pertinent to my investigation which was the statement that PFC Combs provided to the 15-6 officer. I do not have the additional statement from SPC Cook. I did not obtain a copy of the completed 15-6 because I was already leaving theater. Former Agent Duggar did not review the 15-6 before the case was closed that I am aware of. It is normal for us to get a copy of the 15-6 and add it to our report. Knowing about SPC Cook's concern about the time line could have made a significant difference in the case depending on where the hospital was. My AIR stated that the shooting happened at approximately 1400 hours. The hospital records could show that the time the victim was admitted into the hospital was at 1400 hours. I don't have that information in front of me so I do not know. When it comes to the local nationals and their times and dates and birthdays, I don't take what they write literally because they could be off by a lot. When I tell them to meet me at a certain time, when I have Iraqi's meeting me at the gate, I tell them one time and they show up two hours later thinking that is when I told them. I may have never noticed that it said 1400 and even if I would have it wouldn't have been a real concern with me. Even on the autopsy report they have contradicting issues that as to if it was a close contact gunshot wound or a big gunshot wound, they couldn't specify that. When it comes to the Iraqi nationals and their capabilities of distinguishing little things I don't take it literally from what they write. I did not look into the timeline at all.

I did interview Dr. Hammed. I only got to see the wound that one particular day so I don't see why he would say one thing to me on one day and say one thing to you on another. When it comes to Iraqi doctors and all their experience I don't take it literally. They do not have the same experience and the same thought process that we do. I would take his opinion for what it was worth at the time. Like I said before I don't know why he would say one thing to me and another to you. I can't say as to why he said that the wound was caused by something bigger than an AK-47. I have a lot of experience with the Iraqi's. I was in Iraq for fourteen months and I worked a lot with the Iraqi nationals in the Tikrit area and also in Baghdad, and a lot of the things that they say just doesn't add up to what we would do in the United States. Their experience and the way that they are taught are a lot different. I take what they do and say as what its worth and I don't try to look too much into it. All the doctor could tell me is that it was a gunshot wound and that is as far as I would really dig into it. When I asked him about what caliber weapon caused this he didn't know. When I asked him if it was a close contact or a distance shot he didn't know. He could tell me the general basics but he couldn't tell me anything in depth. I wouldn't read into what he told me. He did say evident traverse, through and through, bullet track, with severe brain hemorrhages which I added to my report. If he told me today that the wound was caused by something bigger than a .762 I would put that in my AIR.

I did interview Mr. Jail Abase Ali. I believe the husband indicated that the shot happened from two hundred meters away. I'm going from memory because I do not have the entry for the husband in my AIR.

The DC renews his objection of this witness not having access to the full CID report.

The TC asked the DC to state for the record that they agree to continue the Article 32 with no more testimony from SGT Duggar; therefore the government does not need to provide him with a copy of the CID report for further testimony.

The DC states for the record that he does not need any further testimony from SGT Duggar to complete this hearing.

The TC agrees to provide a copy of the witnesses complete AIR to her.

The hearing is recessed at 1910 hours, 18 December 2004.

The hearing is reconvened at 0900 hours, 19 December 2004. All parties that were present before the recess were present again.

The TC instructs the witness that she is still sworn from yesterday.

#### CROSS EXAMINATION

I have my final AIR in front of me. I never said the hospital report regarding the timeline wasn't accurate. I said that I don't trust what the Iraqi's put down to be accurate because I have had incidents with them in the past where they have been off with their times. It could be right or it could be wrong, I have no idea. I did not enter in my reports that you can't trust Iraqi times and dates. It is nowhere in any of my reports. I never noticed that the time on the hospital reports was that close to when the incident occurred. It never occurred to me to cross reference that. I never saw the time on the report of when she was taken to the hospital, but I did attach that exhibit to my report. I did review the exhibit but I did not make notice of the time that she was admitted. Even if I would have seen 1400 it probably would not have rung a bell because I have had experience with times in the past. If SPC Cook would have said to me that he didn't think that the timeline was right I would have took more notice.

I interviewed Mr. Jalil Abass, the neighbor, which was ten days after the shooting. It would have been better to talk to him the day after the incident but it was not a possibility at the time. I asked to go to the crime scene the same day that I went to the unit which was on the 23<sup>rd</sup> and I was told no that we couldn't go. The Brigade was not willing to take us out there. I was told by CPT Marquiss that he was told directly from the IP station not to come there for several days until things quiet down. I wasn't there the moment of the shooting so the Chief of

Police didn't ask me if anyone was going to get paid as a result of the shooting. I am aware the Special Agent Duggar interviewed SFC Prior.

The TC objected to the relevancy of the statement that the chief of police may have made to SFC Prior.

The IO allows the line of questioning.

### CROSS EXAMINATION

Special Agent Duggar did not relay to me that the Chief of Police had asked if anyone was going to get paid. All Iraqi's know that once a bystander is shot by coalition forces that there is going to be a payment come forth. I don't know why the Chief of Police was asking for money since he is not related to the family. He might have just known that coalition forces are paying Iraqi's money when someone shoots somebody.

As far as I know it was the Chief of Police that said he didn't want any US forces at the IP station. I was told, by CPT Marquiss, that they didn't want any US soldiers patrolling the area because they were afraid of retaliation. Based on that statement and the availability of getting a convoy to the crime scene it ended up being ten days later. The Chief of Police provided the witnesses at that time to be interviewed. I coordinated with the Chief of Police on the 30th and told him that I would like to have everyone available that was willing to talk to me and he got the people to come over.

Mr. Abase stated that he witnessed two US soldiers in the bunker, on the roof, at the top of the police station before the shot was fired. If SGT Everly is correct that you can not see up into the tower from the alleyway then Mr. Abbess's statement would cause concern. Mr. Abbess's statement is inconsistent with SGT Everly's statement. At the window that we were at is a pretty big window. I could see the people clearly walking in the street or in the alley. I don't see how they say you can't see in that bunker. It would be harder to see inside the tower during the day because there is no light source in the tower. At the time that the witnesses gave me their statements I believed them to be true. There was no reason for me not to believe them. I couldn't know if that was true or not because I had not been down in the alley to look up at the tower.

Mr. Assam Abed Rubiyah said. SGT Durran and SPC Cook were both on the roof on the day of the incident. I believe that the soldiers that the witnesses thought they saw were actually the IP guard that was in the bunker with PFC Combs. I know that they had entered the bunker shortly after the shot was fired but the witnesses identified them as US soldiers. I know that for a time there was an IP in the bunker with PFC Combs and that it was ten to fifteen minutes after that that the shot was fired. The IP being in the bunker with PFC Combs is not indicated in any of the statement.

The DC instructs the witness to look at exhibit 5 in the CID report.

This shows the IP's on the other side of the rooftop. They are not visible from the alley at all. It is not listed anywhere in my file that the IP's were checking on PFC Combs. I specifically recall speaking to PFC Combs about an IP being in that tower with him. Now if that IP ended up going back to the other side I don't know because this sketch is written up at the time of the incident not any time prior. This sketch shows where everyone was when the shot was fired. The IP being in the tower with him is not in any statements or my report. It was in a discussion that I had with PFC Combs and maybe I forgot to tell anyone else about. I do know at one point there was an IP in that bunker with PFC Combs.

If an incident is going on, especially if within a few minutes they realize that someone has fired a shot, they have to figure out what happened and take precautions of safety for the people involved. I would not necessarily say that SFC Prior was wrong in questioning him at that moment to figure out what had happened. In a moment of crisis you don't stop to read somebody their rights you want to figure out what happened. I do not know about SFC Prior's reading PFC Combs his rights or what he should have done at that time, that was his judgment call. I was not required to give him a cleansing statement because he was given a statement at the unit, by the commander, and when that statement was given it was under rights advisor. I do not know if he was given a cleansing statement by 1LT Petit. I have reviewed the 3881 that was done by 1LT Petit. It does not have any cleansing language on it. I wouldn't think he would be required to do it at that point either, but that is just my personal opinion.

I never went down the alley during my investigation. I do not know the exact location of the victim. I did not do any range assessments; I did not find any bullet. I didn't look for any ricochet mark, which was considered irrelevant. It was not a murder charge. It didn't matter whether he directly or indirectly shot her. It would not matter to the command under the charge of involuntary manslaughter. We were not trying to prove intent, if we were looking for intent then we would say that it was murder and he was intentionally aiming his weapon at her and shot her. We don't believe that to be the case.

There wasn't any reason to go down into the alley. It wasn't worth the risk at the time. The soldier had already admitted to what had occurred, it was collaborated by other people, it wasn't necessary to put more soldiers at risk going down the alleyway to figure out something that was already established. If the soldier had not talked to us then we would have more to prove and more reason to go out there and figure out what had happened. Based on his testimony or what he was saying we didn't feel it was necessary to go down into the alley and do initial tests. There were no other shots fired that anybody heard, there was only the single shot, he admitted to shooting the weapon. She was shot in the head. The bullet, from what the doctor said, could have been his weapon. He never said that it could have been from something bigger or smaller. He said they couldn't

tell. There was no reason to believe that the round that came from his weapon wasn't the round that killed the women.

I did not indicate in my record that the doctor said that he couldn't tell what caliber weapon had caused the wound. I talked to him and asked specifically if he could tell what kind of round it was. He stated that he couldn't tell what type of caliber weapon it was, that he could not tell by looking at the injury. He said he didn't know if the bullet went into the head directly or if it did ricochet it could have tumbled. If I thought that the fact that he couldn't tell was important I would have put it in my report. What he said to you in your interview is very contradictory to what he said to me.

I did interview Master Saef. He stated to me that he was in the alley way shopping for dresses with his grandmother. He told me that she had bought some type of dress or articles of clothing, something to wear. They were done shopping and were coming down the alley heading back toward home. If they are saying something different now it is contradictory and would be of some concern. Master Saef stated to me that he saw a black male, US soldier, holding his weapon and scanning the area where he and Mrs. Husaene were. At the time everyone was saying the same story so it made sense. If they are saying something different now then it would be of some concern. I don't know if the witnesses are saying something different or if you are basing this on what the soldiers are saying.

The TC objects on the basis that there is no scientific evidence as to what can be seen in the tower from the alley.

The DC responded to the objection on the basis that it is important to show the indiscrepancies.

The TC asks that the IO limits this type of questing to two or three questions and then move on.

The IO instructed defense counsel to move on after a few more questions.

### CROSS EXAMINATION

If there are sworn statements by soldiers that there is no way that you can see into the tower could question the creditability of the witnesses, but I don't think that it hurts the overall case because we have only one shot that was fired, with confirmation from PFC Combs that the shot came from his weapon. He admitted to firing the weapon. This concerns me but not to a degree where it ruins the case or that we now need to start back from square one. You still have proof that this incident occurred. PFC Combs definitely shot a round off from the tower.

I did not do any canvass interviews. I only did the five interviews of the grandson, the daughter, the husband, and the two witnesses, which were all provided by the IP. The family was paid thirty five hundred dollars according to CPT Marquiss but I was not present when the payment was made. I did tell CPT Marquiss to email me and tell me when the payment was made so I could annotate it. It is annotated in my AIR on page six.

The DC withdraws its earlier objection in regards to the payment paperwork since we have support from the fact that the family had been paid.

The IO notes the withdraw of the objection for the record.

### CROSS EXAMINATION

I did not meet with the autopsy doctor. The autopsy report was provided to CPT Marquiss. The Chief of Police provided the autopsy report to him. We coordinated with our battalion. Our battalion was in touch with Dr. Baker, which is the doctor at the autopsy hospital, and he said that he would not release the autopsy report without the Chief of Police's approval because according to Iraqi law the Iraqi Police were the ones running the investigation. The doctor wanted the IP's to provide permission for us to get a copy of it. The battalion told Dr. Baker that we would get that approval and would have the IP contact him. I contacted the IP Chief through the interpreter and told him that the hospital would not release a copy of the autopsy report without his approval and he in turn said that he would email the doctor, I'll get the copy, and you can just pick it up from me. CPT Marquiss still had soldiers still going to the IP stations we had him provide the copy to CPT Marquiss and then he provided it to us. That is how it finally ended up in our hands. I never got a copy of the CT scan. I asked about it but he said there wasn't a machine that could do that, that there was no machine. I asked him if there was a copy of an X-ray that I could have and he said no. He described a machine like an ultrasound. He had it on a screen but then there was nothing there.

I did not investigate any in-discrepancy between the doctor, SGT Everly, and the autopsy report. I do not recall any discrepancy. I would have to look at what SGT Everly wrote in his statement. Agent Duggar coordinated with SGT Everly in the beginning so I don't know if he told him about the discrepancy regarding the wound. I didn't know that a doctor told SGT Everly that the bullet didn't come out. We were asking those questions. It would be important to know. On the day that I spoke to both the doctors they both said that there was. This is the same doctor that is telling you that it was a bigger weapon than an AK, but he never told me that. It there are sworn statements contradicting what he told me that would be a concern. The doctor that SGT Everly was speaking to was Dr. Ramsey. He was not the key physician, that was Dr. Hammed. So Ramsey may have had bad information that day. I don't know why he said that because when I spoke to him all he told me was that it was a gunshot wound and that I needed

to speak to Dr. Hammed because he was the actual primary physician. Dr. Ramsey was there at the time that the victim died as far as what SGT Everly said, but he was not her primary care giver.

I vaguely remember hearing that the Chief of Police had first indicated that a child had been shot, but they said that because she was such a small woman that it might have been a child. That is as far as I know of anything about a child being shot. It is true that the Chief stated that a woman had been grazed on the forehead but I don't think that at that time anyone knew about the seriousness of the crime. I know that she was put in a car and drove away. I don't think they realized that it was so severe until afterwards.

I am familiar with CID PAM 195 10, the crime scene handbook. It does say in there that you have only one chance to process a crime scene, to make sure that you do it right the first time. It also states to seek the doctor's opinion about the cause and manner of death. It does say that you are supposed to photograph the scene. It instructs us to evaluate if the scene and evidence appears intentional or staged. You have put up a perspective that we were in a combat zone and when you go into a crime scene here it is not required in Iraq. It is up to the squad leader and the team leader to decide if they want to go out there. I've spent fourteen months in Iraq; I have been to three outdoor crime scenes outside of military installations. So that fact that even photographs were even taken on a case like this is good. We already knew that the soldier had shot the weapon and that no one else had heard any shots and that a woman was killed as a result of the fire. I know you're saying that I should have done a lot more but under the circumstances what I did was completely sufficient to anyone who reviewed this case in CID Command. You can read a lot of CID reports that state that investigation was conducted in a highly hostile area and that is a very, very common thing in our cases. The charge was not murder it was involuntary manslaughter, it is neglect with something severe on a weapon that could cause deadly force. That is why the charge is involuntary manslaughter.

I know SGT Duggar. He used to be a CID agent and he helped me on some of the leads that I needed completed to include PFC Combs' second interview. He went to the crime scene with me and he reviewed all of the material as much as we could do. He closed out the case after I left theater. When I left it was basically all done there were just a few minor things. It was more of just getting everything together, drafting up the final, actually typing up the final and closing it out. As far as investigator leads after I left, there wasn't any left to complete.

I wouldn't say there is any doubt in the credibility of SGT Duggar. I know CW5 Paul Hudson, not personally, but I know who he is. He is way above my level I don't really have to deal with him. He may be the Chief of Investigators Operations. He would definitely be a very experienced agent. It would cause me concern regarding SGT Duggar if CW5 Hudson stated that the recorded results of the inquiry cast doubt on his credibility. I personally know about the inquiry but

it has nothing to do with investigative reasoning. It was a personal issue that caused him not to be an agent anymore. It has nothing to do with his case work or investigative issues. I don't see how CW5 Hudson can say something about his investigation when he never worked directly with Agent Duggar when it comes to his investigations. Unless he specifically said investigations. The issue of misconduct that Agent Duggar had back in CONUS before this issue was also of a personal issue. I'm not going to disclose the information regarding the inquiry into SGT Duggar's misconduct. He told me on a personal level and I'm not going to disclose that information to you. I do not have a personal relationship with SGT Duggar.

The TC objected to the relevance of Agent Cintron's relationship with SGT Duggar.

### RE-DIRECT EXAMINATION

The TC directs the witness's attention to the case file.

I obtained a sworn statement made by PFC Combs taken by 1LT Petit. I have the one that was taken on the 23<sup>rd</sup>. I don't think we added the sworn statement made by PFC Combs to 1LT Petit on the 22<sup>nd</sup> of September to our report. I don't have that one.

PFC Combs stated to me that there was an IP present with him in the tower the same day before the shooting. We talked for about an hour that day when I first got to the station. If PFC Combs stated to 1LT Petit that the Iraqi that was in the tower with him left to do his own thing that would lead me to believe that the IP was with him in the tower the day of the shooting. It is possible that the people in the alley could have seen two people in the tower through the large portal from the alley.

It has been my experience that people tend to remember things more as time moves on, something that they might not remember the day of or after an incident they might recall later on. So I think as a couple days go by more things would come to mind.

I have investigated deaths, murders, and rape before. Most of these incidents happened while I was in Iraq. We had several rape incidents. In the rear I have investigated larceny, rapes, and station cases. I'm trying to remember if there were any specific murders or attempted murder cases. I don't think that I was directly involved in one.

In rape cases, the members of the family generally tend to be overprotective of the victim.

The DC objects to relevance.



The IO allows the line of questioning.

## RE-DIRECT EXAMINATION

The witnesses in these cases tend to make inconsistent statements. Generally the story of the victim is the same but everyone has their own little perspective as to what they saw and little tiny details may not add up. That is not uncommon. Sometimes you can have little in-discrepancies in the story but the overall story itself is still solid. If we take those little in-discrepancies and throw them away we still have a solid investigation. An actual witness that is the main witness to the victim in the crime is the one that is more important. I would put less credence to someone who has heard about what happened secondhand to the person who actually pulled the trigger.

I have been trained on how to give rights waivers. You are not required to read everyone their rights every time you talk to them. It depends, yes, if I want to ask them something incriminating or could lead to being potentially incriminating. If it is just someone in the area then, no, I would just talk to them until something was said that triggered that I know that this person is definitely a suspect. Then I would stop and let them know that they don't have to tell me anything, anything you just said will not be used against you. That is when a cleansing statement would be used.

I'm not saying that SFC was specifically concerned about safety I'm just saying that generally that when an incident occurs if the person who is suspected of a crime, is it an accident, or is it not an accident. Your first initial reaction is going to be what happened, what's going on. I don't know if SFC Prior is a MP or not or what exactly his intentions were. He was given his rights before talking to me so I didn't give him a cleansing statement. I don't think anyone had a reason to give him a cleansing statement. In circumstances of responding to incidents that have operational concerns as opposed to investigative inquiry rights waiver are not required.

Credibility is definitely important within CID. Misconduct that would not cause you to lose your MOS or certification in other parts of the Army, while a CID agent, this same misconduct would cause you to lose your CID certification. It depends on your MOS on how much training you receive before becoming a CID agent. If you are a military policeman you do not have to do on the job training, you just put in your packet and go on to CID school. The school is approximately five months. After school you still have a probationary period. If you have minor misconduct you can be relieved from CID because credibility is very important when conducting these investigations. I can tell you that Agent Duggar was still under probationary status while in Iraq. His paperwork to get accredited was getting deleted. I know that is part of the reason why the allegation came up for this inquiry. The decision was made, I believe, that the commands go ahead and let him go as a CID agent because he was still on probationary status and he had

a prior incident. As far as I know none of this has anything to do with his investigative work. He was having issues on a personal level that could, at some point, maybe interfere with work. So it was decided that it was better to let him go then to let him become an agent.

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

The hearing was recessed at 1000 hours, 19 December 2004.

The hearing was reconvened at 1015 hours, 19 December 2004. All parties that were present before the recess were again present.

The TC reintroduces into evidence Prosecution Exhibit number 16, 1034 Public Voucher for purchases.

The IO admits PE 16 into evidence.

The TC introduces into evidence Prosecution Exhibit number 17, MCM, para. IV-64.

The IO admits PE 17 into evidence.

The TC introduces into evidence Prosecution Exhibit number 18, PFC Combs' counseling packet.

The IO admits PE 18 into evidence.

The TC requested that all DC objections be reduced to writing.

The IO instructs the DC to reduce all objections to writing.

The TC asked that the delay of thirty days be attributed to DC.

The DC stated the delay has already been marked and attributed to the defense.

The TC rests.

The DC requests that the IO include any summarization or legal advice along with her report along with any notes that she may have taken.

Staff Sergeant Connie Julian, 272<sup>nd</sup> Military Police Battalion, 759<sup>th</sup> Military Police Brigade, Camp Cuervo, Baghdad, Iraq, was called as a witness, duly sworn and testified in substance as follows:

DIRECT EXAMINATION

I into the Army in July of 1993. I've been to California, Korea, Fort Knox, Bosnia, Fort Bliss, Germany and here in Iraq. I arrived in Iraq in the beginning of April. I have known PFC Combs since he came to 2<sup>nd</sup> Platoon, in the fall of 2003. I am currently his squad leader and have been since July 1<sup>st</sup>.

I have been to IP 10 twenty four to twenty five times and have been on the roof the same amount of time. I have been to six or seven other IP stations. I am up on a roof at an IP station every time I go out. I know COL Hay then he is the station commander at IP 10. I know him very well and I trust him. IP 10 has a nick name called the Wild, Wild West. IP Station 10 has a parking lot right beside of it where all the people come into Baghdad and park their vehicles. A lot of them are insurgents. There is an intersection. IP 10 sits on the corner of Pennsylvania and Main Street which is a very well traveled route, even from the locals. I am familiar with the day that this incident occurred. There was a need for heightened awareness that day due to a General coming in. The soldiers were briefed and were told to be on their toes. We hear a lot of gunshots at IP 10, it is a dangerous place. There is a lot of gang activity there.

It's different working with the IP's. A lot of the IP's we run into are corrupt. IP's will do something in front of you to make you think that they are doing their job when in all actuality they are doing something different. We run into a lot of station commanders that need rounds, station commanders themselves or other IP's will sell their rounds. They beat their subjects into admitting truths, confessions of things they never did. It is a different world out there. They are always after money. They will do just about anything to get money.

It does not shock me that the station commander asked if anyone was going to be paid directly after the shot. They are all after money.

I have told my soldiers that scanning was okay. It is a good tool because it keeps them alert and they are always scanning their sector of fire so that they always know what is in their sector of fire. If they do see something and they get a positive identification they are always at the ready. It keeps them aware. I want my soldiers to be aggressive. I have never heard anyone say that soldiers are not allowed to scan. I've never seen anything in writing that soldiers are required to use bino's, but I would prefer that they use them. It is okay for them to scan if they are not using bino's. I have scanned with my weapon. I think that it is good for soldiers to run scenarios through their head; it always keeps them on their toes. It makes them think outside of the box. They get an idea of what they would do in certain circumstances. A lot of my soldiers will come to me and ask what would happen in this scenario and I'll talk to them about it.