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

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

CROSS EXAMINATION

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

I have my soldiers scan because they stay alert. I tell them to scan if they feel as if they need to scan. Scanning when you are bored is not a bad thing. It is important to scan so that you know what is in your sector because you never know what could happen. The enemy is out there. There are also innocents out there. I like for my soldiers to be aggressive but still follow the rules of engagement. They should know what is in their sector so that they don't cause unnecessary suffering. On the other hand you can not stand up there and scan on the tower for the entire two hours that you are up there. No soldier could. Scanning for forty five minutes is a long time. If you are not scanning the entire time you should at least always be looking around your sector. If you get tired
you are not going to scan. If you are scanning you are usually alert. You can be
tired and still scan. It is safer for the soldier to be alert when scanning. If you are
told that a General is coming the awareness is heightened. If a General is
coming it could mean that we could be attacked, you never know. You wouldn't
want the enemy to know that a General is coming. If a General is coming in the
awareness should be heightened because we don't want anything to happen to
him. There are always leaks in OP SEC, you never know. My soldiers do not
get nervous because there is a General coming. With the awareness
heightened, because of the general coming, it could have been a factor that
ccontributed to what my soldier did.

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

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

The DC objects to the relevancy.

The IO allows the demonstration to go forward.

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

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

RE-DIRECT EXAMINATION

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

There being no further questions from either side or the Investigating Officer, the
witness was instructed not to discuss her testimony or knowledge of this case
with anyone besides Trial Counsel, Defense Counsel, the accused, or the
Investigating Officer, was permanently excused, and departed the room.
The DC offers into evidence Defense Exhibit A, Picture with SGT Duran’s etching that was drawn by 1LT Watken. Defense Exhibit B, a sketch drawn by SPC Cook from the CID file, Defense Exhibit C, SFC Prior’s statement.

The TC objects to DE C.

The IO admitted DE C.

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

The TC objected to DE D.

The IO admitted DE D.


The TC objected to DE I.

The IO did not allow DE I into evidence.

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

The Defense rests.

The hearing recessed at 1043 hours, 19 December 2004.

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

The DC requested to make closing argument second.

The IO instructed the DC to go first.

The DC made closing arguments.

The TC made closing arguments.

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

**SECTION I - Assignment Information**

- **Rank - DOR**
- **PFC**

**SECTION II - Security Data**

- **PSI Status**
- **SECRET**

**SECTION III - Service Data**

- **BASD** 20021107
- **PEBD** 20021107

**SECTION IV - Personal/Family Data**

- **Date of Birth** 19531221
- **Birthplace**

**SECTION V - Foreign Language**

- **DOR**
  - **SGT**
  - **SSG**
  - **MSG - 1SG**

**SECTION VI - Military Education**

- **Institution** MEJMES
- **Course**
- **Year**

**SECTION VII - Civilian Education**

- **Level Completed** 4 YRS
- **Program**
- **Length**
- **School**
- **Degree**
- **Completed**

**SECTION VIII - Awards and Decorations**

**SECTION IX - Assignment Information**

- **Date of Loss**
- **Date of Last PCS**

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**SECTION X - Remarks**

- **Remarks**

Benjamin Bloom
SSG, USA
BOE'S 110010

This is a true and certified copy. 

Laura Bloom
CHARGE SHEET

I. PERSONAL DATA

NAME OF ACCUSED  (Last, First, M/D)
COMBS, James E., III

UNIT OR ORGANIZATION
272d Military Police Company, 759th Military Police Battalion,
89th Military Police Brigade, Camp Cuervo, Iraq  APO AE 09390

PAY PER MONTH
BASIC $1,407.00
SEA/FOREIGN DUTY $225.00
TOTAL $1,632.00

2. SSN

3. GRADE OR RANK
PFC

4. PAY GRADE
E-3

5. CURRENT SERVICE
a. INITIAL DATE
b. TERM
20021107
6 Years

6. NATURE OF RESTRAINT OF ACCUSED
NONE

7. DATE(S) IMPOSED
NONE

II. CHARGES AND SPECIFICATIONS

6. CHARGE I: VIOLATION OF THE UCMJ, ARTICLE 119

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

III. PREFERRAL

1a. NAME OF ACCUSER (Last, First, M/D)
JASON L. MARQUISS

b. GRADE
C-3

c. ORGANIZATION OF ACCUSER
272d MP Co, 759th MP Bn

d. DATE
20 OCT 04

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above
named accuser this 22nd day of October, 2004, and signed the foregoing charges and specifications under oath that
he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the
matters set forth therein and that the same are true to the best of his/her knowledge and belief.

C. Cullen Sheppard
Typed Name of Officer

HHC, 89th Military Police Brigade
Organization of Officer

Article 136, UCMJ
Official Capacity to Administer Oath
(See R.C.M. 307(b) - must be a commissioned officer)

D FORM 458, MAY 2000
PREVIOUS EDITION IS CIRCULATED.
12. On 20 October 2004, the accused was informed of the charges against him/her and of the names of the accuser(s) known to me (See R.C.M. 305 (a)). (See R.C.M. 308 if notification cannot be made.)

JASON L. MARQUISS
Typical Name of Immediate Commander

272d Military Police Company
Organization of Immediate Commander

O-3

Jason L. Marquis
Signature

13.

The sworn charges were received at 1745 hours, 20 Oct 04, at 759th Military Police Battalion

89th Military Police Brigade
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 493)

FOR THE: 1


BYRON A. FREEMAN
Typical Name of Officer

O-5

Grade

Signature

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

Referred for trial to the court-martial convened by


20

subject to the following instructions: 2


By

Command or Order

Typical Name of Officer

Official Capacity of Officer Signing

Grade

Signature

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

Typed Name of Trial Counsel

Grade or Rank of Trial Counsel

Signature

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

DD FORM 458 (BACK), MAY 2000
3–31–1. FALSE OFFICIAL STATEMENT (ARTICLE 107)

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

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

c. ELEMENTS:

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

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

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

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

d. DEFINITIONS AND OTHER INSTRUCTIONS:

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

NOTE 1: Official nature of document. For a document to be regarded as official, it must
concern a governmental function and must be made to a person who in receiving it is
discharging the functions of his or her particular office, or to an office which in receiving
the document or statement is discharging its functions. Further, a person conducting an
interrogation or an office requesting submission of a document must, under the
circumstances (including the application of Article 31, UCMJ), have the authority to require
an answer or statement from the accused. Whether a statement or document is official is
normally a matter of law to be determined as an interlocutory question. However, even
though testimony concerning officiality may be uncontroversial, or even stipulated, when
such testimony permits conflicting inferences to be drawn, the question should generally
be regarded as an issue of fact for the members to resolve.
apparently tend to bring about the prohibited (communication) (delivery) (transmittal) and be done with the specific intent to bring about the (communication) (delivery) (transmission) of the matter to the (person(s)) (or) (entity) (entities) with the intent, or reason to believe, that the matter would be used to the injury of the United States or to the advantage of a foreign nation. For an act to apparently tend to bring about the commission of an offense means that the actual offense of espionage would have occurred except for (a circumstance unknown to the accused) (an unexpected intervening circumstance) (__________) which prevented completion of the offense.

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

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

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

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

ARTICLE 119

3–44–1. VOLUNTARY MANSLAUGHTER (ARTICLE 119)

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

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

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

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

d. DEFINITIONS AND OTHER INSTRUCTIONS:

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

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

   The offense of voluntary manslaughter is committed when a person, with intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation. "Passion" means anger, rage, pain, or fear. Proof that the accused was acting in the heat of passion caused by adequate provocation is not
required. It is essential, however, that the four elements I have listed for you be proved beyond a reasonable doubt before the accused can be convicted of voluntary manslaughter.

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

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

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

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

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

**NOTE 7: Other instructions.** Instruction 7-3, *Circumstantial Evidence* (Intent), is ordinarily applicable.
3–44–2. INVOLUNTARY MANSLAUGHTER—CULPABLE NEGLIGENCE (ARTICLE 119)

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

b. **MODEL SPECIFICATION:**
   In that _________ (personal jurisdiction data), did, (at/on board—location), on or about _______, by culpable negligence, unlawfully kill _______ by _______ him/her (in) (on) the _______ with a ________.

c. **ELEMENTS:**

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

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

   (3) That this (act) (failure to act) amounted to culpable negligence; and

   (4) That the killing of (state the name or description of the alleged victim) by the accused was unlawful.

d. **DEFINITIONS AND OTHER INSTRUCTIONS:**

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

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

   You may find the accused guilty of involuntary manslaughter, only if you are satisfied beyond a reasonable doubt that the (act) (failure to
act) of the accused which caused the death amounted to "culpable negligence."

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

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

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

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

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

NOTE 4: Brain death instruction. The military standard for death includes brain death. An individual is dead who has sustained either: (1) irreversible cessation of spontaneous respiration and circulatory functions, or (2) irreversible cessation of all functions of the brain, including the brain stem. See United States v. Gomez, 15 M.J. 954 (A.C.M.R. 1983); United States v. Jefferson, 22 M.J. 315 (C.M.A. 1986); and United States v. Taylor, 44 M.J. 254 (1996). 7-24, Brain Death, may be adapted for this circumstance.
3-44-3. INVOLUNTARY MANSLAUGHTER—WHILE PERPETRATING OR ATTEMPTING TO PERPETRATE CERTAIN OFFENSES (ARTICLE 119)

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

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

c. ELEMENTS:

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

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

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

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

d. DEFINITIONS AND OTHER INSTRUCTIONS:

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

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

NOTE 1: Elements of offense directly affecting the person. The military judge should here list the elements of the offense alleged to have been perpetrated or attempted. The statement should be based upon the pertinent instruction which lists the elements of the offense but should be tailored to serve the purpose for which the statement is intended.
When the offense committed is an attempted perpetration, the military judge should refer to Instruction 3-4-1, Attempts, which will prove helpful in drafting the instructions at hand.

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

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

NOTE 3: Brain death instruction. The military standard for death includes brain death. An individual is dead who has sustained either: (1) irreversible cessation of spontaneous respiration and circulatory functions, or (2) irreversible cessation of all functions of the brain, including the brain stem. See United States v. Gomez, 15 M.J. 954 (A.C.M.R. 1983); United States v. Jefferson, 22 M.J. 315 (C.M.A. 1986); and United States v. Taylor, 44 M.J. 254 (1996). 7-24, Brain Death, may be adapted for this circumstance.
3–85–1. NEGLIGENCE HOMICIDE (ARTICLE 134)

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

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

c. ELEMENTS:

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

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

(3) That the killing by the accused was unlawful;

(4) That the (act) (failure to act) of the accused which caused the death amounted to simple negligence; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

d. DEFINITIONS AND OTHER INSTRUCTIONS:

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

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

Simple negligence is the absence of due care, that is, (an act) (or) (failure to act) by a person who is under a duty to use due care which demonstrates a lack of care for the safety of others which a reasonably
careful person would have used under the same or similar circumstances.

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

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

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

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

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

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

# COURT-MARTIAL CHARGES

(PH PAM 27-7)

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<th>PART I</th>
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<tbody>
<tr>
<td>TO Commander, 759th MP Bn Commander</td>
<td>FROM Commander, 272d MP Co</td>
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</table>

1. Court-Martial charges against the following named individual are forwarded as Enclosure 1. Witness statements, any evidence of previous misconduct (to include property certified DA Forms 2627) and the accused's DA Forms 2 and 2-1 are attached as Enclosure 2.

2. **Combs III, James Edward**  
   **PFC E-3**  
   **272d MP Co, 759th MP Bn, 89th MP Bde APO AE 09342**
   **Organization**

3. I recommend:
   - ( ) Summary Court-Martial
   - ( ) Special Court-Martial
   - ( ) BCD Special Court-Martial
   - ( ) General Court-Martial

   **NAME OF COMMANDER**:  
   **CPT JASON MARQUISS**  
   **SIGNATURE OF COMMANDER**:  
   **JASON L MARQUISS**

<table>
<thead>
<tr>
<th>PART II</th>
<th></th>
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<tbody>
<tr>
<td>TO Commander, 89th MP Bde</td>
<td>FROM Commander, 759th MP Battalion</td>
</tr>
</tbody>
</table>

I have reviewed the attached charges and conclude that each offense is supported by the evidence.

I (recommend) (direct):

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

   **NAME OF COMMANDER**:  
   **LTC BYRON FREEMAN**  
   **SIGNATURE OF COMMANDER**:  
   **BYRON FREEMAN**

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<tr>
<th>PART III</th>
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I have reviewed the attached charges and conclude that each offense is supported by the evidence.

I (recommend) (direct):

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

   **NAME OF COMMANDER**:  
   **DAVID D. PHILLIPS**  
   **SIGNATURE OF COMMANDER**:  
   **DAVID D. PHILLIPS**

<table>
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<tr>
<th>PART IV</th>
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<tbody>
<tr>
<td>TO Commander, III Corps</td>
<td>FROM Commander, 89th MP Brigade</td>
</tr>
</tbody>
</table>

I have examined the Article 32 Investigation and allied papers and (recommend) (direct) trial by:

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

   **NAME OF COMMANDER**:  
   **DAVID D. PHILLIPS**  
   **SIGNATURE OF COMMANDER**:  
   **DAVID D. PHILLIPS**
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


2. Staff Sergeant Monica Carlile, 759th Military Police Brigade Paralegal NCO, and Sergeant Jesse Roberson, 231st Military Police Battalion Paralegal, will assist you in coordinating the procedural details of the investigation, notetaking, and in preparing your report of the results of this investigation. You should contact SSG Carlile immediately after receipt of this memorandum at 584-0900.

3. You will consult with the Administrative Law Division, Office of the Staff Judge Advocate for guidance and assistance prior to commencement of the investigation for advice as to procedure, proper completion of the report and guidance on the law applicable to the case. The phone number is 822-2500.

4. Upon appointment, you will set the hearing for no later than 14 calendar days after the receipt of this appointment memorandum. Your report of investigation will be completed as soon as possible, but no later than 7 calendar days following the termination of your investigation. You will attach a detailed daily chronology from the time of this notification until the completion of your report.

5. Captain C. Cullen Sheppard or any other trial counsel deemed appropriate by the chief of justice will represent the government as the trial counsel and can be reached at 639-1571. The accused will be represented by defense counsel and can be reached at DNV 822-2866.

6. The date for the Article 32 hearing should be set within three working days from the date of the appointment. I delegate to you the authority to grant delays up to 14 days in the above Article 32 hearing. All requests for delays and approval or disapproval of delays must be in writing.

7. Unless otherwise directed by me, a summarized record of the Article 32(b) proceeding will accompany your report.

Encl
Case File

[Signature]
DAVID D. PHILLIPS
COL, MP
Commanding
DEPARTMENT OF THE ARMY
Headquarters, 59th 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 759th 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 L. Pryor, II

4. As investigating officer, I will try to arrange for the appearance of any witnesses that you want to testify at the hearing. Send names and addresses of such witnesses to me by 12 November 2004. If, at a later time, you identify additional witnesses, inform me of their names and addresses.
AFVP
SUBJECT: Article 32(b) Investigation

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

MARGARET L. COMPTON
MAJ, MP
Investigating Officer
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

2223
MEMORANDUM FOR MAJ Margaret L. Compton, Article 32 Investigating Officer

SUBJECT: Additional (second) Article 32(b) Investigation Delay Request -- PFC James Combs, 2nd -- 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
MEMORANDUM FOR Private First Class James E. Combs, III, 272nd Military Police Company, 759th 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

SUBJECT: Defense Request for Delay.

1. Applicable Law: Rules for Courts-Martial 405(c)(2)(C) and 707(b).


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

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

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

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

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

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

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

   e. **SSG Stephen McQuerry**, 2nd Platoon, 272nd Military Police Company, Camp Cuervo, Iraq. **Relevance**: SSG McQuerry has known the accused since he arrived in the 272nd Military Police
FICI-JA-BFO
SUBJECT: Pretrial Investigation Witness and Evidence Request -- United States v. PFC James Combs. 272nd MP Company, 759th MP BN, 89th MP BDE, III Corps, Camp Victory, Iraq

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

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

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

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

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

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

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

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

   c. The United States Army Criminal Investigation Command Criminal Investigation Accreditation File (CIAF) for SA Bryan Dugger. The file is kept at Headquarters, USACIDC, Fort Belvoir, VA. Additionally, all USACIDC inquiries or investigations conducted IAW CIDR 195-1 or RCM 303 done regarding allegations of misconduct by SA Dugger. The POC for the files is the USACIDC Deputy SJA at DSN 312-656-0369, or Ms. Black at DSN 312-656-0353.
FICI-JA-BFO
SUBJECT: Pretrial Investigation Witness and Evidence Request -- United States v. PFC James
Combs, 272nd MP Company, 759th MP BN, 89th MP BDE, III Corps, Camp
Victory, Iraq

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

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

3. POC is the undersigned at 822-2866.

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

MEMORANDUM FOR Major Margaret L. Compton, Investigating Officer


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

CHRISTOPHER L. PAWLOSKI
CPT, JA
Trial Counsel

CF:
Defense Counsel
Legal Advisor
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, 272nd 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-10
SUBJECT: Ruling on Government Witness List

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

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

CF:
Defense Counsel
Government Counsel
MEMORANDUM FOR CPT Cullen Sheppard, Trial Counsel, 89th 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 272nd 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 272nd 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 272nd 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. Aqurs, 427 U.S. 97 (1976), U.S. v. Bagley, 473 U.S. 667 (1985), United States v. Simmons, 38 M.J. 376, 381 (C.M.A. 1993), United States v. Kinzer, 39 M.J. 559 (A.C.M.R. 1994). This includes, but is not limited to, any statements made at any time during the course of the investigation, including oral statements, during interviews with the trial counsel, regarding PFC Combs' character and duty performance.

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

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

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

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

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

7. POC is the undersigned at 822-2866.

//ORIGINAL SIGNED//

DAVID T. SCOTT
CPT, JA
Defense Counsel

Cf:

MAJ Compton, IO
**UNITED STATES**

v.

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

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.
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 272nd 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.
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 272nd 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 272nd 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 DISNE 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.

I. 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
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
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
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
WARNING PROCEDURE/WAIVER CERTIFICATE

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

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)

PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.

ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.

DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION
   Camp Liberty, Baghdad, Iraq

5. NAME (Last, First, MIl)
   Combs, James F., III

6. SSN

7. GRADE/STATUS
   E-3/AD

2. DATE
   22 SEP 05

3. TIME
   1530

4. FILE NO.

8. ORGANIZATION OR ADDRESS
   272nd Military Police Company
  APO AE 09390

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

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

ACT 92 - DELIBERATE OR DUTY

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

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

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

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

5. COMMENTS (Continue on reverse side)

Section B. Waiver

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

WITNESSES (if available)

1a. NAME (Type or Print)

b. ORGANIZATION OR ADDRESS AND PHONE

2a. NAME (Type or Print)

b. ORGANIZATION OR ADDRESS AND PHONE

3. SIGNATURE OF INTERVIEWEE

4. SIGNATURE OF INVESTIGATOR

5. TYPED NAME OF INVESTIGATOR

6. ORGANIZATION OF INVESTIGATOR
   272nd Military Police Company
   APO AE 09390

Section C. Non-waiver

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

2. SIGNATURE OF INTERVIEWEE

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

DA FORM 3881, NOV 89

EDITION 2001 IS OBSOLETE

USAF 2.01

Exhibit C
On Sept 22, 2004 around 13:40-13:45 PFC Combs was sitting in a tower at station 10. At the time we were about to leave station 10 and go to station 14. When accidental discharge my M-4 incidents in the alley north of the station. This was our second of three stations to visit on the date in question. I was on guard no longer than 15 minutes at station 10 when I shot a round down the alley north of the station. Up on the roof was me and Spc Cook with two I can't see. At the time of the accident the I was in the tower with me left to do his own thing. It was about 10 to 15 minutes after we left that the accident occurred. I was looking around my area of fire with my rifle not pointing it at anyone when I was looking down the alley I saw a few people but not that many most of the people were on the street. I obscured before the accident that my weapon was on safe but next thing I knew my weapon went off and everything went blank for a second. I guess from shock and the loud ringing in my ear. I really couldn't hear anything but I saw a group of people from the alley farther up the hill come down with a person in a person arms going to a blue like pick-up truck and put the person inside but at the same time Sgt Aaron got there and was talking to me so my mind was in two different places at the same time he was asking me what happen and I told him but at the
STATEMENT OF PFC JAMES E. COMBS III  TAKEN AT CAMF CUBRC  DATED 22 SEP 04

S. STATEMENT (Continued)

Sometime I really didn't know them from there. Sgt. Puyer came over and asked me the something that Sgt. Ouran did and I told him the something up higher and we got out there and come back to base camp. JEC

Q: I LT PETIT, N.P.
A: PFC COMBS, J. E. III JEC

Q: ABOUT HOW MANY HOURS OF SLEEP DID YOU GET LAST NIGHT?
A: About 14 to 16 hours JEC

Q: WHY DID YOU HAVE YOUR FINGER IN THE TRIGGER WELL?
A: When last observed weapon was on safe JEC

Q: WAS THERE ANY CHANCE TO THE THREAT LEVEL AT THE STATION THAT WOULD HAVE CAUSED YOU TO BE "ON EDGE"?
A: NO JEC

Q: ARE THERE ANY PROBLEMS/SITUATIONS IN YOUR PERSONAL LIFE THAT WOULD CAUSE YOU TO BE "ON EDGE"?
A: NO JEC

///NOTHING FOLLOWS///

AFFIDAVIT

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

(Signature of Person Making Statement)

WITNESSES:

________________________________________________________________________

________________________________________________________________________

ORGANIZATION OR ADDRESS

________________________________________________________________________

________________________________________________________________________

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT JEC

PAGE 2 OF 2 PAGES
OFFICE OF THE CLERK OF COURT
US ARMY JUDICIARY
ARLINGTON, VIRGINIA 22203-1837


Criminal Investigation Report

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

الاستنتاج:

1- يظهر من إضافية الاعراض التشريحية المشاهدة في جثة المتوفية بعدة حسن على تضامن
لอาการها في الطبلاة أنها أصبحت بآلام تزايديها بسبب للاضرورات الموجودة أعلاه وانتهى ذلك
إلى وفاتها.

2- لا يُنصح بالاستناد على أن الحال قد حصل من مسافة قريبة.

3- بالنظر لتفاعلا المقدون، فالأطباء والذين هذه معرفة بنيوية وفائدةسلح المستخدم في الاتهام.

الدكتور نيح urge
الطبيب في مجهود الطب العدلي

2251

2251
 Republic of Iraq  
Minister of Health  
Autopsy Institute  
No.: 21155  
Date: 30 Sept. 2004

Technical No: 10688

To: Baab Alsheik Police Station
In accordance with autopsy request No. 5044 on
22-9-2004 include the special autopsy report for the deceased (Badia Mahass Ali)
Please study with respect.

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

Autopsy Report

I the undersigned Dr. Monir Ibrahim do make
Autopsy Check on the body of (Badia Mahass Ali) at 7:45 am.
day 23-9-2004 and the result was as follows.

Description for body diagnostic

- Age: ___  
- Sex: Female  
- Height: intermediate  
- Skin color: Tan  
- Hair color: Black  
- Face/Hair color: ___  
- Eye: ___  
- Deadly marks: the back, face of the body disintegration won't start yet  
- Physique: ___  
- Death Stiffness: Complete  
- Tattoos and differentiate marks: ___  
- Clothes: ___

Outside damages

1. Bullet entrance at the left mural area almost
Autopsy Report

I the undersigned Dr. Mohir Ibrahim do make Autopsy Check on the body of (Badiah Hassaw Ali) at 7.45 AM on the day 23-9-2004 and the result was as follows:

Description for Body Diagnostic:
Age ---- Sex - Female Height - Intermediate
Skin color - Tan Hair color - Black Face/Hair color -
Eyes ---- Deadly marks - The back face of the
Body disintegration won't start yet
Physique ---- Death Stiffness - Complete
Tattoos and differentiate Marks ---- Clothes ----

Outside damages:
1. Bullet entrance at the left Mural area almost
one C.M. in diameter penetrating to cranial
braincase] interior. There is no trace for Gunpowd
around it and the outlet of upper right the forehead
area and with capacity almost two C.M.

For official use only

2253
Head:
Scalp: torn apart with bruises
Braincase and Base: Fractions at the two front
Cavities, Mural and Forehead bone.
Brain and Meninx: Torn apart with bleeding.
Face Bones: Normal, no trace.
Neck and supplement for fractions.

Chest and Thorax:
Chest Bones: Normal, no trace for fractions.
Heart:
Lungs: pale
Diaphragm

Abdomen and inside Abdomen: Normal
Stomach and intestines
Liver, Spleen, Pancreas: Pale
Kidney, Womb

The sexual organs and Anal-

Spinal Column and Hip Bones: No broke.
Upper Legs / Lower Legs: S Broken Bones.

Complement Checks, Results and Argument: After check on status it showed that she entered in
Nervous System Surgery Hospital because
had bullet injured in head at 229-2004.
She died in the same day that she
took her to Hospital.
**Chest and Thorax:**
- Chest Bones: Normal no trace for fractures
- Heart
- Lungs: Pale
- Diaphragm

**Abdomen and inside Abdomen:** Normal stomach and intestines
- Liver - Spleen - Pancreas: Pale
- Kidney - Womb

The Sexual Organs and Anal

Spinal Column and Hip Bones: No Broke
- Upper Legs / Lower Legs: Fractures

Complement checks / Results and Assessment

After check on status it showed that she inquired in nervous system surgery Hospital because had bullet injured in head at 22-9-2004. She died in the same day that she took her to Hospital.
Conclusion.

1- Appear From Autopsy Report on the Body of Badiyah Hassan Ali that she injured with Bullet which caused her the damages that described above in this report which ended to death.

2- We can not find what indicated that the bullet fired from close distance

3- Because the thrown penetration we are unable to know in this situation the quality and to whom the weapon that been used belong to.

Dr. Munir Ibrahim
Physician in Autopsy Institute
2004 / 9 /
استيضاح التقرير الطبي العدلي الأولي

الرقم: ٢٢٥٨
التاريخ: ١٩٩٤/٩/٥

وزارة الصحة
الطبيبة العدلية

اتى على ادعاء الدكتور ......... ١٨ عام، عربي، الجنسية .........، من عائلة .........، مقيم في ضاحية .........، ادعى استياءه بسبب الفحص الطبي المقدم، وادعى عدم حصوله على النتائج المترتبة عليه.

الحالة العامة: الأصابع صحيحة، الرأس صافي، الأذن صم، العينين صحيحة، الجيوب الأنفية غير ممتلئة، الرئة صافية، الأمعاء صحيحة، القلب طبيعي، الرغبة في اللصق تحت الإبطين.

الاستيضاح: كشفت الفحوصات الطبية الأولية أن الفحص الطبي المقدم غير دقيق، واتبعت النتائج المترتبة عليه.

في ظل هذا، تم إجراء الفحص الثاني، وتم إعطاء النتائج المترتبة عليه.

حسب الطلب الوارد من顾客 (١٨ عام، عربي، الجنسية .........) والمراجع .........، ونصح الطبيب بالاستفسار عن النزヘルات الطبية المترتبة عليه.

لم يتم العثور على أي اضرار جسدية ملموسة، ولكن العينين صحيحة.

وبالنظر لما شهدناه ذلك يمكن من القيام بالإشغال المعتادة.

يحتاج إلى:
فحص بعد أخر...

وضع تحت المشاهدة في ...

وأدلاء قد نظمت هذا التقرير ووضعت...

المشاعر ...

التوقيع: .........
وظيفة:

٢٢٥٨
Chief Complaint

B.L.

Duration:

We saw an increase in the duration.

Clinical Findings:

- Present process:
  - P.R.: 100 bpm
  - B.P.: 120/80
  - T: 37°C
  - R.B.: 37

- Improvement:
  - P.R.: 80/60
  - B.P.: 90/50
  - T: 36°C
  - R.B.: 36

Prox. Diagnosis:

- Present Hx:
  - Scopic:

- Future:

- Other:

- Labs:
  - WBC: 10,000
  - ESR: 50
جنيب الله الرحمن

اسم المductor: هلال الرؤية

توقيع المductor: F. A. H. Shik

نذب دوام ضطغ الدم (أ)، وبكلنغ من السر (ج)، والخطياء في مستشفى مستشفى جراحة الدماء والصحة العامة.

لتحيي نذب ضطغ الدم في المستشفى بتاريخ ٢٤/٩/٢٠٠٤، والذي كان مصابًا بثورة (ج) ربع (٢٩) رحمين. المراجع الهبري لمثل

تشمل مسيرة الدماء، ونتيجته نتاج دورة حياة، مدخل على الذبحة الحالية، حيث توفي المصاب في الساعة ٨:٠٠، بعد دعاية اليوم ١٠/٩/٢٠٠٤.

Dear DR.

May I refer to the cadaver of this (male/female) ٢٤ years.

Brain C.T.Scan depressed skull bone fracture

The patient died at (٧:٠٠ AM/Pm) on ٢٤/٩/٢٠٠٤.

اسم الطبيب: M. M. ر. ٢٦/٩/٢٠٠٤

التوقيع

ملاحظة: الرجاء تنظم بخصوص النسخة الأولى للمدور والنسخة الثانية تحفظ في طبقة المريض.
This patient presented with severe bleeding from a mass in the right side of the head. For a massive tearing of the opening, P.R. 80/120. P.P. undated.

[Signature]

[Date: 8-6]
Pt. was presented to us a Bullet injury
for head injury from Side to side (Coronal)
- She was read in to our ER
- GCS = E 5v 15 = 5/15 = mT IVH
- Brain CT - sh ehad a trace f bullet & ICH & IVH
- She was admitted to ICU & put on ETT
- She was beyond surgical intervention

أنموذج الطبيب
Republic of Iraq
Ministry of Interior

Identification number 211629

Division - Al Rasafa
File number: 300M
Page: 64

Department of Citizens and Civilian

Identification

Issued under the Law of Civilian Rights Number -

Name: Badraa
Father name: Hasan Ali
Hast name: Al Anbaki
Mother name: Makia Hasan
Sex: Female

Issued Date: DEC-1-1993
Signature of employee:
Full name: Nour
Republican of Iraq

Ministry of Medical

Department of Medical
and living Statistics

Death Certificate

Deceased name: Badeea
Sex: Female
Nationality: Iraqi
Religion: Muslim
Date: Sep. 23, 2004

Address Information (not written down)

Name of Informant: Hasan Ali

* In the next paragraph is a questionnaire about the cause of death (nothing is written down)

* The next paragraph is the medical certification they indicate here the cause of the death which is a bullet injury.

I am the undersigned Doctor Moneer Ibrahim stating that the deceased name Badeea Hasan Ali deceased on _______ (the date not clear)
Signature _____ (there is no signature)

File number: 2923

Sihem Al Takari
SS# 619-82-4711

2265
F0R OFFICIAL USE ONLY
Republican of Iraq
Ministry of Medical
Legal medicine

Referendum report of
legal Medicine

I am the undersigned Doctor Raghad Sabeh Hasun
Al-Alaq, did the legal Medicine examination of
the patient, name: Raedaa Hasan Ali, Age: 56,
Sex Female, in the emergency room of Kindy
hospital, on Sep-22-2004, at 2:00 pm, upon the
request of Rab Al-Shik police station, number
(Nono), date Sep-22-2004.
The following what I can report,

1. Patient unconscious during the examination.

2. Increase of the pulse, decrease of the blood pressure.
   (we were unable to measure it)

3. We were unable to open her right eye, the pupil
   of her eyes were (I was unable to read the word)

4. Soft abdomen

5. Destruction on the right side of the head, and
   the forehead, appearance of the brain, bleeding.
   I was told that she was bleeding during the
   examination.

6. X-ray, the result and the analysis is required by
   her Doctor, the patient is refered to Kindy
   hospital for further procedures.

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

Signature of Doc Dr. Raghad Al-Alaqi
Date Sep-22-2004
Ministry of Health
Baghdad, Iraq

Emergency Form

Name of Medical Center: [Blank]
Patient Name: [Blank]
Patient Address: Bagdad
Sex: [Blank]
Age: [Blank]
Date of Admiton: Sep-22-2004
Time of Admission: 2:00 pm

* The rest in English

* Some words are written on the top of the page; they are:
  Patient name: [Blank]
  Date she was referred to the intensive care: Sep-22-, person name: [Not mentioned who that person is]
  The patient died 7:00 pm
In the name of God

Medical Center
Of Baghdad
Al Rasafa
Head Surgery
hospital

Identification number:
2896

Bab AL Shah
Police Station

Commander name: Salah Khaled Khaban
Commander Signature

Subject / refer a Body for Autopsy
the rest is translated in English at the bottom of the page.
Ministry of Health
Baghdad, Iraq
Kindy hospital

To Medical Unit:
Subject: referral patient to intensive care

Referent name: Badeen
Age: —
Sex: Female
Injury: —
For the reason of: —

Doctor: Rabab Asaad
Date: [illegible]

2269 9-6
Occupation: Student
Religion: Muslim
Date of Birth: Jul - 1 - 1945
Print: Fifty nine
Place of Birth: Baghdad
Remarks: None
Marital Status: Married
Spouse Name: Kaley Abas Ali
Place of record: Baghdad - Al Ri Safa
Description
Eye Color: Brown
Skin Color: Tan
Hair Color: Black
Height: 160 centimeter
Blood Type:
Signature:

Sihan Aljabar:
SS#: 619-82-4711
### Public Voucher for Purchases and Services Other Than Personal

**U.S. Department, Bureau of Establishment and Location**
HQ 39TH BRIGADE COMBAT TEAM
OFFICE OF THE STAFF JUDGE ADVOCATE
APO AE 09278

**Claim #BCT-521**

**Payee’s Name and Address**
JALIL ABASS
BAGHDAD, IRAQ

**Shipped To**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>QTY</th>
<th>UNIT PRICE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In full settlement of the amount allowed by the Secretary of the Army, or any officer duly designated for such purposes under authority of 31 U.S.C. 3721 and AR 27-20, Chapter 10 upon the claim of the above named claimant for property damage, lost, destroyed, captured, or abandoned in service.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Voucher Information**

- **Voucher No.**
- **Schedule No.**
- **Date Voucher Prepared:** 12 OCTOBER 2004
- **Contract Number and Date:**
- **Requisition Number and Date:**

**Payment Information**

- **Amount:** 3,500.00

**Signature of Claimant**

17 OCT 04

**Signature of Agent**

CHARLES J. CARTER, CPT. JA. CLAIMS OFFICER

**Accounting Classification**

2151020 22-01242 14030999 22-4200 VIRG 195265 599999 APC 0569

**Check Information**

- **Check Number:**
- **Cash:** 3,500.00
- **Date:** 12 OCT 04

**Other Information**

- **Voucher Not to be Used for the Payment of Salary**

**Voucher Payment Statement**

The information is required to be paid to the payee of the voucher and is not a private matter. The information is required to be paid to the payee of the voucher and is not a private matter. The information is required to be paid to the payee of the voucher and is not a private matter. The information is required to be paid to the payee of the voucher and is not a private matter.
39TH BRIGADE COMBAT TEAM  
OFFICE OF THE BRIGADE STAFF JUDGE ADVOCATE  

SETTLEMENT AGREEMENT  

CLAIM No.: 39BCT-521  

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

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

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

Claimant:
Name: JALIL ABBAS
Address: BAGHDAD, IRAQ

Mohammed Hisham Jassim Bakr #C-3133
Witness Signature and I.D. Number - INTERPRETER

Maj. Memoon, CPT, MP Commanding
Witness Signature and I.D. Number - SOLDIER
MEMORANDUM FOR RECORD

SUBJECT: Foreign Claim action for JALIL ABBAS

Claim #35DCT-521

1. Facts- Claimant states that he was shot and injured by U.S. Forces on 10 October 2004. The claimant presented proper documentation validating the claim for injuries occurred. The claimant requested $3,500.00 for injuries sustained during this incident.

2. Opinion- In order to form a basis for a claim under the FCA, it must be shown that the incident occurred outside the United States, and that it was caused by noncombatant activities of the United States Armed Forces or by the negligent or wrongful acts of military members or civilian employees of the Armed Forces. The claimant suffered injuries in this incident. The claimant was not at fault in this incident; therefore, the injuries incurred were due to the negligence of US Forces. The evidence submitted by the claimant substantiates the injuries suffered during this incident.


4. Action- Pay this foreign claim in the amount of $3,500.00.

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

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

(5) During certain offenses.

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

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

d. Lesser included offenses.

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

(2) All murders under Article 118.

(a) Article 119—involuntary manslaughter

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

(c) Article 134—negligent homicide

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

(a) Article 80—attempts

(b) Article 119—voluntary manslaughter

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

(d) Article 134—assault with intent to commit voluntary manslaughter
e. Maximum punishment.

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

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

f. Sample specification.

In that________________________ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about________________________, with premeditation (while perpetrating) (attempting to perpetrate) ______________________ murder __________________________ by means of (shooting him/her with a rifle) __________________________.

44. Article 119—Manslaughter

a. Text.

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

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

(1) by culpable negligence; or

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

b. Elements.

(1) Voluntary manslaughter.

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

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

(c) That the killing was unlawful; and

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

(2) Involuntary manslaughter.

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

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

(c) That the killing was unlawful; and

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

c. Explanation.
272ND MILITARY POLICE

"FIGHTING DEUCE"

95th MP BN
COUNSELING
SOP/INVENTORY SHEET
APPENDIX 9 (Counseling SOP), Annex A (Administration) to The 95th Military Police Battalion Administrative SOP

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

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

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

4. RESPONSIBILITIES
   a. Battalion Commander will:
      (1) Enforce the battalion's counseling program.
      (2) Ensure all counseling is completed in a timely manner and counseling is accomplished as a necessary management and development tool for assigned personnel.
      (3) Review counseling packets on a show-me basis to check counseling compliance and quality.
      (4) Incorporate the battalion's counseling program as an inspection area during the command inspection program.

   b. Command Sergeant Major will:
      (1) Manage the battalion's counseling program.
      (2) Administer a counseling training program through NCODP to ensure compliance and understanding.
      (3) Review counseling packets on a show-me basis to check counseling compliance and quality.

   1.
SUBJECT: Appendix 9 (Counseling SOP) to Annex A (Administration) to the 95th Military Police Battalion Administration SOP

c. Company/Detachment Commander will:

(1) Manage the counseling program at the unit level.

(2) Ensure all counseling is completed in a timely manner and accomplished as required.

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

d. First Sergeants will:

(1) Apply the counseling program at the unit level.

(2) Review 50% of unit counseling folders on a monthly basis to check for completeness and accuracy.

(3) Conduct NCODP classes on how to counsel and the effects of counseling needed.

(4) Ensure the provisions of this SOP are adhered to.

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

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

SUBJECT: Appendix 9 (Counseling SOP) to Annex A
(Administration) to the 95th Military Police Battalion
Administration SOP

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

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

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

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

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

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

4.
AERTR-MP
SUBJECT: Appendix 9 (Counseling SOP) to Annex A (Administration) to the 95th Military Police Battalion Administration SOP

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

(a) First Sergeant's interview

(b) In-processing

(c) Commander's interview

(d) Chain of command's initial counseling

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

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

(4) Disciplinary counseling. Counseling soldiers who violate regulations, policies, fail to carry out orders, or do not meet set standards is a necessary part of a leader's duty. Disciplinary counseling is used when the leader takes corrective steps not resulting in formal punitive action against the soldier under the provisions of the UCMJ. Administrative measures are normally applicable to minor or first offenses concerning conduct or inefficiency. Disciplinary counseling differs from performance counseling. While both are used to improve performance and maintain standards, performance
AERTR-95-CSM

SUBJECT: Appendix 9 (Counseling SOP) to Annex A (Administration) to the 95th Military Police Battalion Administration SOP

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

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

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

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

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