

1 month of October in the city of Samarra by themselves. They
2 had the most contacts of any platoon in the entire battalion
3 and they suffered no casualties. There is no other platoon in
4 the battalion that can say that. He set up the first police
5 station in Balad and trained and monitored the Iraqis.
6

7 Balad was the geopolitical center of that region. It was
8 very unstable at the time and one of the hottest spots in Iraq.
9 Within a month we owned the city and built great relationships.
10 Subsequently, we spent a lot of money improving the
11 infrastructure. The periphery was mostly Sunni. Trying to
12 bring them into the government was difficult, but once we
13 controlled Balad and the city outlines, we controlled the
14 entire region.
15

16 Lieutenant Saville's platoon were the key to the success for
17 Alpha Company. He was put in for two bronze stars. His
18 rehabilitative potential is very high. He's very mature. He's
19 a faith-filled man, outstanding leader, outstanding officer and
20 he's earned the faith of his men. He's combat tested and he's
21 a man of integrity. I would take him anywhere, anytime. I'd
22 go to combat with him, I'd stand by his side and I'd put my son
23 in his outfit if we were going back to war without thought.
24

25 **CROSS-EXAMINATION**

26 **Questions by the trial counsel-Captain Schiffer:**

27
28
29 The platoons were very autonomous because of the lack of
30 leadership in 1-66 Armor. The fight in Iraq is at the company
31 and platoon level. Squad leaders, platoon sergeants and
32 platoon leaders make the decisions on a daily basis that equal
33 success, the death of insurgents or the death of their
34 soldiers.
35

36 I am aware of what the accused had pled guilty to. This
37 incident has exposed the unit to a negative information
38 operations campaign by the enemy, a very effective one. It can
39 sometimes place soldiers at risk. If not dealt with, this can
40 affect the unit mission and our forward progress of Iraq on a
41 political level.
42

43 **[END OF PAGE]**
44
45

1
2
3 **REDIRECT EXAMINATION**

4
5 **Questions by the defense counsel-Captain Drake:**

6 The charges Lieutenant Saville has been found guilty of does
7 not change my opinion about his leadership or any of the
8 observations or opinions I've stated today. I think the charges
9 are absurd. What you have is a hero who is revered by his
10 soldiers and his leadership. I've seen what he's done and what
11 his capabilities are. Instead of pinning medals on him, we're
12 making him sit in this courtroom. I think it's a travesty to the
13 Army and to our officer corps to allow this to happen.

14 The witness was permanently excused and remained in the
15 courtroom.

16
17 **Sergeant First Class Carl Ironeyes**

18
19 **SERGEANT FIRST CLASS CARL IRONEYES, U.S. Army, was called as a**
20 **witness for the defense, was sworn, and testified in substance**
21 **as follows:**

22
23 **DIRECT EXAMINATION**

24
25 **Questions by the assistant trial counsel-Captain Shaw:**

26
27 I'm Sergeant First Class Carl Ironeyes. I'm currently
28 stationed at Fort Carson, Colorado, with 1-68 Infantry.

29
30 **Questions by the defense counsel-Captain Drake:**

31
32 I've known Lieutenant Saville for over a year and half now.
33 He was my platoon leader. The op-tempo was high and very
34 dangerous. We would get mortar attacks in the morning. We
35 would start our day doing whatever PT we could and then we
36 basically did patrols. We enforced no weapons, no illegal
37 activity and keeping the peace. We detained Iraqis and
38 controlled insurgencies. We received hostile fire and returned
39 fire.

40
41 I've been in the Army for 17 years. I've been through a lot
42 of platoon leaders and you couldn't ask for anyone better than
43 Lieutenant Saville. I have no complaints. He treated everyone
44 very well.

1
2
3 **CROSS-EXAMINATION**

4 **Questions by the assistant trial counsel-Captain Shaw:**

5 Keeping the peace was a very important part of our mission.
6 I was not aware I was in Iraq to win the hearts and minds of
7 the people. There were active insurgents who were to be
8 engaged or detained and there were Iraqis who were to be
9 safeguarded.

10
11 Lieutenant Saville is a good leader. It is important for
12 leaders to possess certain qualities like integrity. I wasn't
13 aware that he was found guilty of obstructing justice
14 yesterday. I find it hard to believe that he furnished a false
15 statement in order to not be prosecuted for certain acts. A
16 platoon leader should ensure his soldiers do the right thing
17 and counsel and advise them to do the right thing in not
18 violating the laws of war. From what I know of the situation,
19 what he did comports with being a good leader. I believe his
20 advising soldiers to throw non-hostile Iraqis into the water
21 comports with him being a good leader.

22
23 **REDIRECT EXAMINATION**

24
25 **Questions by the defense counsel-Captain Drake:**

26
27 Lieutenant Saville never did anything to compromise my
28 opinion of his integrity, leadership or care for his soldiers.

29
30 The witness was permanently excused and remained in the
31 courtroom.

32
33 **Major Gavin Gardner**

34
35 **MAJOR GAVIN GARDNER, U.S. Army, was called as a witness for the**
36 **defense, was sworn, and testified in substance as follows:**

37
38 **DIRECT EXAMINATION**

39
40 **Questions by the assistant trial counsel-Captain Shaw:**

41
42 I'm Major Gavin Gardner. I'm currently the S-4 of 3d
43 Brigade Combat Team, Fort Carson, Colorado.

1 **Questions by the defense counsel-Captain Drake:**
2

3 Jack has worked for me since July of 2004. This is after he
4 returned from Iraq. I observed him on a daily basis. He has
5 shown up everyday and provided 100 percent of the work. He
6 could have easily not done any work, with this case pending
7 against him and I would have understood that, but that hasn't
8 been the case. He's provided more effort and does more work
9 than some of the branch-qualified captains that have been to
10 the advanced course in my office. I put that in his
11 evaluations. Of the 14 officers that have worked for me thus
12 far as the Brigade S-4, I put him at number four in effort.
13 What he might not know in technical knowledge of the S-4 arena,
14 he makes up for with effort and he tries to learn.
15

16 Because of this case, I told him I didn't want to give him
17 any long-term projects. He and Sergeant First Class Perkins
18 developed and monitored projects from companies we have
19 contracts with. He developed the brigade standard SOP, which
20 is also the division standard SOP for these products. He
21 accounts for these products and issues them to the units. He
22 also developed the brigade's paint program. Jack corresponds
23 with the NCOIC down at DOL and makes that mission happen. We
24 are ahead of schedule for the brigade and that's all due to
25 Jack's hard work.
26

27 Lieutenant Saville has very high rehabilitative potential.
28 I can't think of a person with more potential. Whether he
29 decides to make the Army a career or gets out and goes into the
30 civilian world, he's going to go very far. If I go back to
31 combat, I'd like to take him with me. If we were on the
32 outside and I was working for a civilian firm, I want him
33 working with me. None of the offenses that he's been found
34 guilty of changes my opinion of him. I've always believed in
35 him. I've told him to learn from his mistakes and move on out.
36

37 The witness was permanently excused and remained in the
38 courtroom.
39

40 **Lieutenant Colonel Nathan Sassaman**
41

42 **[END OF PAGE]**
43
44
45

1 LIEUTENANT COLONEL NATHAN SASSAMAN, U.S. Army, was called as a
2 witness for the defense, was sworn, and testified in substance
3 as follows:
4

5 DIRECT EXAMINATION
6

7 Questions by the trial counsel-Captain Schiffer:
8

9 I'm Lieutenant Colonel Nathan Sassaman, HHC 1-8 Infantry.
10

11 Questions by the civilian defense counsel-Mr. Spinner:
12

13 I began my career as a platoon leader in the 7th Infantry
14 Division at Fort Ord, California. I deployed to Honduras and
15 Panama with the 7th Infantry Division. From there, I commanded
16 a company in Fort Lewis, Washington and went on several
17 training center rotations. From there I got a Master's Degree
18 from the University of Washington. I was an admissions officer
19 at the U.S. Military Academy. I then served as a battalion
20 operations officer, battalion executive officer and brigade
21 operations officer. I deployed to Yongsung, Korea and worked
22 for General Laporte. I went from Korea to assuming command in
23 Iraq on June 17, 2003, at Samarra East Airfield. I commanded
24 1st Battalion, 8th Infantry from June 2003, until giving up
25 command last month on Valentine's Day. I'm a 1985 graduate of
26 the U.S. Military Academy.
27

28 Lieutenant Saville served under my command. He was one of
29 the first new lieutenants that came into country for our
30 battalion. He served in my Alpha Company. I was his senior
31 rater. We started out north of the Tigris River in the Samarra
32 East Airfield Region. That was a short period because we were
33 waiting to relieve 3-7 CAV from 3d Infantry Division. It was
34 about a 750 square kilometer area of operation that 1-8
35 Infantry assumed control of to include LSA Anaconda, which was
36 one of the largest American bases in Iraq. We had
37 responsibility for the security of that particular base as well
38 as Balad, which was a city of about 100,000. We had Highway 1,
39 which was a major line of communication between Baghdad and
40 Tikrit. It was a crossroad for the brigade and the division
41 because at the time, it was General Sanchez's major supplier.
42

43 We moved into the province around mid-June. By July the
44 insurgency was formed and we averaged three attacks per day.
45 We also conducted continuous combat operations against them;

1 raids, missions and going after high value targets. It was a
2 fairly active place. We were able to conduct some very
3 aggressive missions in September and late October and we had
4 gotten ourselves to a point where we figured these cell groups
5 out. We went from an area where we were averaging three
6 attacks a day in October to February, where we had seven
7 attacks for the whole month. That was prior to us leaving. It
8 was a different type of enemy; Saddam's Fedayeen and a lot of
9 break off cells that wanted to kill Americans.

10
11 In my region, it was a platoon fight. I did not like to
12 patrol or have any of my smaller units patrol with less than a
13 platoon. The platoon leader was responsible for treating the
14 wounded and engaging the enemy. Squad leaders, platoon
15 sergeants and platoons leaders are the decision makers. They
16 are the ones winning the fight in Iraq for us on the tactical
17 level.

18
19 There was not an option to let detainees go, from my
20 perspective. We were in areas where they did not respect
21 authority, so one of our methods was to institute a curfew.
22 Platoon leaders had the responsibility of detaining any curfew
23 violators. The people actually enjoyed the curfews because the
24 vast majority of Iraqis in those areas felt a lot safer. It
25 made a much cleaner fight for us too.

26
27 Lieutenant Saville was put in charge of the police station
28 in Balad. That's what we wanted to do right off the bat; get
29 the security infrastructure set up. We got a standard
30 operating procedure from the New Hampshire Police Force and
31 used that as our blue print. He was responsible for getting
32 the administration piece set up and the joint patrols piece.
33 At the end of July, General Meyers visited us and did a press
34 conference from our FOB on how Balad had become the role model
35 for how he wanted American forces training and working with
36 Iraqi police so we could get the security infrastructure set.
37 That was his initial duty prior to taking a platoon. Soon
38 after he took a platoon in Alpha Company and they went, almost
39 immediately, to Samarra. The brigade commander had been piece-
40 meal forces from around the brigade to augment 1-66 Armor.

41
42 Samarra is not good. The make up of the men is a much
43 bigger, thicker, stronger person than what we faced in Balad.
44 They were very belligerent. These guys wanted to fight all of
45 the time. There was always a struggle with them. There were

1 always a lot of men working out in the gym they had. I didn't
2 see anybody else in any other place I was in while in Iraq
3 where people actually worked out and lifted weights.
4

5 1-66 had a horrible time trying to control this place. They
6 had two FOB's and they were getting mortared regularly. When
7 they would go in and patrol the city, they were attacked. They
8 were losing men and had a fair amount of people wounded to the
9 point where the boss said we were going to augment it with some
10 infantry. They had such a tough time that they were run out of
11 the city. They lost control.
12

13 1-66 Armor failed in their mission to secure the city and
14 set it up for civil infrastructure projects. They moved out to
15 a base 16 miles outside of the city. That's when Lieutenant
16 Saville showed up. They had an extremely difficult mission
17 because that was a place that experienced success against
18 American forces. This was mid-October. I sent a company up
19 there from 28 September to 14 October and they were attacked
20 everyday they were in the city. In addition to that, they
21 conducted an operation where they cleared an industrial area
22 and were able to fill what were the equivalent of five 18-
23 wheelers full of mortars and RPG's to include American
24 equipment, uniforms and food supplies. This was a great sign
25 for us because it told us not only were they killing and
26 hijacking American food, equipment and arms, but they were
27 taking it and using it against us.
28

29 That company went through a significant experience for a
30 couple of weeks and then we went to a platoon-sized rotation.
31 At that time, the platoon had already been up there since July
32 so they were the most experienced platoon. The platoon leader
33 switched out and that was his first mission. He took them up
34 there. They were outstanding. They had some very successful
35 engagements. When Lieutenant Saville's platoon came back, we
36 did a huge officer professional development session with 66 CAV
37 out of Germany. Lieutenant Saville and Sergeant First Class
38 Perkins led the officer professional development session. I
39 think that helped us out tremendously when we went up there in
40 December as a battalion.
41

42 By December, Lieutenant Saville was my best platoon leader.
43 He'd seen the most combat. I had a stable full of great
44 officers that were facing unique challenges and fights at their
45 platoon level around the region, but that was my most

1 experienced platoon and he had proven to be a good leader. He
2 was coachable, he listened, he adapted well to what others were
3 telling him and he was adopted by fire with almost two-dozen
4 attacks in his first month of being a platoon leader.
5

6 One month in Iraq is like is like four months in peacetime.
7 The experience you gain from working with your equipment and
8 your men day in and day out and the pressures and fatigue and
9 fear of death and destruction that comes along with working in
10 a combat environment are unrivaled.
11

12 When we moved into Samarra in December we controlled the
13 city. We went in hard. No one ever told us to win the hearts
14 and minds, but they told us to bring peace, stop the
15 insurgency, and stop the fighting so that we could make life
16 better and make it so that the Iraqi women could send their
17 children to school everyday, so that both boys and girls could
18 go to school, so that the Iraqi men could have jobs and so we
19 could eliminate the fear and persecution that 30 years of
20 Saddam had brought to that country.
21

22 We went in hard and after 48 hours everybody in Samarra knew
23 there was a curfew and they knew the American forces were here
24 to try again. It was a much more difficult mission than moving
25 in for the first time because these people have had success
26 against American forces. The insurgency was well organized.
27 They were higher in number than we were used to.
28

29 We owned the downtown area and the surrounding city area,
30 but on the outskirts and down south is where I feared we would
31 receive attacks. They ended up using the Samarra bypass, which
32 is a major highway. On Christmas Eve, they executed a horrific
33 IED blast that killed three soldiers. The very next day we had
34 another incident where an American contractor was killed in
35 that same vicinity.
36

37 We had another mission where part of our forces were needed
38 to move back down to Balad to execute a brigade set mission.
39 The base was attacked. The unit that relieved our unit had
40 been getting mortar attacks, which were increasing in frequency
41 and volume. On the 2d of January, rounds came inside the
42 complex, wounding five and killing one, the Engineers Company
43 Commander.
44

1 On the 5th of January, when I got back, I went to link up
2 with my Bravo Company and they had a three or four round volley
3 of RPG's and machine gun fire. This was three or four weeks
4 into the Ivy Blizzard Operation. This was the first challenge
5 to our authority. It was a daytime attack, which was rare.
6 That was kind of the end of it; we didn't have anymore attacks
7 thereafter.

8
9 When Captain Paliwoda died, it ruined the war for me and my
10 experience in Iraq. He was a close friend of mine. That was a
11 tough period for the battalion. I was angry because the
12 previous battalion could not get the job done and I had to
13 leave the area I had worked for six months. I went over there
14 to win the peace and help the Iraqi people. I can't say that
15 for every other unit over there. We were pulled to go to
16 Samarra and while I was there, seven of my Iraqi policemen that
17 Lieutenant Saville had trained were killed in an IED blast,
18 four Iraqi National Guardsmen were killed and we lost two
19 Americans. What we had built in six months disintegrated in
20 three weeks while I was in Samarra having to fight these thugs
21 who were disrespecting American forces. We were also getting
22 pulled back to do missions back in our old A/O. I felt did
23 anyone else want to help out with the fight besides 1-8? It
24 made it hard for me to get excited to rebuild Iraq.

25
26 Captain Cunningham was Lieutenant Saville's company
27 commander. He was close to Captain Paliwoda. I was informed
28 that some Iraqis were forced to enter into the water by
29 Lieutenant Saville's platoon. I was leaving the memorial
30 service for Captain Paliwoda and as I was getting near the FOB
31 at Samarra, I got a call saying they had a report for me. When
32 I got there that night, I was informed by Captain Cunningham
33 and Lieutenant Saville that they had pushed two Iraqis into the
34 water. I asked Lieutenant Saville that night did anybody
35 drown? That's the only time I addressed Lieutenant Saville
36 because the rest of the time I was talking to Captain
37 Cunningham. He told me nobody drowned.

38
39 There had been a lot of actions in Iraq that had not been
40 what I considered fully investigated. I had the understanding
41 from my senior commanders that if anybody went into the water,
42 everybody was going to be court-martialed. After he gave me
43 that information, I went back to Balad the next morning. After
44 I told Captain Cunningham and Lieutenant Saville not to say

1 anything about the water, about a week later a full CID
2 investigation into this action occurred.
3

4 The SJA never had the courtesy to inform me they were doing
5 that. The former brigade commander never advised me or said
6 they were going forward. I had gone off into another operation
7 that had taken me out of the net for about a five-day period.
8 When I came back I found this out. I waited a day, then called
9 the Commanding General of the division the following the
10 evening and explained to him what I had done and that I was
11 writing my sworn statement and was going to deliver it to CID
12 the next morning and answer whatever questions they had for me.
13

14 I subsequently received non-judicial punishment. I received
15 a letter of reprimand as part of an Article 15 proceeding from
16 the Commanding General of the 4th Infantry Division for impeding
17 an investigation. I have submitted my retirement paperwork and
18 am currently clearing. I'll have served just over 20 years in
19 the military when I retire later this summer.
20

21 I'm well aware that the judge is shortly going to deliberate
22 on what sentence to impose on Lieutenant Saville. I understand
23 that I'm not permitted to recommend a particular punishment.
24 This whole event is tragic. I think if cooler heads would have
25 prevailed and we would have had the opportunity to get in a
26 room and talk about it with my brigade commander, the
27 Commanding General and some other people, I think it would have
28 never come to this. It was always my hope that it would be a
29 non-judicial punishment action. I never saw it as a crime,
30 especially in light of the enemy we were facing.
31

32 It was a mistake and they should have never done what they
33 did. I've said from the beginning that I thought this was non-
34 judicial. I completely disagreed with my superiors that this
35 should be a court-martial. This is a tragedy all the way
36 around, starting with Bowman who has left the Army all the way
37 to the battalion commander who is going to leave the service
38 and everybody in between. This is a great loss to the Army.
39 Lieutenant Saville was my best platoon leader and that was my
40 best platoon. That's the irony of ironies. I'm not just
41 saying this. He still has a lot to offer the service. His
42 duty performance since the event and before the event has not
43 tailed off. He keeps on going and does an outstanding job. In
44 many ways, I think this has been a disservice to the Army and
45 the "big Army" should be ashamed of itself in a lot of ways.

1 Mistakes were made at every level, but Lieutenant Saville
2 should be allowed to continue to serve. It's really
3 unfortunate the way things have transpired.
4

5 **CROSS-EXAMINATION**
6

7 **Questions by the trial counsel-Captain Schiffer:**
8

9 The charges Lieutenant Saville was found guilty of was not
10 the factor that caused me to retire. It was a personal
11 decision between my wife and I. From my point of view, it was
12 not an option to let detainees go. I first learned of the
13 details of the incident from Captain Cunningham and Lieutenant
14 Saville in the mess hall. They didn't report to me anything
15 that happened on the 5th of December 2003. The offenses that
16 the accused was found guilty of didn't cause a negative
17 information/operations campaign against us. We were getting
18 clobbered on that from the start. The Army has done a very
19 poor job of information/operations campaign since the very
20 beginning in April of 2003. We were sensitive to it. I went
21 over there to win. Clearly they were using the media more
22 effectively than we were and this was from the very start of
23 the war. These events did not help.
24

25 If I had to do it over again, I would do the exact same
26 thing. We were fighting an enemy that was killing our soldiers
27 daily. I was taught in the Army to win. I deeply disagreed
28 with my superior commanders on the actions they thought should
29 be taken with these individuals. The legal community and my
30 senior commanders were not fighting in the streets of Samarra,
31 they were living in a palace in Tikrit. They lacked some of
32 the situational awareness that the soldiers and I had on the
33 ground and I think that's what lead to a lot of the
34 misinformation, miscommunication and misunderstandings. It's
35 unfortunate the way the whole thing has gone, but I would have
36 done the exact same thing because I was trying to win the war.
37

38 **EXAMINATION BY THE COURT-MARTIAL**
39

40 **Questions by the military judge-Colonel Dixon:**
41

42 The information came down after I learned of the incident.
43 I was the last person to learn of the incident. The comment
44 was directly related to this incident, right after I found out
45 about it from them. I didn't want to win the war at all costs.

1 They did the wrong thing that night. I court-martialed several
2 soldiers that went to Fort Leavenworth for 7, 8 or 9 years
3 because they did the wrong things. We would not win the war at
4 all costs. On the whole, I wanted to help these people out and
5 for the vast majority we did that. I've said all along that
6 this action should be punished, but there were some heroic
7 actions. However, because of the adverse action medals have
8 been prevented from going forward because when you're flagged,
9 you're not allowed to receive any awards.

10
11 For me, it was a tactical mistake. It was poor common
12 sense, poor judgment. I just have a hard time in the setting
13 we were fighting in to consider this something that should have
14 been tried in this venue. I've always thought that non-
15 judicial punishment was the appropriate action for this
16 offense.

17
18 **REDIRECT EXAMINATION**

19
20 **Questions by the civilian defense counsel-Mr. Spinner:**

21
22 Non-judicial punishment should not preclude Lieutenant
23 Saville from receiving appropriate medals for the acts he
24 deserved them for. He is clearly deserving of a Bronze Star
25 for valor and an Army Commendation Medal for valor, but based
26 on this particular adverse action, he would not receive those
27 awards, non-judicial or judicial.

28
29 The witness was permanently excused and remained in the
30 courtroom.

31
32 **Mr. Thomas Saville** 5

33
34
35 **MR. THOMAS M. SAVILLE, civilian, was called as a witness for**
36 **the defense, was sworn, and testified in substance as follows:**

37
38 **DIRECT EXAMINATION**

39
40 **Questions by the trial counsel-Captain Schiffer:**

41
42 I am Thomas M. Saville. I live in

43
44 **[END OF PAGE]**

1 **Questions by the civilian defense counsel-Mr. Spinner:**
2

3 I am Jack's father. We live in eastern Virginia, the rural
4 part of Virginia. I serve as the superintendent of schools for
5 the public school. My children were raised in that area. My
6 wife's name is Beverly. I have three children. He has an
7 older sister named Emily and a younger brother named David. He
8 grew up in a Christian home in a small town in a rural area.
9 We are a close family with values. A small town where people
10 care for each other, neighbors know each others names, we look
11 out for each other, it's just a good family atmosphere.
12

13 Jack was involved with school and church related functions.
14 He was involved in school both academically and athletically.
15 He played baseball, tennis, ran cross-country and was captain
16 of the wrestling team. He was afforded numerous opportunities
17 with his church group to go on missions.
18

19 Jack did excellent academically. He was always near the top
20 of his class. When he went to West Point he set a goal to
21 graduate in the top 10 percent of the class. He unfortunately
22 missed that goal, but he graduated in the top 20 percent. He
23 was always a hard worker. He always set goals. He had
24 numerous part time jobs during his school years. One summer he
25 worked for a local crabber. He would be up at 4:30 and on the
26 job at 5:15. He would come home from that and cut grass in the
27 neighborhood. Then in the afternoon he would go work for a
28 local contractor, helping with construction sites. He would do
29 that past dinnertime on most evenings. He was always self-
30 sufficient and hardworking.
31

32 I was principal of the high school Jack attended and I was
33 able to hire a West Point graduate as the wrestling coach.
34 Jack had been a member of the wrestling team and developed into
35 the captain of the team. The coach sort of took him under his
36 wing and talked to him about West Point. One day he told me he
37 was thinking about WestPoint and I told him I thought it was a
38 good idea. I told him to give it his best shot and we would
39 support him in any way that we could. He worked hard and did
40 everything they asked him to do. He did well in his interviews
41 and kept his scholastic records up as well as his physical
42 fitness and he was accepted.
43

44 We were proud of his performance while attending West Point.
45 He was excelling and we thought he was in his right niche in

1 life. He was focused and he seemed to do well. Those around
2 him reflected he was doing well. I asked him why he wanted to
3 go to West Point and he told me he wanted to lead people. He
4 wasn't interested in behind the desk jobs or working with
5 machines. He wanted to work with people and lead people and
6 West Point was the best way to train to do that. I agreed with
7 that. I followed his training in the Army when he completed
8 West Point. He went to Ranger school. We had the opportunity
9 to go down to Fort Benning for his graduation.

10
11 When we found out he had to go serve in Iraq and potentially
12 in combat, we were very proud. I always tried to be
13 encouraging. I knew that he might not come home, but I was
14 willing to accept that. It was very difficult watching news
15 reports about casualties we were experiencing in areas he was
16 serving. I am very close to my son. He has done very well
17 comporting himself while he was under these allegations. I've
18 been very proud of him. He hasn't shirked. We've had those
19 father son talks about doing what's right and if you make
20 mistakes, you stand up, account for it and accept the
21 consequences. I think he's demonstrated this to the court.

22
23 He got married after he returned from Iraq and I was
24 delighted to have a new daughter. She's here today and her
25 name is Ashley. The things he's been living under for the last
26 year or so has made him a stronger man and a stronger husband.
27 He's a very faithful man; he derives his strength from his
28 faith. He communicates well and does not want to be in the
29 spotlight in situations, he is humble. This experience has
30 really strengthened him as a person. He understands what he
31 did and understands the consequences of his actions. You make
32 decisions and then stand up and be accountable for those
33 decisions.

34
35 My wife and I love Jack very much. We'll continue to
36 support him and continue to be proud of him.

37
38 The witness was permanently excused and remained in the
39 courtroom.

40
41 The accused made an unsworn statement with the assistance of
42 his civilian defense counsel.

43
44 [END OF PAGE]
45

1
2
3 **UNSWORN STATEMENT**

4 The civilian defense counsel handed the accused Defense Exhibit
5 A for him to look over and discuss with the court.

6 Defense Exhibit A1 is a picture of me and mother returning
7 home. This was the first time I was able to get off during my
8 freshman year at West Point. Defense Exhibit A2 is a picture
9 of me and my wife. We were married on April 25, 2004. She was
10 aware of my situation when we married. She was the first
11 person, other than my chain of command, that I talked to about
12 those things. I wrote it in a letter so she would have a
13 chance to reflect without being told on the phone. We didn't
14 talk everyday, so I didn't want to use a phone conversation on
15 that. I wanted to talk about positive things. Our one-year
16 anniversary is coming up and I don't know two people who, for
17 the amount of time we've been married, have a stronger
18 relationship. We both have strong relationships with God,
19 which is very important for us and a lifetime of happiness
20 together. She understands there is a potential that I could be
21 sentenced to confinement for some period of time.

22
23 Defense Exhibit A3 is a picture of my father and me. I
24 returned home from a summer in Europe where I attended Airborne
25 school, French Jump school and deployed with 1-508 to Bosnia.
26 I am very close to my father. I was initially hesitant to talk
27 to him about this. I'm not a very proud person, but I don't
28 take what I do lightly. I was very disappointed with myself
29 after these decisions and took responsibility for those
30 decisions. I talked to him about that and he understood. He's
31 been very supportive throughout all of this. Growing up, I was
32 very close to my mom, but this opportunity has given me an
33 opportunity to grow closer to my father.

34
35 Defense Exhibit A4 is a picture of me and one of my squad
36 leaders in Iraq prior to a mission. Defense Exhibit 5 is a
37 picture of my graduation. President Bush is in the photo. He
38 did the commencement and that's just me shaking his hand. I
39 enjoyed West Point, but it's not your typical college. I was
40 excited about being an infantry officer. I was excited about
41 going to Fort Benning. I looked forward to the challenges I
42 had at that point and time.

43
44 Sir, I want to express my sincerest apologies for the poor
45 decisions I made on 2 and 3 January 2004. I have come to fully

1 appreciate how my actions have adversely affected US-Iraqi
2 trust during critical times of reconstruction. The results of
3 my decision caused embarrassment not only for my unit and
4 myself, but to the Army, the US and our mission in Iraq.
5

6 I want to apologize to Mr. Zaydun and Mr. Marwan for the
7 maltreatment my decision caused. Although they were in
8 violation of curfew, their actions were not deserving of the
9 punishment they received. I also wish to apologize to the Army
10 for not serving in compliance with the Rules of Engagement and
11 the faith and trust placed in me. Finally, I wish to apologize
12 to my soldiers. I asked them to participate in actions that
13 were illegal.
14

15 Sir, you are about to render a sentence that will
16 undoubtedly affect my near and distant future and I would like
17 to take this time to give you a better understanding of who I
18 am.
19

20 I was born to Tom and Beverly Saville on 19 January 1980, in
21 Kilmarnock, Virginia. I am the second of three children. My
22 father was a schoolteacher and later became a principal. In
23 high school, I participated in numerous sports and clubs. I
24 graduated in 1998, the first male in my class with a 4.0 GPA,
25 and voted "Most Likely to Succeed" by my classmates.
26

27 While searching for potential colleges and universities, I
28 became interested in the Army and subsequently got accepted
29 into West Point. I attended WestPoint from 1998 to 2002. I
30 graduated in the top 20 percent of my class with a BS in
31 Environmental Science. I selected Infantry and Fort Carson as
32 my branch and post assignment, and received my commission on
33 June 1, 2002.
34

35 I arrived for duty at Fort Carson in July and deployed to
36 Balad, Iraq, in August 2003. I joined 3BCT two months into the
37 deployment. From August to September, I served as the OIC of
38 the Balad Police Station, responsible for conducting joint US-
39 Iraqi Police patrols within the city. We conducted daily
40 patrols and executed numerous searches in and around Balad
41 until we were selected to join 1-66 AR in Samarra.
42

43 Samarra remained the only insurgent stronghold in 3BCT's
44 area of operations. As the only infantry platoon operating in
45 the city, 1st Platoon conducted daily patrols in the city from

1 October to November 2003, capturing and/or killing numerous
2 enemy combatants while seizing numerous large caches of
3 weapons. This was done while not sustaining a single injury or
4 death to my soldiers.
5

6 I returned to Balad in November with my platoon, where we
7 continued our patrol and search rotations. From November to
8 December, we captured or killed over 50 enemy combatants and
9 began preparing for Operation Ivy Blizzard in Samarra. Being
10 that 1st Platoon was most familiar with the city and the
11 surrounding areas, 1st Platoon was selected as the main effort
12 for this division-sized mission. We executed our mission,
13 capturing 16 of the 17-targeted individuals.
14

15 Following the CID investigation into my platoon on 3 January
16 2004, I was moved to LSA Anaconda where I served with the
17 Brigade S4 shop until redeployment. I was responsible for
18 establishing 3BCT's Combined Tactical Assembly Area and
19 ensuring all logistical aspects were in place for 3BCT's
20 redeployment. Upon returning to Fort Carson in March 2004, I
21 have served in the Brigade's S4 shop, responsible for fielding
22 new equipment, painting all of 3BCT's vehicles, executing
23 equipment lateral transfers and preparing the Brigade for NTC
24 and OIF deployments in August and November 2005 respectively.
25 I married Ashley Taylor on 25 April 2004 and have focused a
26 majority of my attention of preparing for this trial since
27 redeployment.
28

29 Barring the results of this trial, I desperately wish to
30 remain in the Army. Since attending West Point, the Army has
31 provided me with and education, excellent training and
32 opportunities to serve my country in a time of war. After
33 serving the remainder of my 5-year commitment, I would like to
34 attend graduate school and receive a degree in construction
35 management with a focus in environmental compliance.
36

37 Sir, I implore you to take my life experiences and previous
38 records into account while determining what is a fair sentence
39 for the US Army and me. I have complete faith you will make a
40 decision that is in accordance with the law and your career as
41 a soldier.
42

43 The civilian defense counsel offered the accused's prepared
44 statement as **Defense Exhibit C for identification.** The

1 military judge admitted Defense Exhibit C for identification
2 into evidence.

3
4 The defense rested.

5
6 The prosecution had no rebuttal.

7
8 The military judge inquired as to the accused's financial
9 situation and suggested means of obtaining that information.

10
11 The defense requested a recess for the purpose of finding the
12 best way to present the requested information to the court.

13
14 [The court-martial recessed at 1251 hours, 15 March 2005.]

15
16 [The court-martial was called to order at 1304 hours, 15 March
17 2005.]

18
19 The military judge stated that all parties present when the
20 court closed were again present.

21
22 The defense presented the following witness:

23
24 **Ashley Saville**

25
26 **MRS. ASHLEY SAVILLE, civilian, was called as a witness for the**
27 **defense, was sworn, and testified in substance as follows:**

28
29 **DIRECT EXAMINATION**

30
31 **Questions by the trial counsel-Captain Schiffer:**

32
33 I am Ashley Saville. I live in Colorado Springs, Colorado.

34
35 **Questions by the civilian defense counsel-Mr. Spinner:**

36
37 I am the spouse of Jack Saville. We were married April 25,
38 2004. I am employed. I work for Clear Channel Radio as an
39 advertisement salesperson. I earn commissions. My approximate
40 annual income is about \$40,000. My husband is a First
41 Lieutenant in the Army. We do not own a home, we rent. Our
42 rent is \$875 per month. He pays that bill. He has a loan from
43 his time at WestPoint for approximately \$12,000, which he pays.
44 I have a car payment, which is approximately \$350 a month. I

1 have small credit card debts, but nothing major. We are saving
2 to buy a home. Aside from that, I have utilities and normal
3 expenses. There are no other significant expenses we have as a
4 household.

5
6 **EXAMINATION BY THE COURT-MARTIAL**

7
8 **Questions by the military judge-Colonel Dixon:**

9
10 I've been employed as an advertisement salesperson for the
11 radio station for two years. I don't see any significant change
12 in that employment status in the foreseeable future. My
13 employment is based on how well I do as well as how much I make.
14 I currently reside in Colorado Springs. If my husband is
15 sentence to confinement, I plan on staying in Colorado Springs
16 and continuing to work. My home before marriage was in Columbus,
17 Georgia. My family is in Columbus, Georgia. I am not paying for
18 the services of Mr. Spinner.

19
20 **REDIRECT EXAMINATION**

21
22 **Questions by the civilian defense counsel-Mr. Spinner:**

23
24 I hope we spend our first anniversary together.

25
26 The witness was permanently excused and remained in the
27 courtroom.

28
29 The trial counsel gave a sentencing argument.

30
31 The defense counsel gave a sentencing argument.

32
33 **[The court-martial closed at 1333 hours, 15 March 2005.]**

34
35 **[The court-martial opened at 1441 hours, 15 March 2005.]**

36
37 The military judge stated that all parties present when the court
38 closed were again present.

39
40 The military judge stated that during the recess, counsel was
41 called into chambers to discuss an issue that surfaced as a
42 result of the testimony presented by Lieutenant Colonel Sassaman;
43 specifically anyone involved with forcing Iraqis into the water
44 would be court-martialed. The military judge further stated that
45 he inquired and ascertained from the defense that they were aware

1 of that statement and the significance thereof during the
2 accusatory phase of the court-martial and after fully
3 investigating the issue, it was resolved to the satisfaction of
4 the defense and there was no evidence of unlawful command
5 influence during the adjudicative phase of the court-martial.
6 Both defense and government counsel agreed with the military
7 judge's summation of the events that took place during the
8 recess.

9
10 The military judge announced the following sentence:

11
12 **To forfeit \$2,000 pay per month for six (6) months, and**
13 **to be confined for 45 days.**
14

15 **Appellate Exhibit XI, the quantum** was presented to the military
16 judge. The military judge ascertained from the accused if the
17 sentencing agreement was what was agreed upon between him and
18 the Convening Authority. The accused affirmed that the
19 agreement was correctly stated.

20
21 Both counsel agreed with the agreement.

22
23 The court reporter handed the military judge the **post-trial and**
24 **appellate rights form**, marked as **Appellate Exhibit XII**.

25
26 The military judge ascertained that the accused had been
27 advised of his appellate rights orally and in writing by his
28 defense counsel, that he had signed the document, and that he
29 understood his post-trial and appellate rights.

30
31 There being nothing further, the court-martial adjourned.

32
33 **[The court-martial adjourned at 1446 hours, 15 March 2005.]**

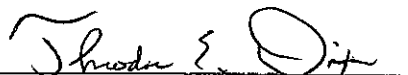
34
35 **[END OF PAGE]**

AUTHENTICATION OF THE RECORD OF TRIAL

IN THE CASE OF

SAVILLE, Jack M., _____, First Lieutenant/1LT
Headquarters and Headquarters Company, 3d Brigade, 4th Infantry,
Fort Carson, Colorado, 80913

I received the completed record of trial for review and authentication on 28 April 2005.

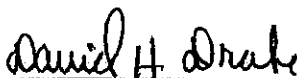


THEODORE DIXON
COL, JA
Military Judge

DATE: 28 April 2005

ACKNOWLEDGEMENT OF RECEIPT AND EXAMINATION

I received the record of trial for review in the foregoing case on _____ 2005 and completed my examination on 25 APR 2005.



DAVID DRAKE
CPT, JA
Defense Counsel

DATE: 25 APR 2005

The record of trial was served on defense counsel on _____ 2005. After verifying receipt with defense counsel on _____ 2005 and conferring with the military judge on review by defense counsel on _____ 2005, the record was forwarded for authentication without completion of defense counsel's review.

DOUG LARKINS
MAJ, JA
Chief, Military Justice

AUTHENTICATION OF THE RECORD OF TRIAL

IN THE CASE OF

SAVILLE, Jack M., _____, First Lieutenant/1LT
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Fort Carson, Colorado, 80913

I received the completed record of trial for review and authentication on _____ 2005.

THEODORE DIXON
COL, JA
Military Judge

DATE: _____

ACKNOWLEDGEMENT OF RECEIPT AND EXAMINATION

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David H Drake

DAVID DRAKE
CPT, JA
Defense Counsel

DATE: 25 APR 2005

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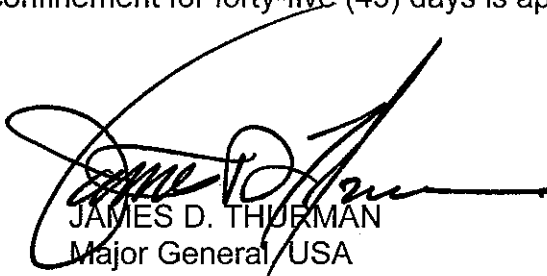
DOUG LARKINS
MAJ, JA
Chief, Military Justice

ACTION

10 JUL 2005

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

In the case of First Lieutenant Jack M. Saville, U.S. Army, Headquarters and Headquarters Company, 3rd Brigade, 4th Infantry Division (Mechanized), Fort Carson, Colorado, only so much of the sentence as provides for forfeiture of \$1000.00 pay per month for six (6) months, and confinement for forty-five (45) days is approved and will be executed.



JAMES D. THURMAN
Major General, USA
Commanding

PROSECUTION
EXHIBITS
ADMITTED
INTO
EVIDENCE

OFFICER RECORD BRIEF AR600-8-104 CMAAOF -R1

ORB TYPE 2900	BRIEF DATE 20040213	CRFLD DESIGNATION	CRFLD DESIG DATE	CNTL BRANCH BR DTL/EXPIRES	IN	COMPONENT USAR	AD GRADE - ADOR 1LT 20031201	SSN	NAME SAVILLE JACK MORRISON								
SECTION I - Assignment Information				SECTION II - Security Data			SECTION III - Service Data			SECTION IV - Personal/Family Data							
OVERSEAS DUTY				INVEST NAC			BASD		Current PPN		Ead Current Tour	Date of Birth	Birthplace				
YR/MO RTN	CTRY	MONTH	TCS	NUMBER OF TOURS	DTEINV	20000414	DTPSCG	20000501	20020601	A1	20020601	19800119	VIRGINIA				
				SHORT	LONG	SECTION V - Foreign Language			Basic Date of Apt		Basic Yr Gp	Source of Orig Apt	Country of Cit	Sex/Redcat			
				0	0	CLNC SEC			20020601		FY2002	USMA	US	M /WHITE,NOT HIS			
				DROS	DEROS	Language			Mo/Days Afc		Mo/Afs	Type of Orig Apt		No Dependent			
				NA	NA	Read			028/00		028	USAR		Adults/Children			
				Conus departure date			Listen			Curr Svc Aqrmt/Expr Date		Date of Proj/Mand Ret			Religion		
										OBV (OBLIGATED VOL) /20070601					PROT-NO-DENOM		
												CPT-CW3	MAJ-CW4	Marital Status	Spouse Birthpl/City		
Date Dependents Arrived OS										PDOR		20020601	20031201	SINGLE	Spouse Birthpl/City		
Career Field Information- Commsioned/AMEDD/Warrant														Pulhes/Date	Height/Weight		
BR Code/MedMos1/Pmos		Frnctl Area/MedMos2/Smos		DLAT						LTC-CW5		COL	BG	MG	111111/20021001	70/150	
11				SECTION VI - Military Education						TDOR		LTG	GEN	Home of Record at Ead		VIRGINIA	
BRAOC/MedMos3/Pmos Sqj		Frnctl Aoc/Smos SQI		OBC GRAD										Mailing Address			
A				Course			Year			SECTION VII - Civilian Education					3D BCT		FT CARSON CO
Skills										LEVEL COMPLETED		BACCALAUREATE			80913-0000		
Basic Branch/PMOS				INFANTRY						INSTITUTION		NY, USMA, WEST POINT			BS		G YR 2002
Functional Area				SMOS						DISCIPLINE		ENVIRN SCIENCE					
Career Track		X	Single		Dual				INSTITUTION					YR			
Primacy		X	Branch		Functional Area				DISCIPLINE					YR			
Prev Branch/MOS										INSTITUTION					YR		
Prev Functional Area										DISCIPLINE					YR		
Control Career Management Field				11200						SECTION VIII - Awards and Decorations							
Projected Career Management Field				11200						NDSM - 1							
Geographic Orientation										ASR - 1							
AVIATOR QUALIFICATIONS										GWT 1							
ASED				TOFDC As Of						Iraqi Expeditionary 1							
Pilot Status		Aircraft	Qual	Aircraft	Qual	Aircraft	Qual	Aircraft	Qual								
Rating Date																	
Date Of Availability		Date Of Last PCS		SECTION IX - Assignment Information						Date Of Last OER		Org Zip Code					
200510		20030523		ASGT		FROM	MO	UNIT NO	ORGANIZATION		STATION	LOC	COMD	DUTY TITLE		DMOS	
PROJ																	
Current		20030623		0008	IN BN 01HHC MECH		FT CARSON	5CO	FC	INCOMING PERSONNEL		11Z000000					
1st Prev																	
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10032

DATE LAST PHOTO



PROSECUTION EXHIBIT 1 FOR ID

Gene A. Roberts
CW2, USA
Chief Personnel Management

UNITED STATES)

v.)

SAVILLE, Jack M.)
1LT, U.S. Army,)
Headquarters and Headquarters Company,)
3rd Brigade Combat Team,)
4th Infantry Division)
Fort Hood, Texas 76544)

STIPULATION OF FACT

11 March 2005

With the express consent of the Accused, it is hereby stipulated by and between trial counsel and defense counsel, that the following facts are true, susceptible of proof, and admissible into evidence against the Accused for findings and sentencing on all charged offenses. Furthermore, defense counsel agrees to waive any objection under the Military Rules of Evidence to matters and enclosures contained in this stipulation.

Stipulated Facts

1. The Accused entered active duty in the United States Army on 1 June 2002, and remained continuously on active duty since that date. His MOS is 11A, Infantry Officer. On 23 June 2003, the Accused reported to 1st Battalion, 8th Infantry Regiment, 3rd Brigade, 4th Infantry Division, Fort Carson, Colorado, where he has been assigned since that time.
2. This court-martial is properly convened and has jurisdiction over the Accused and the charged offenses.
3. The Accused was the platoon leader for 1st Platoon, A Company, 1st Battalion, 8th Infantry Regiment, 4th Infantry Division from September 2003 until late January 2004 while deployed in support of Operation Iraqi Freedom. He was subsequently reassigned to be the assistant Brigade S4. As a platoon leader, the accused was responsible for four Bradley Fighting Vehicles (BFVs), their crews, and dismounted infantry teams accompanying each BFV. The Accused was the senior officer in his platoon and responsible for thirty-four soldiers. While deployed, the Accused routinely oversaw combat operations, including: presence patrol missions, raids, checkpoint operations, and operating base security. As platoon leader, the Accused was in charge of all platoon operations and supervised the actions of his soldiers.
4. From August 2003 until early December 2003, the Accused's platoon's primary area of operations was Balad, Iraq. The Accused's platoon was attached to 1-66 Armor Battalion, 4th Infantry Division, on several occasions between September and December 2003. The primary area of operations for 1-66 Armor was Samarra, Iraq. Samarra is approximately 30 miles from Balad in an area approximately 70 miles north of Baghdad, Iraq.

PROSECUTION EXHIBIT 2 FOR ID

5. The Accused's platoon took part in Operation Ivy Blizzard, a Division level operation in and around Samarra, Iraq from December 2003 until early January 2004. During the operation, the Accused's platoon conducted presence patrols, raids, and conducted security operations.

6. On 2 January 2004, the Accused's platoon left Samarra and traveled to Balad, Iraq. The Accused's platoon mission was to support efforts to capture insurgents operating in Balad. While planning for this operation, Forward Operating Base Eagle, the 1-8 Infantry Battalion command post located near Balad, received mortar fire, resulting in the death of CPT Eric Paliwoda. CPT Paliwoda commanded B Company, 4th Engineer Battalion, which was the engineer company attached to 1-8 Infantry Battalion. CPT Paliwoda was a popular commander who was friends with CPT Matthew Cunningham, the Accused's company commander.

7. After arriving in Balad during the day on 2 January 2004, CPT Cunningham gave a mission briefing that was attended by unit squad leaders, platoon sergeants, and platoon leaders. The mission was to conduct a raid in order to capture or kill insurgents responsible for the mortar attack that killed CPT Paliwoda. The mission was to raid a number of houses, with LTC Sassaman in overall command, and CPT Cunningham responsible for Company A, 1-8 IN. The Accused and his platoon were ultimately responsible for securing and searching twenty-five houses.

9. The Accused attended CPT Cunningham's mission briefing along with 1LT Nelson (the platoon leader for 2nd Platoon), SFC Perkins, and other leaders in the company. CPT Cunningham briefed that of approximately eighteen names on a target list that was distributed to all personnel in attendance, five individuals "were not to come back alive." These targeted individuals' names were marked with an asterisk next to their names on the target list. During this mission brief, the Accused and LT Nelson discussed CPT Cunningham's order to kill certain detainees. Both platoon leaders were concerned about the illegal order and decided to clarify it with CPT Cunningham. During the briefing, they approached CPT Cunningham to clarify what the order meant. The Accused understood the order to mean that those with an asterisk next to their names on the list were not to come back alive and asked CPT Cunningham if that was his intent. CPT Cunningham repeated his statement that these detainees "were not to come back alive." The Accused went back to his platoon sergeant, SFC Perkins, section leaders, and squad leaders, and briefed the mission order given by CPT Cunningham, including the order that certain detainees were not to come back alive. He also told his platoon that they should not do anything that they felt was not right, and to notify him directly if one of the Iraqis with an asterisk by his name was captured. Later that evening, two of the Iraqis with asterisks by their names on the target list were killed by members of the Accused's platoon.

10. After completing the raids in Balad, Iraq in the early morning hours of 3 January 2004, the Accused and his platoon returned to Samarra, Iraq to complete its ongoing mission there. On 3 January 2004 at about 1930 hrs, the Accused's platoon began a patrol from Forward Operating Base Brassfield-Mora, located outside Samarra. The mission was to conduct a presence patrol in the city of Samarra. During the beginning of the patrol, SFC Perkins, the Accused's platoon sergeant, announced over the platoon frequency that "Any curfew violators are getting wet tonight." The soldiers of the Accused's Platoon generally knew that this meant curfew violators would be detained and thrown into the Tigris River for violating curfew, which was at 2300 hrs.

13. At approximately 2315 hrs on 3 January 2004, two young Iraqi males were detained by the Accused's Platoon. The two men, Marwan and Zaydun, were traveling back from Baghdad in a white pickup truck filled with plumbing supplies to their home in Samarra. Marwan testified that two men were approximately 200 to 500 meters away from their home when they were detained by the Accused and his platoon. At first soldiers in the Accused's platoon simply stopped and searched the detainees for contraband. The Accused then ordered his soldiers to detain Marwan and Zaydun. Marwan and Zaydun were bound at the hands with 550 cord, placed in the Accused's BFV, and driven to a nearby bridge over the Tigris River in Samarra.

14. Once at the bridge, the detainees were taken out of the BFV and the 550 cord was removed. SGT Reggie Martinez, the team leader inside the Accused's BFV, and his soldiers escorted Marwan and Zaydun out of the vehicle. SGT Martinez walked up to the Accused to receive guidance, and the Accused ordered SGT Martinez to throw the detainees into the river. SGT Martinez, SPC Bowman, SGT Rincon, and SPC Hardin, soldiers in the Accused's platoon, complied with the order, walking Marwan and Zaydun to the water's edge near a pump house located adjacent to the bridge that also served as a dam. The Accused's soldiers then followed the Accused's order and forced the detainees into the Tigris River. The Accused and his platoon then departed the area. The Accused never left his BFV while the Iraqis were thrown into the river. The entire stop took approximately five minutes. At the time the accused ordered his soldiers to throw the detainees into the Tigris River the following dangerous conditions existed and were known to exist by the Accused: the current and exact depth of the water were unknown; the water and air temperature were cold; the water contained natural debris; and it was nighttime. In addition, the Accused did not know if either detainee could swim.

15. Approximately two to three days later, the 1-8 Infantry Battalion Operations Officer (S-3) received a report from higher command that some Iraqis claimed they were pushed into the Tigris River and one of the two men was still missing. CPT Cunningham received this report and was ordered to gather facts about what happened. The Accused told CPT Cunningham what transpired at the bridge on 3 January 2004. The Accused and CPT Cunningham then approached LTC Sassaman, the 1-8 Infantry Battalion Commander, and briefed him. After hearing all of the facts, LTC Sassaman ordered the Accused and CPT Cunningham not to tell anyone about pushing Iraqis into the river when discussing what happened to the detainees that evening, and to get the soldiers in the Accused's platoon to do the same. LTC Sassaman also ordered MAJ Gwinner, the Battalion Executive Officer, to take CPT Cunningham, the Accused, and the Accused's platoon to the bridge and assess the situation.

16. MAJ Gwinner, CPT Cunningham, the Accused, and several soldiers from his platoon returned to the bridge around 14 January 2004. The Accused and SFC Perkins walked through the entire incident with MAJ Gwinner and CPT Cunningham and spent approximately 90 minutes at the scene. As part of the investigation, the Accused jumped into the Tigris River where Marwan and Zaydun were forced in. Initially, the water was over the Accused's head. Once the Accused moved about 1-2 meters towards shore, the Accused could stand in the water. After revisiting the scene and investigating the crimes of 3 January, the officers, including the Accused, talked to the Accused's platoon about the situation. Everyone present agreed to omit any mention of the assaults (i.e., throwing the Iraqis into the river) when questioned about the incident.

17. After completing the investigation of the event, the Accused and his platoon further discussed and agreed upon a version of events to tell law enforcement officials (i.e., Criminal Investigation Command). All soldiers with relevant knowledge, to include the Accused and SFC Perkins, agreed to tell CID that the detainees were left on the side of the road when they departed the area and to not mention that Marwan and Zaydun were forced into the Tigris River. The Accused gave CID a false sworn statement on 16 January 2004.

Charge IV: Violation of the UCMJ, Article 128 (Aggravated Assault)

18. The Accused ordered his soldiers to throw Marwan, an Iraqi detainee, into the Tigris River on 3 January 2004 at approximately 2315. As the platoon leader, the Accused ordered his subordinates to commit this assault on Marwan. Four of the Accused's soldiers surrounded Marwan and pushed him to the edge of the pump house, where they forced him into the river. Marwan testified that he was pleading with the soldiers in Arabic not to throw him into the river. After pushing him into the water, the Accused's soldiers walked away.

19. The force and conditions by which Marwan was assaulted were likely to produce death or grievous bodily harm. The harm done by his soldiers, at the direction of the Accused, was done with unlawful force and violence.

Charge V: Violation of the UCMJ, Article 134 (Obstructing Justice)

20. Approximately two weeks after the incident, CID questioned the Accused and his platoon about his platoon's actions on 3 January 2004. The Accused wrongfully omitted information to CID about the assaults on Marwan and Zaydun. The Accused told CID that there were no orders given about forcing detainees into the water and told CID that the two detainees were standing on the side of the road talking to one another when the Accused's platoon departed the area. The Accused knew that CID was investigating him and his platoon because there were reports that detainees were thrown into the water and one of the detainees was missing. The Accused had reason to believe that there would be criminal proceedings pending based on his actions and the acts of his soldiers, and the level of investigation being pursued by CID. The Accused omitted any information about the detainees being put into the Tigris River in order to impede CID from gathering accurate information and thereby obstructing the due administration of justice. The Accused misrepresented facts to CID in order to prevent the truth from coming to light. The Accused's misrepresentations and deception was prejudicial to good order and discipline, as it was a poor example for his subordinates and was of a nature to bring discredit to the Armed Forces.

Additional Charge II: Violation of the UCMJ, Article 92 (Dereliction of Duty)

21. The Accused received an illegal order from CPT Cunningham on 2 January 2004 when CPT Cunningham stated that certain Iraqi detainees were to be killed. After receiving this order, the Accused had a duty to challenge CPT Cunningham's illegal order. The Accused and 1LT Nelson did approach CPT Cunningham to seek clarification of the order. CPT Cunningham reiterated that the detainees on the target list with an asterisk next to their names "were not to

come back alive” because these targets were primarily responsible for the mortar attacks in which CPT Paliwoda was killed. The accused continued to understand this to mean that these detainees were to be killed during the raid. CPT Cunningham did not rescind the order, but instead reiterated what was to be done with the targets if identified. Once CPT Cunningham clarified what he meant, the Accused knew that he was obligated to personally disobey the order. The Accused knew it was an illegal order based on his prior Army training in the Law of War, and knew he had a duty to challenge an order to kill Iraqi detainees. Although he told his platoon not to do anything they felt was not right, the Accused knew his subordinate noncommissioned officers heard CPT Cunningham’s order and understood the order meant to kill the identified detainees.


22. Instead of executing his duties, the accused willfully failed to challenge CPT Cunningham’s order. He failed to challenge the order or tell CPT Cunningham that his order was illegal and in violation of the Law of War. Rather, the Accused allowed CPT Cunningham’s illegal order, to be passed on to the rest of the platoon. Two of the Accused’s subordinate noncommissioned officers subsequently shot and killed detainees identified on the list as those that should not come back alive.

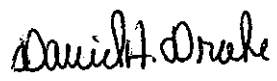
Additional Charge III: Violation of the UCMJ, Article 128 (Aggravated Assault)

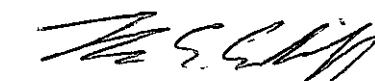
23. The Accused ordered his soldiers to throw Zaydun, an Iraqi detainee, into the Tigris River on 3 January 2004 at approximately 2315. As the platoon leader, the Accused ordered his subordinates to commit this assault on Zaydun. Four of the Accused’s soldiers surrounded Zaydun and pushed him to the edge of the pump house, where they forced him into the river. Marwan also testified Zaydun was pleading with the soldiers in Arabic not to throw him into the river because he could not swim. After pushing him into the water, the Accused’s soldiers walked away.

24. The force and conditions by which Zaydun was assaulted were likely to produce death or grievous bodily harm. The harm done by his soldiers, at the direction of the Accused, was done with unlawful force and violence.

25. There is no justification or defense for the Accused’s actions.


JACK M. SAVILLE
1LT, US Army
Accused


DAVID H. DRAKE
CPT, JA
Defense Counsel


THOMAS E. SCHIFFER
CPT, JA
Trial Counsel

Encl
Sworn Statement dated 16 January 2004
Sworn Statement dated 22 January 2004

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

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

Criminal Investigation Report

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

DEFENSE
EXHIBITS
ADMITTED
INTO
EVIDENCE

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

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAVE BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION (b) (6) 5 U.S.C. 552(b)6):

Photographs



October 16, 1997

The Honorable Tom Bliley
United States House of Representatives

Dear Mr. Bliley:

As division superintendent of the Spotsylvania County Public Schools, it is my pleasure to recommend Jack M. Saville for admission to the United States Naval Academy and the United States Military Academy at West Point. Mr. Saville is a very accomplished student. He ranks eleventh in his class of 251 students at Spotsylvania High School. He has maintained a cumulative GPA of 3.87/4.00.

In addition to his academic excellence, Mr. Saville has established himself as an exceptionally well-rounded individual. In a highly competitive process, Mr. Saville was selected to attend the residential Governor's School program last summer. Only a handful of students is so honored statewide. He is an active participant in sports, including wrestling, cross country, tennis, and baseball. He has been a member of the science club, the environmental club, the hiking club, and the French club. His leadership has been evident by his service as an SCA representative and as president of the Key Club. Jack Saville also was selected to participate in Boys' State.

Mr. Saville appreciates the value of community service. He is an active member of his church youth group and has participated in Habitat for Humanity. In addition to his volunteer activities, he has also gained valuable job experience by working during the summers and on weekends.

Mr. Jack M. Saville is an outstanding candidate for admission into the United States Naval Academy and the United States Military Academy. I recommend him to you knowing that he would represent Spotsylvania County Schools and his community very well. If I may provide any additional information, please do not hesitate to contact me.

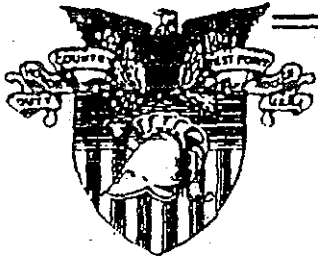
Sincerely,

A handwritten signature in cursive script that reads 'Sue F. Burgess'.

Sue F. Burgess, Ed.D.
Division Superintendent

SFB:mgm

West Point



NEWS RELEASE

Contact: _____

FOR IMMEDIATE RELEASE

LOCAL CADET EARNS AWARD – Oct. 6, 2000

WEST POINT, N.Y. – Cadet Jack M. Saville, son of Thomas and Beverly Saville of Tappahannock, has received the Superintendent's Award at the U.S. Military Academy.

Recipients of the Superintendent's Award must have exceeded a 3.0 grading in academics, military and physical programs. Saville was awarded a gold wreath pin for his efforts.

Saville graduated from Spotsylvania High School in 1998. He is concentrating his studies in environmental science and plans to graduate in 2002 and be commissioned as a second lieutenant.

The mission of the U.S. Military Academy is to educate, train, and inspire the Corps of Cadets so that each graduate is a commissioned leader of character committed to the values of Duty, Honor, Country; professional growth throughout a career as an officer in the United States Army; and a lifetime of selfless service to the Nation.

- 30 -



April 17, 1997

Mr. Jack Saville

Dear Jack:

I am writing to congratulate you on being selected as a participant from our school division to the 1997 Governor's School - Academic Program. To be selected from such an outstanding pool of nominees from across the Commonwealth of Virginia is a remarkable accomplishment indeed.

Please accept my congratulations on behalf of Spotsylvania County Schools. We are proud of your achievements. I send my best wishes for your continuing success.

Sincerely,

A handwritten signature in cursive script that reads 'Sue F. Burgess'.

Sue F. Burgess, Ed.D.
Division Superintendent

SFB:cab

copy: Mr. Thomas Saville
Principal
Spotsylvania High School

DEFENSE EXHIBIT B 30 FOR ID

SECRETARY OF THE NAVY

Scholastic Leadership Award

The Secretary of the Navy
takes great pleasure in presenting
this award for outstanding leadership
to

Jack M. Penille



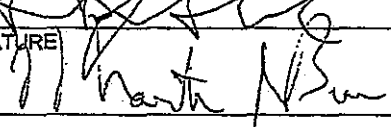
Spotsylvania High School

for exhibiting the timeless traits of leadership.

Your initiative, good judgment and willingness to speak with authority, inspire trust and strengthen others. You never compromised absolutes, leading by example through your optimism, enthusiasm and integrity. Congratulations on a job well done, and best wishes in all your future endeavors.

John H. Dalton
John H. Dalton
Secretary of the Navy



SERVICE SCHOOL ACADEMIC EVALUATION REPORT				DATE	
For use of the form, see AR 623-1; the proponent agency is MILPERCEN				021213	
1. LAST NAME - FIRST NAME - MIDDLE INITIAL 2LT Saville, Jack M		2. SSN	3. GRADE 2LT	4. BR IN	5. SPECIALTY/MOSC 11
6. COURSE TITLE INFANTRY OFFICER BASIC COURSE CL: C 2 6-02			7. NAME OF SCHOOL USA INFANTRY SCHOOL, FT BENNING, GA		8. COMP RA
9. Type of Report <input checked="" type="checkbox"/> Resident <input type="checkbox"/> Non Resident	10. PERIOD OF REPORT: (Year, month, day) From: 020818 Thru: 021213		11. Duration of Course: (Year, month, day) From: 020818 Thru: 021213		
	2. EXPLANATION OF NONRATED PERIODS				
13. PERFORMANCE SUMMARY <input type="checkbox"/> EXCEEDED COURSE STANDARDS <small>(Limited to 20% of class enrollment)</small> <input checked="" type="checkbox"/> ACHIEVED COURSE STANDARDS <input type="checkbox"/> MARGINALLY ACHIEVED COURSE STANDARDS <input type="checkbox"/> FAILED TO MEET COURSE STANDARDS <small>*Rating must be supported by comments in ITEM</small>			14. DEMONSTRATED ABILITIES a. WRITTEN COMMUNICATION <input type="checkbox"/> NOT EVALUATED <input type="checkbox"/> UNSAT <input checked="" type="checkbox"/> SAT <input type="checkbox"/> SUPERIOR b. ORAL COMMUNICATION <input type="checkbox"/> NOT EVALUATED <input type="checkbox"/> UNSAT <input checked="" type="checkbox"/> SAT <input type="checkbox"/> SUPERIOR c. LEADERSHIP SKILLS <input type="checkbox"/> NOT EVALUATED <input type="checkbox"/> UNSAT <input type="checkbox"/> SAT <input checked="" type="checkbox"/> SUPERIOR d. CONTRIBUTION TO WORK <input type="checkbox"/> NOT EVALUATED <input type="checkbox"/> UNSAT <input type="checkbox"/> SAT <input checked="" type="checkbox"/> SUPERIOR e. EVALUATION OF STUDENTS RESEARCH ABILITY <input checked="" type="checkbox"/> NOT EVALUATED <input type="checkbox"/> UNSAT <input type="checkbox"/> SAT <input type="checkbox"/> SUPERIOR <small>(SUPERIOR/UNSAT rating must be supported by comments in ITEM 1)</small>		
15. HAS THE STUDENT DEMONSTRATED THE ACADEMIC POTENTIAL FOR SELECTION TO HIGHER LEVEL SCHOOLING/TRAINING? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A <small>(A N/A response must be supported by comments in ITEM 1)</small>					
<p>2LT Saville performed in a superb manner during the Infantry Officer Basic Course. The focus of this course is to prepare lieutenants technically and tactically with sufficient leadership skills to successfully lead a rifle platoon in combat. 2LT Saville demonstrated his dedication to personal excellence by scoring 278 on the Army Physical Fitness Test. He demonstrated above average skills as a communicator. This was evidenced by his ability to issue quality oral operations orders. 2LT Saville demonstrated exceptional leadership skills. His performance as a platoon leader during a platoon attack under urban conditions was particularly noteworthy. Whether as a leader or a follower, 2LT Saville was an outstanding team player. During the course he served in the capacity of student Platoon Leader and made a significant contribution to the success of the training conducted by the class. Based on his demonstrated potential during IOBC, 2LT Saville will be an excellent infantry platoon leader.</p>					
PASS 0212 70/160			 I have been counseled concerning my AER		
17. AUTHENTICATION					
a. TYPED NAME, GRADE, BRANCH, AND TITLE OF PREPARING OFFICER Steven J. Gribshaw CPT, IN, SENIOR PLATOON TRAINER			SIGNATURE 		
b. TYPED NAME, GRADE, BRANCH, AND TITLE OF REVIEWING OFFICER MARTIN J. BARR MAJ, IN, COMPANY COMMANDER			SIGNATURE 		
18. MILITARY PERSONNEL OFFICER					
a. FORWARDING ADDRESS <small>(Rated student)</small> PO BOX 2922 TAPPAHANNOCK, VIRGINIA 22560			b. DISTRIBUTION <input checked="" type="checkbox"/> STUDENT <input type="checkbox"/> UNIT CDR P/B NCOES ONLY <input type="checkbox"/> STUDENT'S OFFICIAL MILITARY RECORD		

OFFICER EVALUATION REPORT										SEE PRIVACY ACT STATEMENT ON DA FORM 67-9-1			
For use of this form, see AR 623-105; the proponent agency is ODCSPER													
PART I - ADMINISTRATIVE DATA													
a. NAME (Last, First, Middle Initial) SAVILLE, JACK M.				b. SSN		c. RANK ILT		d. DATE OF RANK Year: 2003, Month: 12, Day: 01			e. BRANCH IN	f. DESIGNATED SPECIALTIES / FMCS (M) 11A	
g. UNIT, ORG., STATION, ZIP CODE OR APO, MAJOR COMMAND A CO, 1ST BN (M), 8TH IN, FORT CARSON, CO 80913							FORSKOM		h. REASON FOR SUBMISSION 05 Annual				
i. PERIOD COVERED						j. RATED MONTHS 12	k. NONRATED CODES	l. NO. OF ENCL 0	m. RATED OFFICER COPY (Check one and date)		n. PSB INITIAL	o. CMD CODE FC	p. PSB CODE FS13
FROM Year: 2002, Month: 12, Day: 14		THRU Year: 2003, Month: 12, Day: 13						<input checked="" type="checkbox"/> 1. Given to Officer <input type="checkbox"/> 2. Forwarded to Officer		Date: 8 Jun 2004			
PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I-VII and the admin data is correct)													
a. NAME OF RATER (Last, First, MI) CUNNINGHAM, MATTHEW A.		SSN 372-98-0227		RANK CPT	POSITION COMPANY CDR		SIGNATURE <i>Matthew Cunningham</i>		DATE 8 Jun 2004				
b. NAME OF INTERMEDIATE RATER (Last, First, MI)		SSN		RANK	POSITION		SIGNATURE		DATE				
c. NAME OF SENIOR RATER (Last, First, MI) SASSAMAN, NATE		SSN 540-94-1163		RANK LTC	POSITION BATTALION CDR		SIGNATURE <i>Nate Sassaman</i>		DATE 8 Jun 2004				
SENIOR RATER'S ORGANIZATION 1ST BATTALION (M), 8TH INFANTRY FORT CARSON, CO 80913				BRANCH IN	SENIOR RATER TELEPHONE NUMBER DNVT 534-3150		E-MAIL ADDRESS nathan.sassaman@us.army.mil						
d. This is a referred report, do you wish to make comments? <input type="checkbox"/> Yes, comments are attached <input type="checkbox"/> No								e. SIGNATURE OF RATED OFFICER <i>Jack Saville</i>		DATE 8 Jun 2004			
PART III - DUTY DESCRIPTION													
a. PRINCIPAL DUTY TITLE Rifle Platoon Leader						b. POSITION AOC/BR 11A00							
c. SIGNIFICANT DUTIES AND RESPONSIBILITIES. REFER TO PART IVa, DA FORM 67-9-1 Responsible for the training, health, welfare, and morale of a thirty-five man mechanized infantry rifle platoon capable of world-wide deployment and combat ready upon arrival. Plans and supervises effective individual and collective training in support of the company METL at the platoon and squad level. Responsible for the accountability, maintenance, and operational readiness of four M2A2 Bradley Fighting Vehicles and platoon equipment worth in excess of eight million dollars. Ensures the well-being and safety of soldiers during training. Responsible for the evaluations, awards, and performance counseling of all assigned personnel. Additional duties include Unit Movement Officer and maintenance officer.													
PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM (Rater)													
CHARACTER Disposition of the leader: combination of values, attributes, and skills affecting leader actions													
a. ARMY VALUES (Comments mandatory for all "NO" entries. Use PART Vb.)													
1. HONOR: Adherence to the Army's publicly declared code of values				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		5. RESPECT: Promotes dignity, consideration, fairness, & EO				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
2. INTEGRITY: Possesses high personal moral standards; honest in word and deed				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		6. SELFLESS-SERVICE: Places Army priorities before self				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
3. COURAGE: Manifests physical and moral bravery				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		7. DUTY: Fulfills professional, legal, and moral obligations				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
4. LOYALTY: Bears true faith and allegiance to the U.S. Constitution, the Army, the unit, and the soldier				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO									
b. LEADER ATTRIBUTES / SKILLS / ACTIONS: First, mark "YES" or "NO" for each block. Second, choose a total of six that best describe the rated officer. Select one from ATTRIBUTES, two from SKILLS (Competence), and three from ACTIONS (LEADERSHIP). Place an "X" in the appropriate numbered box with optional comments in PART Vb. Comments are mandatory in Part Vb for all "NO" entries.													
b.1. ATTRIBUTES (Select 1)		1. MENTAL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Possesses desire, will, initiative, and discipline		2. PHYSICAL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Maintains appropriate level of physical fitness and military bearing		3. EMOTIONAL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Displays self-control; calm under pressure							
b.2. SKILLS (Competence) (Select 2)		1. CONCEPTUAL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Demonstrates sound judgment, critical/creative thinking, moral reasoning		2. INTERPERSONAL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Shows skill with people; coaching, teaching, counseling, motivating and empowering		3. TECHNICAL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Possesses the necessary expertise to accomplish all tasks and functions							
		<input checked="" type="checkbox"/> TACTICAL Demonstrates proficiency in required professional knowledge, judgment, and warfighting											
b.3. ACTIONS (LEADERSHIP) (Select 3) Major activities leaders perform: influencing, operating, and improving													
INFLUENCING Method of reaching goals while operating / improving		<input checked="" type="checkbox"/> COMMUNICATING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Displays good oral, written, and listening skills for individuals / groups		2. DECISION-MAKING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Employs sound judgment, logical reasoning and uses resources wisely		3. MOTIVATING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Inspires, motivates, and guides others toward mission accomplishment							
OPERATING Short-term mission accomplishment		4. PLANNING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Develops detailed, executable plans that are feasible, acceptable, and suitable		<input checked="" type="checkbox"/> EXECUTING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Shows tactical proficiency, meets mission standards, and takes care of people/resources		6. ASSESSING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Uses after-action and evaluation tools to facilitate consistent improvement							
IMPROVING Long-term improvement in the Army its people and organizations		7. DEVELOPING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Invests adequate time and effort to develop individual subordinates as leaders		<input checked="" type="checkbox"/> BUILDING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Spends time and resources improving teams, groups and units; fosters ethical climate		9. LEARNING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Seeks self-improvement and organizational growth; envisioning, adapting and leading change							
c. APFT: PASS				DATE: JUN 2003		HEIGHT: 71		WEIGHT: 170		YES			
d. JUNIOR OFFICER DEVELOPMENT - MANDATORY YES OR NO ENTRY FOR RATERS OF LTs AND WO1s.										<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	<input checked="" type="checkbox"/> NA	
WERE DEVELOPMENTAL TASKS RECORDED ON DA FORM 67-9-1a AND QUARTERLY FOLLOW-UP COUNSELINGS CONDUCTED?													

PART V - PERFORMANCE AND POTENTIAL EVALUATION (Rater)

a. EVALUATE THE RATED OFFICER'S PERFORMANCE DURING THE RATING PERIOD AND HIS/HER POTENTIAL FOR PROMOTION

OUTSTANDING PERFORMANCE, MUST PROMOTE SATISFACTORY PERFORMANCE UNSATISFACTORY PERFORMANCE OTHER (Explain)

b. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE AND POTENTIAL FOR PROMOTION. REFER TO PART III, DA FORM 67-9 AND PART IVa, b, AND c DA FORM 67-9-1.

1LT Jack Saville is the best of six lieutenants I currently rate and is one of the most talented officers I have worked with. He combines a strong tactical base of knowledge with a self confident yet flexible leadership style and excellent physical conditioning. 1LT Saville took over as my 1st platoon leader in July 2003 while the company was deployed to OIF I and operating in the heart of the Sunni triangle. Based on my initial assessment of this talented officer's base of knowledge and demeanor under pressure, I felt confident sending 1LT Saville and his platoon to Samarra, Iraq as the only infantry element in a highly contested area of operation. 1LT Saville displayed uncommon knowledge of urban operations and ability to adapt to enemy tactics early during this assignment. 1st platoon faced an element that initiated fire with heavy RPG, small arms, and mortar fire in an average of five minutes or less once forces moved to within 500m of the city periphery. 1LT Saville conducted effective enemy analysis and subsequently developed an effective counter ambush battle drill resulting in 22 separate contacts killing over 40 enemy combatants with zero friendly casualties. 1st platoon's lessons learned conducting platoon operations in Samarra are now the company standard for mechanized operations in urban terrain. 1LT Saville's platoon was the company main effort for a Battalion air assault operation in search for former regime loyalists hiding in the Jamal Hamrin ridge, has conducted over 45 separate raids, and was the company main effort as the Battalion moved to Samarra again in a successful operation to gain control of the city. 1LT Saville is a disciplined officer with a keen desire to learn and is a student of his profession. He developed an excellent relationship with his platoon's soldiers and NCOs by listening before acting and engaging in the lives of those he leads. This officer has unlimited potential and should continue to be placed in positions of increased responsibility and leadership. He would serve well as a Ranger platoon leader and will make an excellent infantry company commander.

c. IDENTIFY ANY UNIQUE PROFESSIONAL SKILLS OR AREAS OF EXPERTISE OF VALUE TO THE ARMY THAT THIS OFFICER POSSESSES, FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

Would best serve the Army in OPCF/11.

PART VI - INTERMEDIATE RATER

PART VII - SENIOR RATER

a. EVALUATE THE RATED OFFICER'S PROMOTION POTENTIAL TO THE NEXT HIGHER GRADE

BEST QUALIFIED FULLY QUALIFIED DO NOT PROMOTE OTHER (Explain below)

I currently senior rate 15 officer(s) in this grade
 A completed DA Form 67-9-1 was received with this report and considered in my evaluation and review: YES NO (Explain in c)

b. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)
 HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED

CENTER OF MASS

RO: 1LT SAVILLE JACK M
 227490438

SR: LTC SASSAMAN NATE
 540941163

DATE: 2004 08 12

TOTAL RATINGS: 14

RATINGS THIS OFFICER: 1

c. COMMENT ON PERFORMANCE/POTENTIAL

1LT Jack Saville combines both incredible physical stamina with outstanding tactical acumen to form the model platoon leader. He has led his platoon through significant successful combat actions both in Samarra and Balad. His tactical planning, violent execution, and detailed searches has made his platoon the main effort for numerous key company operations. Knowledgeable, courageous, and skilled, 1LT Saville possesses great potential. He will be an outstanding leader!

d. LIST 3 FUTURE ASSIGNMENTS FOR WHICH THIS OFFICER IS BEST SUITED. FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

Scout Platoon Leader, Company Executive Officer, Company Commander.

OFFICER EVALUATION REPORT

For use of this form, see AR 623-105; the proponent agency is ODCSPER

SEE PRIVACY ACT STATEMENT ON DA FORM 67-9-1

PART I - ADMINISTRATIVE DATA

a. NAME (Last, First, Middle Initial) SAVILLE, JACK M.		b. SSN	c. RANK 1LT	d. DATE OF BIRTH Year: 2003, Month: 12, Day: 01	e. BRANCH IN	f. DESIGNATED SPECIALTIES / BROS (AO) 11A												
g. UNIT, ORG., STATION, ZIP CODE OR APO, MAJOR COMMAND HHC, 3d Brigade Combat Team, Fort Carson, Colorado 80913 FORSCOM				h. REASON FOR SUBMISSION 03 Change of Rater														
i. PERIOD COVERED		j. RATED MONTHS 7	k. NONRATED CODES	l. NO. OF ENCL 0	m. RATED OFFICER COPY (Check one and date)													
<table border="1"> <tr> <th>Year</th> <th>Month</th> <th>Day</th> <th>Year</th> <th>Month</th> <th>Day</th> </tr> <tr> <td>2003</td> <td>12</td> <td>14</td> <td>2004</td> <td>07</td> <td>15</td> </tr> </table>		Year	Month	Day	Year	Month	Day	2003	12	14	2004	07	15	<input checked="" type="checkbox"/> 1. Given to Officer <input type="checkbox"/> 2. Forwarded to Officer		Date AUG 11 2004	n. PSR INITIAL JH	p. PSR CODE FC FS13
Year	Month	Day	Year	Month	Day													
2003	12	14	2004	07	15													

PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I-VII and the admin data is correct)

a. NAME OF RATER (Last, First, MI) EDINGTON, ROYCE A.	SSN 445-80-7235	RANK MAJ	POSITION Brigade S4	SIGNATURE <i>Royce A. Edington</i>	DATE AUG 11 2004
b. NAME OF INTERMEDIATE RATER (Last, First, MI)	SSN	RANK	POSITION	SIGNATURE	DATE
c. NAME OF SENIOR RATER (Last, First, MI) WELSCH, PAUL D.	SSN 008-54-8979	RANK LTC	POSITION Brigade XO	SIGNATURE <i>Paul D. Welsch</i>	DATE AUG 11 2004
SENIOR RATER'S ORGANIZATION HHC, 3d Brigade Combat Team Fort Carson, Colorado 80913		BRANCH AR	SENIOR RATER TELEPHONE NUMBER 719-526-1039	EMAIL ADDRESS paul.welsch@us.army.mil	
d. This is a referred report, do you wish to make comments? <input type="checkbox"/> Yes, comments are attached <input type="checkbox"/> No				e. SIGNATURE OF RATED OFFICER <i>Jack M. Saville</i> AUG 11 2004	

PART III - DUTY DESCRIPTION

a. PRINCIPAL DUTY TITLE Assistant Brigade S4	b. POSITION AOC/BR 11A00
c. SIGNIFICANT DUTIES AND RESPONSIBILITIES. REFER TO PART IVa, DA FORM 67-9-1 Brigade Assistant S4 for the largest Brigade Combat Team (BCT) in the Army, comprising 6 battalions and 5 separate companies totaling more than 3,700 soldiers and 2,000 pieces of equipment. Assistant to principle S-4 officer for all aspects of logistical support, advising and assisting the S-4 officer on the logistical functions of arming, fueling, sustaining, moving, and fixing the force. Assists in responsibility for oversight of a 50 million dollar annual budget and property accountability for equipment valued at more than 612 million dollars. Execute logistical plans to support brigade operations in both garrison and tactical environments. Manage contracts for services and equipment in order to support brigade operations and sustain quality of life initiatives for the soldiers of the BCT. Assist in planning, coordinating, and executing unit deployments.	

PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM (Rater)

CHARACTER Disposition of the leader: combination of values, attributes, and skills affecting leader actions

a. ARMY VALUES (Comments mandatory for all "NO" entries. Use PART Vb.)	Yes	No	Yes	No
1. HONOR: Adherence to the Army's publicly declared code of values	<input checked="" type="checkbox"/>	<input type="checkbox"/>	5. RESPECT: Promotes dignity, consideration, fairness, & EO	<input checked="" type="checkbox"/>
2. INTEGRITY: Possesses high personal moral standards; honest in word and	<input checked="" type="checkbox"/>	<input type="checkbox"/>	6. SELFLESS-SERVICE: Places Army priorities before self	<input checked="" type="checkbox"/>
3. COURAGE: Manifests physical and moral bravery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	7. DUTY: Fulfills professional, legal, and moral obligations	<input checked="" type="checkbox"/>
4. LOYALTY: Bears true faith and allegiance to the U.S. Constitution, the Army, the unit, and the soldier	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>

b. LEADER ATTRIBUTES / SKILLS / ACTIONS: First, mark "YES" or "NO" for each block. Second, choose a total of six that best describe the rated officer. Select one from ATTRIBUTES, two from SKILLS (Competence), and three from ACTIONS (LEADERSHIP). Place an "X" in the appropriate numbered box with optional comments in PART Vb. Comments are mandatory in

b.1. ATTRIBUTES (Select 1)	<input checked="" type="checkbox"/> MENTAL Possesses desire, will, initiative, and discipline	<input checked="" type="checkbox"/> NO	2. PHYSICAL Maintains appropriate level of physical fitness and military bearing	<input checked="" type="checkbox"/> NO	3. EMOTIONAL Displays self-control; calm under pressure	<input checked="" type="checkbox"/> NO
b.2. SKILLS (Competence) (Select 2)	1. CONCEPTUAL Demonstrates sound judgment, critical/creative thinking, moral reasoning	<input checked="" type="checkbox"/> NO	2. INTERPERSONAL Shows skill with people: coaching, teaching, counseling, motivating and empowering	<input checked="" type="checkbox"/> NO	<input checked="" type="checkbox"/> TECHNICAL Possesses the necessary expertise to accomplish all tasks and functions	<input checked="" type="checkbox"/> NO
<input checked="" type="checkbox"/> TACTICAL Demonstrates proficiency in required professional knowledge, judgment, and warfighting						
b.3. ACTIONS (LEADERSHIP) (Select 3) Major activities leaders perform: influencing, operating, and improving						
INFLUENCING Method of reaching goals while operating / Improving	<input checked="" type="checkbox"/> COMMUNICATING Displays good oral, written, and listening skills for individuals / groups	<input checked="" type="checkbox"/> NO	<input checked="" type="checkbox"/> DECISION-MAKING Employs sound judgment, logical reasoning and uses resources wisely	<input checked="" type="checkbox"/> NO	3. MOTIVATING Inspires, motivates, and guides others toward mission accomplishment	<input checked="" type="checkbox"/> NO
OPERATING Short-term mission accomplishment	4. PLANNING Develops detailed, executable plans that are feasible, acceptable, and suitable	<input checked="" type="checkbox"/> NO	<input checked="" type="checkbox"/> EXECUTING Shows tactical proficiency, meets mission standards, and takes care of people/resources	<input checked="" type="checkbox"/> NO	6. ASSESSING Uses after-action and evaluation tools to facilitate consistent improvement	<input checked="" type="checkbox"/> NO
IMPROVING Long-term improvement in the Army its people and organizations	7. DEVELOPING Invests adequate time and effort to develop individual subordinates as leaders	<input checked="" type="checkbox"/> NO	8. BUILDING Spends time and resources improving teams, groups and units; fosters ethical climate	<input checked="" type="checkbox"/> NO	9. LEARNING Seeks self-improvement and organizational growth; envisioning, adapting and leading	<input checked="" type="checkbox"/> NO

c. APFT: PASS DATE: JUN 2004 HEIGHT: 69 WEIGHT: 172 YES

d. JUNIOR OFFICER DEVELOPMENT - MANDATORY YES OR NO ENTRY FOR RATERS OF LTs AND WO1s.
WERE DEVELOPMENTAL TASKS RECORDED ON DA FORM 67-9-1a AND QUARTERLY FOLLOW-UP COUNSELINGS CONDUCTED? YES NO NA

19 AUG 2004

PART V - PERFORMANCE AND POTENTIAL EVALUATION (Rater)

a. EVALUATE THE RATED OFFICER'S PERFORMANCE DURING THE RATING PERIOD AND HIS/HER POTENTIAL FOR PROMOTION

- OUTSTANDING PERFORMANCE, MUST PROMOTE SATISFACTORY PERFORMANCE, PROMOTE UNSATISFACTORY PERFORMANCE, DO NOT PROMOTE OTHER (Explain)

b. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE AND POTENTIAL FOR PROMOTION. REFER TO PART III, DA FORM 87-9 AND PART IVa, b, AND c DA FORM 87-9-1.

Simply outstanding performance by one of the top three lieutenants that I have rated in my career. 1LT Saville is decisive, organized, a self-starter, and a warfighter. His contributions to the S4 section while in Iraq are numerous. Jack was originally assigned to the S4 section to manage the Consolidated Tactical Assembly Area (CTAA) during redeployment operations, with a primary focus on managing the life support area that would serve as transient billeting for units as they collapsed from their forward operating bases (FOB) in order to make preparations for redeployment. He quickly tackled this daunting task and produced a plan that supported the housing and processing of more than 3,500 soldiers over a three week period. Jack flawlessly executed the plan, adapting to the fluid nature of redeployment and continuously adjusted his plan as the availability of movement assets accelerated the movement of units. He also dominated the details that were required to successfully operate the life support area such as chemical latrine placement and service; generator placement, service, and fueling; shower plan; rehearsal area for ground convoy operations, and the accountability of property. His efficient management of the CTAA enabled him to make significant contributions to many other missions assigned to the section. His assistance in obtaining HETs to move the BCT's heavy equipment is particularly noteworthy. Jack organized and led numerous convoys through hostile areas in the Sunni Triangle outside of the 3d BCT's area of operation in order to link up with the extremely valuable and limited HET assets that were required to close out the BCT's redeployment from Iraq to Kuwait. 1LT Saville is one of the finest officers I have served with and he has my complete trust. He must be selected for captain and given the opportunity to command a company at the soonest opportunity. Jack is a natural leader of soldiers and the kind of leader the Army requires to continue its fight in the Global War on Terrorism.

c. IDENTIFY ANY UNIQUE PROFESSIONAL SKILLS OR AREAS OF EXPERTISE OF VALUE TO THE ARMY THAT THIS OFFICER POSSESSES. FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

PART VI - INTERMEDIATE RATER

PART VII - SENIOR RATER

a. EVALUATE THE RATED OFFICER'S PROMOTION POTENTIAL TO THE NEXT HIGHER GRADE

- BEST QUALIFIED FULLY QUALIFIED DO NOT PROMOTE OTHER (Explain below)

I currently senior rate 12 officer(s) in this grade
 A completed DA Form 87-9-1 was received with this report and considered in my evaluation and review YES NO (Explain in c)

b. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)
 HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED:

CENTER OF MASS

RO: 1LT SAVILLE JACK M
 227490438

SR: LTC WELSCH PAUL DANIEL
 008548979

DATE: 2004 08 19

TOTAL RATINGS: 20

RATINGS THIS OFFICER: 1

c. COMMENT ON PERFORMANCE/POTENTIAL

Magnificent performance by a superior officer. 1LT Saville is a very strong leader that is able to focus on whatever mission assigned and produce the absolute best result. After assignment to the S4 section, he quickly gained the confidence of his superiors, peers, and subordinates alike. He is smart, dedicated, and loyal and a key member of the 3d BCT team. His performance in managing the CTAA is unmatched and an integral part of the BCT's ability to redeploy a full two weeks ahead of schedule. Promote to captain and place in command of a company at the first opportunity.

d. LIST 3 FUTURE ASSIGNMENTS FOR WHICH THIS OFFICER IS BEST SUITED. FOR ARMY COMPETITIVE CATEGORY CPT THROUGH LTC, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

Company Commander, Assistant Battalion S-3, Battalion S-4

14 March 2005

Sir,

I want to begin this statement by expressing my sincerest apologies for the poor decisions I made on 2 and 3 January 2004, including the subsequent decision to not come forward with the entire truth to investigating agencies. I have come to fully appreciate how my actions have adversely affected US – Iraqi trust during critical times of reconstruction. Although our mission in Iraq was multifaceted, our objective was to rid our Area of Operations of insurgents while promoting and establishing democracy. The results of my decision accomplished neither of the two. However, it resulted in a course of events that were irreparable, causing embarrassment not only for my unit and myself, but to the Army, the United States, and our mission in Iraq.

I first wish to apologize to Mr. Zaydun and Mr. Marwan for the maltreatment my decision caused. Although they were in violation of curfew, their actions were not deserving of the punishment they received. I also wish to apologize to the Army for not serving in compliance with the Rules of Engagement and the faith and trust placed in me. My actions potentially caused an increased hatred and insurgency towards the United States, putting my Soldiers' lives at greater risk. Additionally, 4th Infantry Division, 3RD Brigade Combat Team, and 1-8 Infantry Battalion succumbed to undeserving embarrassment and negative media attention resulting from my decisions. Finally, I wish to apologize to my Soldiers. I asked them to participate in actions that were illegal. Additionally, I did not serve them in the capacity in which they deserved. My role as Platoon Leader was not only to be the tactical leader, but it included setting a positive example. After losing my platoon after only 6 months, I was then unable to ensure their

DEFENSE EXHIBIT C 30 FOR ID

safety during combat missions. My goal upon arriving in country was simply, although often times difficult, to bring all of my Soldiers home safely. After moving to the 3BCT S4 shop and losing my platoon, I became unable to accomplish this goal. My wife, Ashley, my family, and my friends, although supporting me through all of this, have suffered undue reproach, and no apology I can make to any of them or to the Army can truly overcome the poor decisions that I have made.

Sir, you are about to render a sentence that will undoubtedly affect my near and distant future, and I would like to take this time to give you a better understanding of who I am.

Born to Tom and Beverly Saville on 19 January 1980, in Kilmarnock, VA, I was the second of three children. I attended primary schools in Northumberland and Essex Counties, VA. My father was a schoolteacher, and upon being named a high school principal in 1996, my family moved to Spotsylvania, VA. In high school, I participated in numerous sports and clubs. I ran cross-country in the fall, wrestled in the winter, and played baseball and tennis in the spring. I served as the cross-country and wrestling team captains during my junior and senior year, while serving as the Key Club President (community service organization) during my senior year. I received student-athlete honors during my junior and senior years, and was selected to the National Honor Society in 1997. I graduated in 1998, the first male in my class (13th/260 students) with a 4.0 GPA, and voted by my classmates as "Most Likely to Succeed".

While searching for potential colleges and universities, I became interested in the Army and subsequently the United States Military Academy. If given the opportunity to

attend West Point and join the Army, I felt I would fulfill my inherent duty to our country. Additionally, I wished to attend a university in which my parents would not incur the costs of my education. Two years older than my younger brother, I also desired to set an example and lifestyle choice that he could follow. I applied to USMA during my senior year, and after meeting all physical and health requirements, was accepted on an "early-decision" basis. I received Congressional nominations from Senator John Warner and Representative Tom Bliley. I accepted Senator Warner's.

I attended the United States Military Academy from 1998 to 2002. Following Cadet Basic Training in 1998, I was selected to command the 2ND Regiment during Plebe-Parent Weekend (an opportunity for cadet families to visit West Point during Freshman Fall Break). I served as a Team Leader during each sophomore semester, and attended Airborne School and French Jump School during my sophomore and junior years. During this time, I deployed with 1-508th ABCT to Tuzla, Bosnia-Herzegovina for a two-week UN/SFOR operation. During my junior year at USMA, I served as a platoon sergeant and the First Sergeant of my company. I was selected to the Superintendent's List, achieving a 3.0 academic, military, and physical grade point average. During my senior year, I commanded a Cadet Field Training Company and worked with the Federal Emergency Management Agency in Tacoma, WA. Graduating in 2002, I was in the top 20 percent of my class with a BS in Environmental Science. I selected Infantry and Fort Carson as my branch and post assignment, and I received my commission on June 1, 2002.

My goals upon commissioning revolved around being a Platoon Leader. I trained for the Infantry Officer Basic Course and Ranger School, preparing for an upcoming

deployment to Iraq. Unable to yet determine if a career in the Army was something I wished to achieve, I focused my preparation on leading 34 soldiers in combat operations. After serving 12 months as an Infantry Platoon Leader, I desired to serve with the 75th Ranger Regiment as a means to receive training with a light Infantry, Special Operations unit. These experiences would undoubtedly prepare me for the rigors of Infantry Company Command.

While at Fort Benning, GA, I attended and graduated from the following schools: IOBC from August to December 2002, Ranger School from January to March 2003, and the Mechanized Leaders Course from April to June 2003.

I arrived for duty at Fort Carson in July and deployed to Balad, Iraq in August 2003, joining 3BCT 2 months into their deployment. From August to September, I served as the OIC of the Balad Police Station, responsible for conducting joint US-Iraqi Police patrols within the city-proper and deploying Quick Reactionary Forces. I assumed the Platoon Leader position of 1/A/1-8 IN in September 2003. We conducted daily patrols and executed numerous cordon and searches in and around the Balad AO, until selected to join 1-66 AR in Samarra in another attempt to rid the city of its insurgent populace.

A city of roughly 250,000 to 400,000 Iraqi civilians, Samarra remained the only insurgent stronghold in 3BCT's Area of Operations. As the only Infantry platoon operating in the city, 1st Platoon conducted daily patrols in the city from October to November 2003, capturing and/or killing numerous enemy combatants while seizing numerous large caches of weapons. We made contact over 40 times during the course of the one-month we operated in the city, receiving enemy RPG and small arms fire on a

daily basis. We perfected Tactics, Techniques, and Procedures (TTPs) not found within MOUT or Infantry doctrine, all the while not sustaining a single injury or death to our Soldiers. We worked hand in hand with the Special Forces unit in Samarra, conducting numerous sniper and surgical missions designed to capture or kill the local and foreign insurgency in the city.

I returned to Balad with my platoon in November, where we continued our patrol and cordon and search rotations. From November to December, we captured or killed over 50 enemy combatants, and began preparing for Operation Ivy Blizzard in Samarra, a 4th Infantry Division mission designed to ultimately end Samarra's insurgency. Most familiar with the city and the surrounding areas, 1st Platoon was selected as the main effort for this division-sized mission. We operated in Samarra from December 2003 until January 2004, returning to Balad on 2 January 2004 to destroy the insurgent cell responsible for the mortar fires on Forward Operating Bases Eagle and Attack. During the planning phase for this mission, we received mortar fires that killed CPT Erik Paliwoda and injured numerous 1-8 IN Soldiers. We executed our mission that evening, capturing 16 of the 17-targeted individuals.

1-8 IN returned to Samarra the following afternoon, scheduled to remain there until the end of January. Following the CID investigation into my platoon on 3 January 2004, I was moved to LSA Anaconda where I would serve with the Brigade S4 shop until redeployment. I was responsible for establishing 3BCT's Combined Tactical Assembly Area and ensuring all logistical aspects were in place for 3BCT's redeployment.

Upon returning to Ft. Carson in March 2004, I have served in the Brigade's S4 shop, responsible for fielding new equipment, painting all of 3BCT's vehicles, executing

equipment lateral transfers, and preparing the Brigade for NTC and OIF deployments in August and November 2005, respectively. I married Ashley Ann Taylor on 25 April 2004, and have focused a majority of my attention on preparing for this trial since redeployment.

The impact of my poor decisions has had numerous, severe repercussions on my daily life and my plans to remain in the Army. Away from my family and loved ones during the OIF deployment, my Soldiers ultimately became my family and support group. Each day's focus remained on accomplishing my Battalion and Company's missions, while maintaining the safety of each of my Soldiers. After losing my platoon, I became disenfranchised with my Brigade Chain of Command, ultimately realizing that these feelings were a direct result of the poor decisions I made. I hence focused my efforts on doing the best job possible serving in the Brigade S4 shop, all the while seeking forgiveness and an understanding of God's ultimate plan for me.

Barring the results of this trial, I desperately wish to remain in the Army. Since attending West Point in 1998, the Army has provided me with an education, excellent training, and opportunities to serve my country in a time of war. It has given me more than I could ever dream of giving back to it, and I would like to continue my service to this country. I was recently selected for the Captain's Promotion List, and if I remain in the Army, I hope to serve as the Officer in Charge of Ft. Carson's DECAM Agency (Directorate of Environmental Compliance and Management). After serving the remainder of my 5-year commitment, I would like to attend graduate school, receiving a degree in construction management with a focus on environmental compliance.

Throughout my deployment to Iraq and the subsequent course of events resulting from my poor decisions, my faith has grown exponentially in God and His ultimate plan for my life. After counseling with my pastor, I have gained a true sense of forgiveness from Him, and have realized that God is in complete control. I accepted Christ in 2000, a junior at West Point, but never realized that He is my true comfort, and just as numerous Biblical figures, He uses experiences in my life to conform me to be more like His Son. This experience, regardless of any negative outcome, has given me an awesome testimony to others that may not know Him. Additionally, this past year has strengthened my relationship with my wife and has truly shown me the people that love and support me. I now appreciate others' love and hope to use these experiences for God's greater good.

Sir, I implore you to take my life experiences and previous records into account while determining what is a fair sentence for me and the United States Army. I have complete faith you will make a decision that is in accordance with the law and your career as a Soldier.

Very Respectfully,

JACK M. SAVILLE, 1Lt(P)
IN, USA

APPELLATE EXHIBITS

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) SAVILLE, Jack M.		2. SSN	3. GRADE OR RANK 1LT	4. PAY GRADE 02
5. UNIT OR ORGANIZATION Headquarters and Headquarters Company, 3rd Brigade, 4th Infantry Division (Mechanized), Fort Carson, CO 80913			6. CURRENT SERVICE	
			a. INITIAL DATE 1 June 2002	b. TERM INDEF
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC \$2970.60	b. SEA/FOREIGN DUTY	c. TOTAL \$2970.60		N/A

II. CHARGES AND SPECIFICATIONS

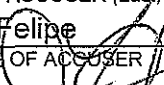
10. CHARGE: I. VIOLATION OF THE UCMJ, ARTICLE 81

SPECIFICATION 1: In that First Lieutenant Jack M. Saville, U.S. Army, did at or near Samarra, Iraq, on or about 3 January, 2004, conspire with Sergeant First Class Tracy Perkins, ~~Sergeant Reggie Martinez~~, ¹²³ ~~Specialist Terry Bowman and Specialist Ralph Logan~~ to commit an offense under the Uniform Code of Military Justice, to wit: to assault Fadhil, Zaydun Ma'Mun and Fadel, Marwhan Abdul-Hakin, and in order to effect the object of the conspiracy, the First Lieutenant Saville along with Sergeant First Class Perkins, Sergeant Martinez, Specialist Bowman and Specialist Logan detained Fadhil, Zaydun Ma'mun and Fadel, Marwhan Abdul-Hakin and transported them to a bridge in the city of Samarra, Iraq, where the said Lieutenant Saville gave an order to push them into the Tigris River.

SPECIFICATION 2: In that First Lieutenant Jack M. Saville, U.S. Army, did at or near Samarra, Iraq, on or between 3 January 2004 and 16 January 2004, conspire with Captain Matthew Cunningham, Major Robert Gwinner and LTC Nathan Sassaman to commit an offense under the Uniform Code of Military Justice, to wit: endeavor to impede a criminal investigation by wrongfully influencing Sergeant First Class Tracy Perkins, Sergeant Reggie Martinez, Specialist Terry Bowman and Specialist Ralph Logan, to deny in their official statements to CID that Mr. Fadhil, Zaydun Ma'Mun and Mr. Fadel, Marwhan Abdul-Hakin were pushed into the Tigris River.

(SEE CONTINUATION SHEET)

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) Moon, Felipe	b. GRADE CPT	c. ORGANIZATION OF ACCUSER HHC, 3BCT, 4ID(M)
d. SIGNATURE OF ACCUSER 		e. DATE 8 JUNE 04


AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 8 day of JUNE, 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.

THOMAS E. SCHIFFER
Typed Name of Officer

HHC, 4ID (M)
Organization of Officer

CPT
Grade

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


Signature

Item 10, continued:

Charge II: VIOLATION OF THE UCMJ, ARTICLE 107

SPECIFICATION: In that First Lieutenant Jack M. Saville, U.S. Army, did at or near Tikrit, Iraq, on or about 16 January 2004, with the intent to deceive, make to a CID agent a sworn official statement, to wit: that Mr. Fadhil, Zaydun Ma'Mun and Mr. Fadel, Marwhan Abdul-Hakin were stopped, searched and released to walk to their vehicle and that he personally witnessed the two individuals on the side of the road as his convoy departed the area, which statement was totally false and was then known by First Lieutenant Jack M. Saville to be false.

CHARGE III: VIOLATION OF THE UCMJ, ARTICLE 119

SPECIFICATION: In that First Lieutenant Jack M. Saville, U.S. Army, did at or near Samarra, Iraq, on or about 3 January 2004, while perpetrating an offense directly affecting the person of Fadhil, Zaydun Ma'Mun, to wit: push him into the Tigris River at nighttime, unlawfully kill Fadhil Zaydun Ma'Mun by drowning.

CHARGE IV: VIOLATION OF THE UCMJ, ARTICLE 128

SPECIFICATION: In that, First Lieutenant Jack M. Saville, U.S. Army, did at or near Samarra, Iraq, on or about 3 January 2004, commit an assault upon Fadel, Marwhan Abdul-Hakin by pushing him into the Tigris River at nighttime, ^{WITH A MEANS LIKELY TO PRODUCE DEATH OR BRIEVOUS BODILY HARM, TO WIT:} ~~FORCING~~ ^{BY FORCING HIM INTO THE TIGRIS RIVER AT NIGHTTIME UNDER DANGEROUS AND UNKNOWN CONDITIONS.}

CHARGE V: VIOLATION OF THE UCMJ, ARTICLE 134

SPECIFICATION: In that, First Lieutenant Jack M. Saville, U.S. Army, did at or near Samarra, Iraq, on or between 3 January 2004 and 16 January 2004, wrongfully endeavored to impede an investigation by falsely giving a sworn statement denying that Mr. Fadhil, Zaydun Ma'Mun and Mr. Fadel, Marwhan Abdul-Hakin were pushed into the Tigris River and that he saw them standing at the shoreline as his convoy departed the area.

CHARGE SHEET

I. PERSONAL DATA


1. NAME OF ACCUSED (<i>Last, First, MI</i>) SAVILLE, Jack M.		2. SSN	3. GRADE OR RANK 1LT	4. PAY GRADE 02
5. UNIT OR ORGANIZATION Headquarters and Headquarters Company, 3rd Brigade, 4th Infantry Division (Mechanized), Fort Carson, CO 80913			6. CURRENT SERVICE	
			a. INITIAL DATE 1 June 2002	b. TERM INDEF
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC \$2970.60	b. SEA/FOREIGN DUTY	c. TOTAL \$2970.60		N/A

II. CHARGES AND SPECIFICATIONS

10. ADDITIONAL CHARGE: I VIOLATION OF THE UCMJ, ARTICLE 128

The SPECIFICATION: In that First Lieutenant Jack M. Saville, U.S. Army, did at or near Balad, Iraq, on or about 5 December 2003, commit an assault upon an unknown Iraqi male by detaining him at an auto shop in Balad, transporting him to the pontoon bridge in Balad, Iraq, and ~~pushing~~ ^{FORCING} him into the Tigris River with a means likely to produce death or grievous bodily harm, to wit: ~~pushing~~ ^{FORCING} the Iraqi male into the Tigris River, ~~UNDER DANGEROUS AND UNKNOWN CONDITIONS.~~ ^{FORCING}

III. PREFERRAL

11a. NAME OF ACCUSER (<i>Last, First, MI</i>) Bailey, Mark	b. GRADE CPT	c. ORGANIZATION OF ACCUSER HHC, 3BCT, 4ID(M)
d. SIGNATURE OF ACCUSER 		e. DATE 2 SEP 04

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 2nd day of SEPTEMBER, 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.

THOMAS E. SCHIFFER

Typed Name of Officer

HHC, 4 ID(M)

Organization of Officer

CPT

Grade

Article 136, UCMJ

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


Signature

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (<i>Last, First, MI</i>) SAVILLE, Jack M.		2. SSN	3. GRADE OR RANK 1LT	4. PAY GRADE 02
5. UNIT OR ORGANIZATION Headquarters and Headquarters Company, 3rd Brigade, 4th Infantry Division (Mechanized), Fort Carson, CO 80913			6. CURRENT SERVICE	
			a. INITIAL DATE 1 June 2002	b. TERM INDEF
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC \$3074.70	b. SEA/FOREIGN DUTY				c. TOTAL $3074.70	N/A

II. CHARGES AND SPECIFICATIONS

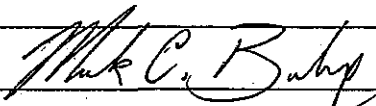
10. ADDITIONAL CHARGE: II VIOLATION OF THE UCMJ, ARTICLE 92

The SPECIFICATION: In that First Lieutenant Jack M. Saville, U.S. Army, who knew of his duties at or near Balad, Iraq, on or about 3 January 2004, was derelict in the performance of those duties in that he willfully failed to challenge an illegal order given by CPT Matthew Cunningham that certain detainees were to be killed, as it was his duty to do.

ADDITIONAL CHARGE III: VIOLATION OF THE UCMJ, ARTICLE 128

The SPECIFICATION: In that First Lieutenant Jack M. Saville, U.S. Army, did at or near Samarra, Iraq, on or about 3 January 2004, commit an assault upon Fadhil, Zaydun Ma'Mun by forcing him into the Tigris River at nighttime with a means likely to produce death or grievous bodily harm, to wit: by forcing him into the Tigris River at nighttime under dangerous and unknown conditions.

III. PREFERRAL

11a. NAME OF ACCUSER (<i>Last, First, MI</i>) Bailey, Mark C.	b. GRADE CPT	c. ORGANIZATION OF ACCUSER HHC, 3BCT, 4ID(M)
d. SIGNATURE OF ACCUSER 		e. DATE 3 MAR 05

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 3d day of March, 2005, 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.

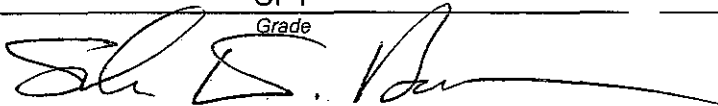
STEPHEN D. BENSON

Typed Name of Officer

HHC, 3BCT, 4 ID(M)

Organization of Officer

CPT
Grade



Signature

Article 136, UCMJ

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

12.

On 3 March 2005, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

Mark C. Bailey

Typed Name of Immediate Commander

HHC, 3BCT, 4ID(M)

Organization of Immediate Commander

CPT

Grade

Mark C. Bailey

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1356 hours, 3 March 2005 at

3BCT, 4th Infantry Division

Designation of Command or

(Mechanized)

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

FOR THE ¹

Brian D. Jones

Typed Name of Officer

Commander

Official Capacity of Officer Signing

COL

Grade

Brian D. Jones

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

Headquarters, 4th Infantry Division

Fort Hood, Texas

20050311

Referred for trial to the General court-martial convened by Court-Martial Convening Order Number 3

dated 9 July 20 04, subject to the following instructions:² To be tried

in conjunction with the original charges and Additional Charge I.

By COMMAND of MAJOR GENERAL THURMAN

Command or Order

CHRISTINE A. COBB

Typed Name of Officer

NCOIC, Criminal Law

Official Capacity of Officer Signing

SFC

Grade

Christine A. Cobb

Signature

15.

On 11 MARCH, 2005, I (caused to be) served a copy hereof on (each of) the above named accused.

THOMAS E. SCHIFFER

Typed Name of Trial Counsel

CPT

Grade or Rank of Trial Counsel

Thomas E. Schiffer

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.

UNITED STATES)

v.)

SAVILLE, Jack M.)
1LT, U.S. Army,)
Headquarters and Headquarters Company)
3d Brigade Combat Team)
4th Infantry Division (Mechanized))
Fort Carson, Colorado, 80613)


UNCONDITIONAL
WAIVER OF ARTICLE 32

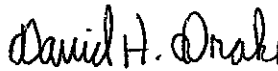
7 September 2004

Comes now, the Accused in the above-referenced court-martial, and unconditionally waives the charges and additional charge referred to the Article 32 investigation in this case. This decision has been made after full consultation with my civilian counsel, Mr. Frank Spinner.

1. I understand and have had explained to me the purpose of the Article 32 investigation under R.C.M. 405, the fact-finding role of the neutral and detached officer and the requirement for inquiry into sufficiency of the charges before referral to the General Court-Martial Convening Authority. I further understand that I can assert any defense, extenuation and/or mitigation and call any witnesses on my behalf, cross-examine any of the Government's witnesses, and make any statement to the investigating officer for consideration.

2. I waive the above rights with full knowledge and benefit of counsel. This waiver is made knowingly, willfully, and voluntarily.


JACK M. SAVILLE
1LT, U.S. Army
Accused


DAVID H. DRAKE
CPT, JA
Defense Counsel

APPELLATE EXHIBIT

II

UNITED STATES)

v.)

SAVILLE, Jack M.)
1LT, U.S. Army,)
Headquarters and Headquarters Company)
3d Brigade Combat Team)
4th Infantry Division (Mechanized))
Fort Carson, Colorado, 80613)


UNCONDITIONAL
WAIVER OF ARTICLE 32


7 September 2004

Comes now, the Accused in the above-referenced court-martial, and unconditionally waives the Article 32 investigation in this case. This decision has been made after full consultation with my civilian counsel, Mr. Frank Spinner.

1. I understand and have had explained to me the purpose of the Article 32 investigation under R.C.M. 405, the fact-finding role of the neutral and detached officer and the requirement for inquiry into sufficiency of the charges before referral to the General Court-Martial Convening Authority. I further understand that I can assert any defense, extenuation and/or mitigation and call any witnesses on my behalf, cross-examine any of the Government's witnesses, and make any statement to the investigating officer for consideration.

2. I waive the above rights with full knowledge and benefit of counsel. This waiver is made knowingly, willfully, and voluntarily.


JACK M. SAVILLE
1LT, U.S. Army
Accused


FRANK J. SPINNER
Civilian Counsel
Colorado Springs, CO

UNITED STATES)

v.)

Jack M. SAVILLE)

1LT, U.S. Army)

Headquarters & Headquarters Company)

3rd Brigade Combat Team)

4th Infantry Division (Mechanized))

Fort Hood, Texas 76544)

MOTION TO COMPEL APPOINTMENT
OF DEFENSE EXPERT CONSULTANT

29 November 2004

COMES NOW the accused, 1LT Jack M. Saville, by and through counsel, to move the Court to appoint an expert in forensic pathology as a consultant to assist the defense, with confidentiality in accordance with Article 46, UCMJ, R.C.M. 703 and Mil.R.Evid. 502.

A. RELIEF SOUGHT

The defense respectfully requests that the defense Motion to Compel be granted and that the Court direct the convening authority to fund the requested expert with confidentiality.

B. BURDEN OF PROOF & STANDARD OF PROOF

The defense, as the moving party, bears the burden of this motion by a preponderance of the evidence. R.C.M. 905(c).

C. FACTS

1LT Saville is charged with causing the death of an Iraqi national, Fadhil, Zaydun Ma'Mun, under Article 119, UCMJ. Although 1 LT Saville waived his Article 32 hearing, in the related case of U.S. v. Perkins evidence was presented questioning whether the decedent is in fact dead. The alleged victim's body is purportedly buried in a known grave in Iraq, identified as such by relatives of the alleged victim. There is a significant question, however, whether the body in the grave is the victim whose name appears on 1LT Saville's charge sheet. At this time, the government is unable to conclusively establish that the body in the grave is the victim identified in the Charge sheet or the manner and timing of death. No scientific evidence is known to exist that confirms the identity of the body and the cause of death. This same date the defense filed a separate motion to abate the proceedings until such time as the defense is able to obtain access to the body of the alleged victim for identification, examination and testing.

While common sense suggests that it is relatively easy to physically verify whether the remains in the grave are truly those of the alleged victim and that if an unbiased autopsy is performed by qualified experts, it will be possible to determine time and manner of death, without an expert to explain these points, factfinders may be misled by government eyewitnesses whose biased testimony cannot be corroborated. The defense nonetheless requires the assistance

of a civilian pathologist as an expert consultant to assist in preparing and presenting the motion to abate and in advising the defense on trial issues such as the scientific methods available to conclusively determine identity, causation and timing of death.

D. LAW

The defense relies on the following authorities in support of its motion:

Article 46, UCMJ

R.C.M. 703

Mil.R.Evid. 502

Ake v. Oklahoma, 470 U.S. 68 (1985)

United States v. Mustafa, 22 M.J. 165 (C.M.A. 1986)

United States v. Garries, 22 M.J. 288 (C.M.A. 1986)

United States v. Toledo, 25 M.J. 270 (C.M.A. 1987)

United States v. Turner, 28 M.J. 487 (C.M.A. 1989)

United States v. Ingham, 42 M.J. 218 (C.A.A.F. 1995)

E. EVIDENCE & WITNESSES

The defense requests argument on this Motion to Compel. The defense requests consideration of the following documents:

- a. Charge Sheet, dated 8 June 2004
- b. Defense letter to Convening Authority requesting appointment of expert, dated November 3, 2004, w/atchs
- c. U.S. v. Perkins Article 32 Report (including DD Form 457, the IO's Memorandum for Record, dated 19 Aug 2004, and the summarized transcript)

The defense requests government production of any advice regarding this issue given to the Convening Authority by the Staff Judge Advocate and the Convening Authority's decision.

The defense does not request government production of the witnesses for this motion.

F. ARGUMENT

The accused is entitled to expert assistance as reflected in the attached request submitted to the Convening Authority, which is incorporated herein by reference and identifies the legal authorities cited above. The key justification found in the request is as follows:

Dr. Wecht has previously served as an expert consultant and testified as an expert witness in numerous cases across the country as reflected in his curriculum vitae, which is attached to this request. His credentials are impeccable. The defense

requests an expert of his stature in part because of the high-profile nature of this case and the need to insure, should he be declared as a defense witness, that the court members understand how forensic pathology can provide objective exculpatory evidence regarding the cause of death.

In this case, the defense will be demanding exhumation of the alleged body of the victim for the purpose of DNA testing (or other scientific testing that will unquestionably verify the identity of the body), and an autopsy by independent and qualified experts to establish the cause of death, presumptively by drowning, if the allegations have any merit. Dr. Wecht will assist the defense in preparing the request and any related motion for appropriate relief. If necessary, he will be called to testify at an Article 39(a) motions' session. Should an autopsy be performed, his assistance will be required to interpret the results and to insure that the autopsy was conducted according to the standards of care within the pathology community.

At trial, in order for an accused to be found guilty of a violating Article 119, the government bears the burden of proof of establishing the victim's death and cause of death beyond a reasonable doubt. If scientific means exist for conclusively resolving these issues based on the aid of expert consultation and testimony, then how can a fair trial be conducted in the absence of such important evidence? This is particularly true where, as here, there is a significant amount of evidence that suggests the alleged victim is not dead.

Appropriate Remedy

Compelling the appointment of an expert forensic pathologist will ensure that the accused receives a fair trial and that the government will be held to a burden of proving guilt beyond a reasonable doubt.

G. CONCLUSION


At this time, appointment of an expert consultant is the only appropriate remedy under the specific circumstances of this case. The defense respectfully requests that this Court grant the defense's Motion to Compel.

RESPECTFULLY SUBMITTED:


FRANK J. SPINNER
Defense Counsel

CERTIFICATE OF SERVICE

I certify that this defense Motion to Abate was served on the government via e-mail to Thomas.Schiffer@us.army.mil and on the military judge via e-mail on 29 November 2004.


FRANK J. SPINNER
Defense Counsel

FRANK J. SPINNER
Attorney at Law
7035 Campus Drive, Suite 904
Colorado Springs, CO 80920

(719) 598-6494 / Fax (719) 598-6009

November 3, 2004

Major General James D. Thurman
Headquarters 4th Infantry Division (Mechanized)
Fort Hood, Texas 76544-5000

RE: *U.S. v. Saville* – Request for Expert Consultant

Dear General Thurman,

In accordance with Article 46, U.C.M.J., R.C.M. 703, and Mil.R.Evid. 502(a), the defense requests that Cyril H. Wecht, M.D., J.D., a qualified expert in the field of forensic pathology, be appointed and funded as a consultant, with confidentiality, to assist the defense in the preparation of its case. LT Jack Saville is charged with various violations of the U.C.M.J., including an allegation of manslaughter, which have been referred to trial by general court-martial. If convicted, he could be sentenced to a significant period of confinement, to receive a punitive discharge and to forfeit all pay and allowances.

In addition to Article 46, U.C.M.J., R.C.M. 703, and Mil.R.Evid. 502, the following cases support the provision of expert assistance to the defense. *Ake v. Oklahoma*, 470 U.S. 68 (1985); *United States v. Mustafa*, 22 M.J. 165 (C.M.A. 1986); and *United States v. Garries*, 22 M.J. 288 (C.M.A. 1986). Such assistance can be protected as privileged communications under Mil.R.Evid. 502 and in accordance with *United States v. Turner*, 28 M.J. 487 (C.M.A. 1989) and *United States v. Toledo*, 25 M.J. 270 (C.M.A. 1987). As stated in *Turner*:

An expert may be of assistance to the defense in two ways. The first is as a witness to testify . . . An expert may also be of assistance to the defense as a consultant to advise the accused and his counsel as to the strength of the government case and suggest questions to be asked of prosecution witnesses, evidence to be offered by the defense, and arguments to be made.

28 M.J. at 488. The Court of Appeals for the Armed Forces repeated that “appellant’s right, upon a minimal showing of need, is to expert assistance.” *United States v. Ingham*, 42 M.J. 218, 226 (1995).

Consultation with Dr. Wecht will be critical to decision-making in strategic issues of the case relating to both motions and findings. In cases of homicide or manslaughter

pathologists are often needed to assist the defense in assessing the cause of death and, in this case, determining whether the alleged victim actually died. Additionally, to the extent that the government may rely on expert opinions to prove their case, the defense requires expert assistance to interview the government experts and prepare potential cross-examination questions. Consultation with Dr. Wecht, the Coroner of Allegheny County, Pittsburgh, Pennsylvania, will expedite the case and lead to the fair administration of justice. To this end, the defense also requests that he be appointed as a representative of the defense team, protected with confidentiality under Mil.R.Evid. 502 until such time as he may be named as a witness.

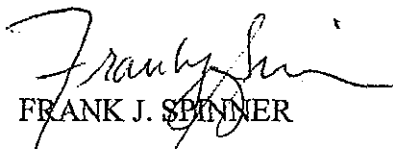
Dr. Wecht has previously served as an expert consultant and testified as an expert witness in numerous cases across the country as reflected in his curriculum vitae, which is attached to this request. His credentials are impeccable. The defense requests an expert of his stature in part because of the high-profile nature of this case and the need to insure, should he be declared as a defense witness, that the court members understand how forensic pathology can provide objective exculpatory evidence regarding the cause of death.

In this case, the defense will be demanding exhumation of the alleged body of the victim for the purpose of DNA testing (or other scientific testing that will unquestionably verify the identity of the body), and an autopsy by independent and qualified experts to establish the cause of death, presumptively by drowning, if the allegations have any merit. Dr. Wecht will assist the defense in preparing the request and any related motion for appropriate relief. If necessary, he will be called to testify at an Article 39(a) motions' session. Should an autopsy be performed, his assistance will be required to interpret the results and to insure that the autopsy was conducted according to the standards of care within the pathology community.

Finally, LT Saville's defense counsel do not possess the requisite expertise to perform the role of an expert in forensic pathology, nor would they be able to testify as expert witnesses should it become necessary as issues arise in the course of presenting their case.

Dr. Wecht charges \$5,000 for an initial consultation and review of records. His fee schedule is attached. Because there is no autopsy to review in this case, it may be that he will be willing to reduce his fees, however, I am unable to commit to that possibility at this time. If additional justification is needed or questions arise based on the representations made above; please have trial counsel inform me accordingly.

Respectfully Submitted,


FRANK J. SPINNER

Atch: CV and Fee Schedule

CYRIL H. WECHT, M.D., J.D.

WEST PENN BUILDING

14 WOOD STREET

PITTSBURGH, PENNSYLVANIA 15222

(412) 281-8090

FAX (412) 261-3650

ANATOMIC, CLINICAL, AND FORENSIC PATHOLOGY
LEGAL MEDICINECorporate Tax ID: 25-1260991PROFESSIONAL SERVICES CHARGES:Consultations:

Medical-Legal Consultations	\$5,000.00*
Additional Charges for Complex Cases Involving Wrongful Death, Product Liability, Medical Malpractice, Extensive Research and Experiments, Multiple Deaths, Etc.	**
Supplemental Consultation Fees	500.00/hour***
Trial Testimony or Depositions (Out-of-Town)	\$5,000.00/day Plus Expenses

*Includes evaluation and analysis of records, examination of microscopic surgical and/or autopsy tissue slides, photographs, research of medical/scientific literature, and written report.

**If applicable, additional charges will be assessed according to complexity of case.

***Additional documents submitted for supplemental review and analysis (including supplemental written report) will be billed at the rate of \$500 per hour.

Depositions:Regular Depositions (In Pittsburgh)

Preparation and Meeting with Consulting Attorney	\$1,000.00*
Deposition* - up to two hours	\$1,500.00**
Deposition - each additional hour	500.00***

Video Tape Depositions (In Pittsburgh)

Preparation and Meeting with Consulting Attorney	\$1,000.00*
Deposition - up to two hours	\$2,500.00**
Deposition - each additional hour	500.00***

*Approximately one hour prior to deposition - Consulting attorney is expected to pay this fee prior to start of meeting.

**Attorney for opposing side may pay the charges for the deposition instead of the consulting attorney.

***If deposition is expected to exceed two hours, blank check should be brought to deposition and completed after deposition.

CURRICULUM VITAE

NAME: Cyril Harrison Wecht, B.S., M.D., J.D.

DATE OF BIRTH: March 20, 1931

PLACE OF BIRTH: Pittsburgh, Pennsylvania

HOME ADDRESS: 5420 Darlington Road
Pittsburgh, Pennsylvania 15217
Phone: (Area Code 412) 521-2881

OFFICE ADDRESS: West Penn Building
14 Wood Street
Pittsburgh, Pennsylvania 15222
Phone: (Area Code 412) 281-9090
FAX: (Area Code 412) 261-3650

Coroner of Allegheny County
Allegheny County Coroner's Office
542 Fourth Avenue
Pittsburgh, Pennsylvania 15219
Phone: (Area Code 412) 350-4800
FAX: (Area Code 412) 350-4869 and 4899
Email: cwecht@county.allegheny.pa.us

EDUCATION:

1943-1948 Fifth Avenue High School - Highest Honors,
Valedictorian

1948-1952 University of Pittsburgh - B.S. - Cum Laude

1952-1954 University of Buffalo School of Medicine

1956 University of Pittsburgh School of Medicine - M.D.

1957-1959 University of Pittsburgh School of Law -
Law Review

1962 University of Maryland School of Law - LL.B.

1962 University of Pittsburgh School of Law - J.D.

ACADEMIC SCHOLARSHIPS, HONORS, AND AWARDS:

I. EDUCATIONAL

1948 Daughters of American Revolution History Award

1948 Rensselaer Polytechnic Institute Medal for
Science and Mathematics

1948-1949	Allegheny County Achievement Award and Scholarship, University of Pittsburgh
1948-1949	Buhl Foundation Scholar, University of Pittsburgh
1948-1952	Honor Scholarship, University of Pittsburgh
1951	Senior Worthy, University of Pittsburgh (Outstanding Junior Student)
1951	Outstanding Undergraduate of Year Award, Phi Epsilon Pi International Fraternity
1952	Hall of Fame, University of Pittsburgh
1955-1956	State Senatorial Scholarship, University of Pittsburgh School of Medicine
1957-1958	Law School Scholarship, University of Pittsburgh
1958-1959	Owens Fellowship, University of Pittsburgh

II. PROFESSIONAL AWARDS

1972	Who's Who in Israel
1973	Voice of Medicine Award, Pennsylvania Medical Society
1975	Who's Who in Government
1977	Who's Who in America
1978	Honorary Member, Allegheny County Police Department
1978	"Distinguished Service to Law Enforcement Award", County Detectives Association of Pennsylvania
1978	"Distinguished Service to Law Enforcement Award", Pennsylvania State Division of the International Association of Identification Officers
1979	President's Certificate of Appreciation for Meritorious Service, American College of Legal Medicine
1990	The Best Lawyers in America: Directory of Experts
1996	Gold Medal Award, Lifetime Achievement in Legal Medicine American College of Legal Medicine

- 1996 Career Achievements Award,
Contributions to Forensic Pathology and
Legal Medicine
New York Society of Forensic Sciences
- 2003 "1st Annual Medical Board Citizen of the Year
Award", Recipient and Guest Lecturer, The
Medical Bureau of Pittsburgh, Nov. 18, 2003

III. COMMUNITY AWARDS

- 1965 Selected as one of the "Outstanding Young
Men of America", National Junior Chamber of
Commerce
- 1966 Honorary Life Member, Italian Sons and
Daughters of America
- 1971 Community Leaders of America
- 1976 Dictionary of International Biography
- 1976 "Outstanding Alumnus of 1976",
University of Pittsburgh
Gamma Circle of Omicron Delta Kappa
- 1977 Myrtle Wreath Award,
Hadassah, Pittsburgh Chapter
- 1977 "Man of the Year Award",
American Legion of Allegheny County
- 1978 Speaker of the Year Award,
Speech Communications Association of
Pennsylvania
- 1979 Meah Club Award,
Hebrew Institute of Pittsburgh
- 1979 Distinguished Alumnus Award, Alpha Phi Omega
Fraternity, Beta Chapter, University of
Pittsburgh
- 1982 Board of Directors, Jewish Sports Hall of
Fame of Western Pennsylvania
- 1983 Humanitarian Award, Jewish War Veterans,
Pennsylvania Department
- 1984 Honorary Member,
Honorable Order of Kentucky Colonels
- 1985 "Man of the Year Award",
Israel Bonds ZOA

- 1991 Special Alumni Award,
Zeta Beta Tau Fraternity
- 1995 Hall of Fame Award for Outstanding Achievements
in Professional, Communal, and Governmental
Activities, B'nai B'rith, District Three,
Philadelphia
- 1996 Ziggy Kahn Award for Outstanding Contributions
to Activities of Young People in Western
Pennsylvania, Jewish Sports Hall of Fame
of Western Pennsylvania and Sports for Israel
- 1998 Lifetime Achievement Award,
B'nai B'rith, Areas of Western Pennsylvania,
Western New York, West Virginia, and Ohio
- 2002 Lifetime Achievement Award,
Champions of Excellence, Champion Enterprises,
Pittsburgh/Allegheny County Public Services
- 2003-2004 First Honorary Member, Black and Gold Society,
Allegheny Club

SOCIAL, PROFESSIONAL, AND HONORARY SOCIETIES:

- 1948 Phi Epsilon Pi - National Officer - 1958-1970
President, Tri-State Alumni Association -
1962-1963
National President - 1967-1969
- 1949 Phi Eta Sigma (Freshman Scholastic Achievement)
- 1949 Alpha Phi Omega (Service to University)
- 1950 Druids, President (Sophomore and Junior
Activities/Scholarship Fraternity)
- 1950 Beta Beta Beta Honorary Biology Fraternity,
University of Pittsburgh
- 1951 Pi Delta Epsilon (Journalism)
- 1951 Delta Sigma Rho (Debate)
- 1951 Theatron (Dramatics)
- 1952 Omicron Delta Kappa (Junior/Senior
Activities/Scholarship)
- 1954 Phi Delta Epsilon Medical Fraternity

1956 "Scope and Scalpel", President and Founder
(Medical School Theatrical Group)

1962-Pres. Phi Delta Epsilon Graduate Club of Pittsburgh

2002 Phi Alpha Delta Law Fraternity International,
Duquesne University School of Law,
Honorary Membership

PROFESSIONAL TRAINING:

1954-1956 Externship - St. Francis General Hospital and
Rehabilitation Institute,
Pittsburgh, Pennsylvania

1956-1957 Internship - St. Francis General Hospital and
Rehabilitation Institute,
Pittsburgh, Pennsylvania

1957-1959 Resident in Pathology, Veterans Administration
Hospital, Pittsburgh, Pennsylvania

1959-1961 Associate Pathologist, United States Air Force
Hospital, Maxwell Air Force Base,
Montgomery, Alabama

1961-1962 Research Fellow in Forensic Pathology and
Associate Pathologist, Office of Chief
Medical Examiner, Baltimore, Maryland

PROFESSIONAL EXPERIENCE:

1961-1962 Pathologist, North Charles General Hospital,
Baltimore, Maryland

1962-1964 Acting Chief, Laboratory Service, and Pathologist,
Leech Farm Veterans Administration Hospital,
Pittsburgh, Pennsylvania

1964-1965 Acting Chief, Laboratory Service, and Pathologist,
Charleroi-Monessen Hospital, North Charleroi,
Pennsylvania

1964-1978 Director, Pittsburgh Pathology and Toxicology
Laboratory, Pittsburgh, Pennsylvania

1966-1968 Associate Pathologist and Associate Director
of Laboratories, St. Clair Memorial Hospital,
Pittsburgh, Pennsylvania

1968-1982 Pathologist and Laboratory Director,
Podiatry Hospital of Pittsburgh

1973-1999
 Chairman, Department of Pathology, and
 Chief Pathologist, St. Francis Central
 Hospital (formerly Central Medical Center &
 Hospital), Pittsburgh, Pennsylvania - 1973-1996.
 Member, Board of Directors - 1975-1982
 Member, Medical Staff Executive Committee -
 1975-1999.
 Chairman, Tumor and Tissue Committee -
 1974-1996.
 Co-Chairman, Transfusion Review Committee -
 1974-1996.
 President, Medical Staff - 1995-1997.
 Director of Forensic Pathology - 1997-1999.

1973-Pres.
 Consultant Pathologist,
 Mayview State Hospital

1978-1992
 Consultant Pathologist and Director
 Latrobe Laboratory,
 MDS Health Group, Ltd.

1985-1991
 Consultant Pathologist,
 Woodville State Hospital

1992-Pres.
 Consultant Pathologist,
 Torrance State Hospital

ARMED FORCES:

1959-1961
 Captain, United States Air Force (Medical Corps)

1961-1965
 Captain, Inactive Reserve, United States
 Air Force (Medical Corps)

TEACHING APPOINTMENTS:

1957-1959
 Teaching Fellow, Department of Pathology,
 University of Pittsburgh School of Medicine

1959
 Lecturer in Legal Medicine,
 University of Pittsburgh School of Medicine

1962-1965
 Clinical Instructor in Medicine (Legal Medicine),
 University of Pittsburgh School of Medicine

1962-1970
 Lecturer, Law-Science Academy of America

1962-1972
 Clinical Instructor in Pathology (Forensic
 Pathology), University of Pittsburgh School
 of Medicine

1972-1973
 Clinical Assistant Professor of Pathology,
 University of Pittsburgh School of Medicine

1973-1996	Clinical Associate Professor of Pathology, University of Pittsburgh Schools of Medicine and Dental Medicine
1985-1996	Clinical Adjunct Associate Professor of Pathology, University of Pittsburgh School of Medicine
1985-Pres.	Clinical Adjunct Professor of Pathology, Department of Diagnostic Services, University of Pittsburgh School of Dental Medicine
1974-1996	Adjunct Associate Professor of Epidemiology, University of Pittsburgh Graduate School of Public Health
1962-1964	Lecturer in Legal Medicine, Duquesne University School of Law
1964-1978	Research Professor of Law, Duquesne University School of Law
1964-1978	Director, Institute of Forensic Sciences, Duquesne University School of Law
1974-Pres.	Adjunct Professor of Pathology and Legal Medicine, Duquesne University School of Pharmacy
1984-Pres.	Adjunct Professor of Law, Duquesne University School of Law
1988-1998	Lecturer, Pennsylvania State Police Academy, Greensburg Barracks
1991-Pres.	Adjunct Professor, Duquesne University John G. Rangos, Sr. Graduate School of Health Sciences
1991-Pres.	Member, Advisory Committee Duquesne University Graduate School of Health Sciences
1996-Pres.	Clinical Professor of Pathology, University of Pittsburgh School of Medicine
1996-Pres.	Clinical Professor of Pathology, University of Pittsburgh School of Dental Medicine
1997-Pres.	Clinical Professor of Epidemiology, University of Pittsburgh Graduate School of Public Health
2003-Pres.	Distinguished Professor, Carlow College

VISITING PROFESSORSHIPS AND SPECIAL GUEST LECTURES:

1963-Pres. Special Guest Lecturer - Numerous Professional Organizations, Academic Institutions and Programs, and Governmental Agencies - United States and Foreign Countries (More than 500)

1964 University of Texas School of Law
Law and Medicine Course

1974 Harvard University School of Law

1980 Southern Illinois University Medical and Law School (One of three keynote speakers, along with Supreme Court Justice Harry Blackmun and the President of the Illinois State Bar Association.)

1985 Ministry of Health, Singapore
(Special invitee - keynote speaker.)

1988 Royal Society of Medicine Inaugural Meeting, Section on Clinical Forensic Medicine, London
(Special invitee - keynote speaker.)

1988 Bicentennial Celebration, Australian Medical Association, Cairns (Special invitee - Plenary Session speaker.)

1988 International Congress on Forensic Sciences, Forensic Medicine Association of China, Beijing (Designated Member, International Organizing Committee, and Vice Chairman - Speaker.)

1992 Yale University School of Medicine
Grand Rounds

1996 Symposium Director and Special Guest Lecturer, Quinnipiac College, Dedication of New Law School, New Haven, Connecticut, April, 1996.

2001 Annual Lecture, Mount Sinai Hospital, New York, New York, September, 2001

2001 Course Director and Lecturer, International Conferences, December, 2001

2002 The Chao Tzee Cheng Visiting Professor and Guest Lecturer in Pathology and Forensic Science, National University of Singapore, January, 2002

2002 Lee Kuan Yew Distinguished Scholar, National University of Singapore, January, 2002

2002 Distinguished Lecturer, Plenary Lectures, Philippine Society of Pathologists, Manila, Philippines, April, 2002

- 2002 Special Guest Lecturer, Criminology Club of Western Connecticut State University, "Forensic Issues in the JonBenet Ramsey and other Famous Cases", April, 2002
- 2002 Special Guest Lecturer, Annual User Group Meeting, Panorama Business Views, Toronto, Canada, June 12, 2002
- 2002 Guest Lecturer, "Some of My Most Interesting Cases" and "Ethical & Medical-Legal Issues in Medicine", Summer Speakers Program, Congregation Shirat HaYam, Nantucket, MA, July, 2002
- 2002 H. Horton Rountree Distinguished Lecturer in Health Law, East Carolina University, Brady School of Medicine, Greenville, North Carolina, September, 2002
- 2002 Featured Speaker, 10th Annual American Association of Forensic Examiners Meeting, Coronado Springs Resort, Walt Disney World, Florida September 27, 2002
- 2002 Conference Co-Chairman, "Law, Family and Violence: A Multidisciplinary Symposium, Annual Forensic Science and Law Conference", Duquesne University, Pittsburgh, PA, November 7-9, 2002
- 2002 Lecturer, Allegheny County Bar Foundation, Juvenile Court Project and Community Legal Services
- 2003 Drs. John M. Jr., & Josephine J. Templeton Guest Lecturer, "Analysis and Consideration of Trends In Violent Deaths: A National and Local Review", Annual Meeting of American Trauma Society, Pennsylvania Division, Hershey, Pennsylvania, March 13, 2003
- 2003 Guest Lecturer, Hirsch Medical/Legal Lecture Series, Georgetown University, Grand Rounds, March 2003
- 2003 Guest Speaker, Chamber of Commerce Luncheon, Aventura, Florida, March, 2003
- 2003 Guest Speaker, Aventura Turnberry Jewish Center, Aventura, Florida, March, 2003
- 2003 Lecturer, Habeas Corpus Resource Center, Spring Conference, San Francisco, May, 2003
- 2003 Lecturer, Northern Chapter of American College of Surgeons, San Francisco, May, 2003
- 2003 Guest Lecturer, "Some of My Most Interesting Cases", Palm Beach County Trial Lawyers Association Dinner Meeting, Florida, July, 2003

- 2003 Course Director and Lecturer, "CMI Review Course",
American College of Forensic Examiners
International, New York, July, 2003
- 2003 Course Director and Lecturer, "Certified Medical
Investigator Certification Program", American
College of Forensic Examiners International,
National Conference, Arizona, October, 2003
- 2003 Guest Lecturer, "How Forensic Pathology is Used to
Prove your Case: Working with the Medical Examiner",
Trial Advocacy Seminar, Palm Beach County Trial
Lawyers Association, Florida

MEDICAL LICENSES:

- 1957 Diplomate, National Board of Medical Examiners
Pennsylvania
- 1957 Pennsylvania
- 1960 California
- 1961 Maryland

MEDICAL SPECIALTY CERTIFICATION:

- 1963 Diplomate, American Board of Pathology -
Anatomic and Clinical Pathology
- 1964 Diplomate, American Board of Pathology -
Forensic Pathology
- 1982 Charter Diplomate, American Board of
Legal Medicine

MEDICAL SOCIETIES AND SCIENTIFIC ORGANIZATIONS:

- 1957-Pres. Allegheny County Medical Society
Member, Board of Directors - 1968-1971
Member, Grievance Committee - 1965-1968
Delegate to Pennsylvania Medical Society -
1968-1970
Member, Committee for the Medical Examiner
System
Member, Anesthesia Mortality Committee

Member, Medical-Legal Committee, and
Chairman - 1973-1974
Member, Drug Abuse Committee, and
Chairman - 1970-1974
Chairman, Medical-Legal Committee
1998

1957-Pres. Pennsylvania Medical Society
Member - Commission on Forensic Medicine -
1969-1977

1957-Pres. American Medical Association
Physician's Recognition Award - 1970-Pres.

1957-Pres. Pittsburgh Pathology Society

1960-Pres. Fellow, College of American Pathologists
Inspector - 1991-Pres.

1961-Pres. Fellow, American Society of Clinical Pathologists

1961-1962 Baltimore Pathology Society

1963-1975 Pennsylvania Academy of Science

1963-Pres. Pennsylvania Association of Pathologists
Co-Chairman, Legislation Committee - 1965-1966

1964-1980 Pittsburgh Academy of Medicine

1964-1985 Pittsburgh Medical Forum

1964-1988 American Association for the Advancement of
Science

1964-1969 Pan American Medical Association

1970-1980 Pennsylvania State Coroners Association

1970-1980 International Association of Coroners
and Medical Examiners

2003-Pres. International Association of Coroners
and Medical Examiners

1973-1983 American Society of Forensic Odontology

1973-1982 Pennsylvania Association of Clinical
Laboratories, Inc.
Member, Board of Directors - 1978-1980

1974-Pres. Fellow, American Physicians Fellowship for
the Israel Medical Association

1988-Pres. Royal Society of Medicine
Member, Clinical Forensic Medicine Section
Member, Accident & Emergency Medicine Section

1991-1995 Charles F. Bailey Chair for Cardiothoracic
Surgery, Hahnemann University
Member, Steering Committee

1996-Pres. Pennsylvania State Coroners Association

LAW LICENSES:

1963 Pennsylvania
(Admitted to practice before all Pennsylvania
Courts, United States District Court for the
Western District of Pennsylvania, Third Circuit
Court of Appeals, and United States Supreme Court.)

LEGAL SOCIETIES:

1963-Pres. Allegheny County Bar Association
Vice-Chairman, Medical-Legal Committee - 1973,
and Chairman - 1974-1978
Member, Medical-Legal Committee - 1973-1990
Member, Building Committee - 1981-1988
Member, Health Law Council - 1997-2002
Honorary Senior Member, Health Law Council -
2002-Pres.

1963-Pres. Pennsylvania Bar Association
Member, Joint Medico-Legal Committee
Member, Medico-Legal Committee - 1981-1988
Member, Senior Lawyers Committee - 1996-Pres.

1963-Pres. American Bar Association
Member, Committee on Law and Medicine -
1973-Pres.
Vice-Chairman, Committee on Law and Medicine -
1973-1977
Publications Vice-Chairman, Committee on Law
and Medicine - 1957-1977
Products, General Liability, and Consumer Law
Committee - 1985-1988
Toxic and Hazardous Substances Committee -
1985-1988
Forum Committee on Health Law - 1985-1988

1963-1988 Association of Trial Lawyers of America
Member, National Committee on Professional
Negligence Insurance - 1968-1975
Chairman, Committee on Liaison with Medical
Associations - 1969-1973
Member, Medical Malpractice Committee -
1975-1976
Member, Professional Legislative Affairs
Committee - 1975-1976

1963-1985 Pennsylvania Trial Lawyers Association

1963-1985 Western Pennsylvania Trial Lawyers Association

1965-1983 American Judicature Society

1965-1985 American Arbitration Association

1965-1979 Association of Trial Lawyers in Criminal Court,
 Allegheny County, Pennsylvania

1966-1976 Federal Bar Association
 Chairman, Tort Section, Pittsburgh Chapter - 1967

1963-1997 American Society of Hospital Attorneys

1972-1979 Member, SCRIBES (Society of Legal Writers)

1973-1978 American Association of Law Schools
 Member, Law and Psychiatry Section

MEDICAL-LEGAL SOCIETIES:

1962-Pres. Fellow, American Academy of Forensic Sciences
 President - 1971-1972
 President-Elect - 1970-1971
 Member, Executive Committee - 1968-1973
 Interview Coordinator, Mid-Atlantic States - 1966
 Chairman, Legislative Affairs Committee,
 Pathology Section - 1966
 Secretary, Pathology and Biology Section -
 1967-1969
 Chairman, Pathology and Biology Section -
 1968-1969
 Associate Program Chairman - 1969 Annual Meeting
 Program Chairman - 1970 Annual Meeting
 Chairman, International Relations Committee -
 1977-1982
 Liaison Representative to the Association of
 Trial Lawyers of America - 1977-1980
 Co-Chairman, International Relations Committee -
 1978-1988
 Member, Select Committee of Past Presidents -
 1980-1981

1962-1973 Fellow, Law-Science Academy of America
 Vice Chancellor and Member, Board of Trustees -
 1966-1970

1963-Pres. Director and President, Pittsburgh Institute of
 Legal Medicine

1964-1978 Fellow, International Academy of Law and Science
 Member, Board of Regents - 1966-1969

1964-Pres. Fellow, American College of Legal Medicine
 President - 1969-1972
 Vice President - 1968-1969
 Member, Board of Governors - 1965-1976
 Chairman, Honorary Fellowship Committee -
 1973-1977
 Member, Legislation Committee - 1974-1978
 Member, Medical Malpractice Committee -
 1975-1976
 Member, Nominating Committee - 1975-1976, and
 Chairman - 1988
 Member, Projects Committee - 1975-1976
 Member, Ad Hoc Task Force on Death and Dying -
 1978-1979
 Program Chairman - 1979 Annual Meeting
 Member, Publications Committee - 1979-Pres.
 Member, Select Committee on Policy and
 Planning - 1983-Pres.
 Chairman, Judicial Council Committee -
 1984-1988
 Vice President, Board of Trustees, ACIM
 Foundation - 1985-1987
 Chairman, 1987-Pres.
 Member, Education Committee - 1989-Pres.
 Chairman, Ad Hoc Legal Medicine Library
 Committee - 1989-1991
 Member, Finance Committee - 1992-Pres.
 Chairman, 800-HELP Line Task Force -
 1993-Pres.
 Member, Referral Committee - 1995-Pres.
 Chairman, Senior Members Committee -
 2003-2004

1965-Pres. International Academy of Legal Medicine
 and Social Medicine
 Vice President - 1976-1979
 National Correspondent for North America -
 1976-1984

1965-2000 International Association for Accident and
 Traffic Medicine
 Member, Executive Council
 Secretary-General - 1966-1969
 Vice President - 1970-1973

1965-1992 Fellow, American Society of Legal and
 Industrial Medicine (Formerly American
 Academy of Compensation Medicine)

1966-Pres. International Association of Forensic Sciences
 Vice President - 1975-1978

1966-Pres. National Association of Medical Examiners
 Member, Board of Directors - 1976-1978

1968-2000 Association for the Advancement of Automotive
 Medicine

1971-1973	American Society for Testing and Materials Chairman, Committee E-30 on Forensic Sciences
1972-1999	American Association of Medico-Legal Consultants Vice President
1973-Pres.	Fellow, British Academy of Forensic Sciences
1973-Pres.	Fellow, Forensic Science Society of England
1973-1976	National Foundation for the Study of Health Science Liability Member, Board of Directors
1974-1982	The Forensic Sciences Foundation, Inc. Member, Board of Trustees
1979-1995	Pan American Association of Forensic Sciences Member, Organizing Committee
1981-Pres.	American Board of Legal Medicine Chairman, Program Development Committee on Forensic Medicine - 1984-Pres. Chairman, Board of Trustees - 1986-1995
1987-Pres.	American College of Legal Medicine Foundation Chairman, Board of Trustees - 1989-1995
1987-Pres.	American Medico-Legal Foundation Member, Board of Directors
1989-1992	United Physicians Association/United Physicians Insurance Member, Board of Directors
1994-1996	International Society of Clinical Forensic Medicine Vice President
2000-Pres.	Cyril H. Wecht Institute of Forensic Science and Law, Duquesne University School of Law, Chairman, Advisory Board
2004-Pres.	Fellow, Royal Society of Medicine, London, England

HONORARY LIFE FELLOWSHIPS IN PROFESSIONAL SOCIETIES:

1970	Society of Psychiatry, Neurology, and Legal Medicine of Columbia, South America
1970	Spanish Association of Forensic Medicine
1972	Society of Legal Medicine and Criminology of France

1974	American Society of Law & Medicine, Inc.
1975	Medical-Legal Society of Rio de Janeiro, Brazil
1976	Mexico Association of Legal Medicine
1977	Society of Legal Medicine of Belgium
1983	Yugoslav Association for Forensic Medicine
2003	American College of Forensic Examiners

NATIONAL PROFESSIONAL ADVISORY BOARDS:

1974-1978	The National Center for Professional Seminars Member, Board of Advisors
1975-1988	Odyssey House Institute for Law & Medicine Member, Advisory Board
1977-1996	The Milton Helpern International Center for the Forensic Sciences Member, Advisory Board
1977-1996	The Western Conference on Criminal & Civil Problems Member, Scientific Advisory Committee on Legal Medicine
1978-1981	Pennsylvania Commission on Crime and Delinquency Member, Allegheny Regional Advisory Committee
1980-1982	Touro Law School Member, National Advisory Board
1985-1995	Amnesty International USA Member, Advisory Committee
1985-1995	Assassination Archives and Research Center Member, Board of Advisors
1990-Pres.	Citizens for Truth About the Kennedy Assassination Member, Board of Directors
1994-Pres.	Coalition on Political Assassinations Chairman, Executive Committee - 1994-2000
1995-2001	The Center for the Preservation of Modern History Member, Advisory Board
2003-Pres.	Member, Advisory Board, Nebraska Institute of Forensic Sciences

COMMUNITY ACTIVITIES:

1962-1968 Jewish Community Relations Council of Pittsburgh
Board Member

1963-1990 American Jewish Committee
Member, Board of Trustees, Pittsburgh Chapter -
1963-1967, 1969-1971

1964-1975 Urban League

1965-1967 Jewish Family and Children's Service of Pittsburgh
Member, Board of Directors

1965-Pres. Young Men & Women's Hebrew Association -
Jewish Community Center
Member, Board of Directors - 1969-1972

1966-1990 American Jewish Congress

1969-1975 United Cerebral Palsy Association of the
Pittsburgh District
Member, Board of Directors

1967-1983 Pennsylvania Guild for Infant Survival, Inc.
(Pittsburgh Chapter)
Co-Founder and Honorary Chairman

1967-1985 Health and Welfare Association of Allegheny County
Member, Suicide Prevention Committee

1975-1980 Chairman, Pittsburgh Conference on Soviet Jewry
Member, National Lawyers Committee

1975-1980 Chairman, Allegheny County Council on
Alcohol and Drug Abuse

1976-Pres. Pittsburgh Zionist Organization
Member, Board of Directors
Vice President - 1983-1991 and 1996-Pres.
Honorary Board Member - 1994-1995

1977-1980 Allegheny Regional Planning Council of the
Governor's Justice Commission

1977-2000 United Jewish Federation
Member, Community Relations Committee - 1985-1988

1977-1982 American Red Cross, Pittsburgh-Allegheny
County Chapter
Medical-Legal Consultant, Executive
Water Safety Committee

1978-Pres. Kollel Bais Yitzchok Institute for
Advanced Torah Studies
Member, Board of Directors

1981-1991 National Foundation for Ileitis & Colitis, Inc.
Member, Board of Directors

1992-1994 Patrons for a Drug Free Community
Member, Board of Advisors

1986-Pres. Anti-Defamation League of B'Nai B'rith
Member, Board of Directors, 1988-1992

1989-1993 Intestinal Disease Foundation, Inc.
Member, Board of Directors
Honorary Board Member - 1990-1993

1996-Pres. Sudden Infant Death Syndrome Alliance
Member, Advisory Committee

1997-2001 Childhood Leukemia Foundation
Celebrity Advisory Board

2001-Pres. Zionist Organization of America, Pittsburgh
District,
Member, Board of Directors

2002 Violence Prevention Task Force,
Chairman, Allegheny County

2003 Jewish National Fund "Tree of Life
Award", Presented to Stanley Gumberg,
Vice-Chair, October 22, 2003

2003 Jewish Family Assistance Fund,
Member, Board of Directors

2003 Amen Corner, Advisory Board

GOVERNMENTAL POSITIONS:

1964-1965 Assistant District Attorney and Medical-
Legal Advisor to the District Attorney,
Allegheny County, Pennsylvania

1966-1970 Chief Forensic Pathologist, Allegheny County
Coroner's Office, Pittsburgh, Pennsylvania

1970-1980
and Coroner, Allegheny County, Pennsylvania
Co-Director of Education, Forensic Pathology

1996-Pres. Residency Training Program (Officially
Approved by the American Board of Pathology
and the American Medical Association)

1971-1976 Member, Board of Health
Allegheny County, Pennsylvania
Member, Pesticide Advisory Subcommittee, and
Ad Hoc Committee to Study Health Effects
of Air Pollution

1972 Secretary's Commission on Medical Malpractice
Member, Health Advisor Panel
(U.S. Department of Health, Education and Welfare)

1980-1984 Member, Allegheny County Board of Commissioners

1980-1984 Chairman, Allegheny County Prison Board

2003-Pres. Forensic Pathology Consultant and Lecturer,
C.I.A., Medical Division

PROFESSIONAL CONSULTANT POSITIONS:

Los Angeles County Medical Examiner -
Coroner's Office:

1968 Robert F. Kennedy Assassination
1969 Sharon Tate/LaBianca Cases
1974 Symbionese Liberation Army Deaths

1972-Pres. Forensic Pathologist,
Westmoreland County Coroner's Office

1988-Pres. Forensic Pathologist,
Armstrong County Coroner's Office

1989-Pres. Forensic Pathologist,
Fayette County Coroner's Office

1993-Pres. Forensic Pathologist,
Greene County Coroner's Office

1997-Pres. Forensic Pathologist,
Clarion County Coroner's Office

1973 Consultant and Guest Lecturer, U.S. Public
Health Hospital, Panama Canal Zone

1976-1977 Member, Special Expert Panel on American
Legionnaires' Disease (Department of Health,
Education and Welfare, Centers for Disease
Control)

ABC National Network - "20/20 Show"

1976 John F. Kennedy Assassination
1979 Elvis Presley Death

1977-1979 U.S. House of Representatives Select Committee
on Assassinations, Forensic Pathology Panel

1978-1993 Consultant in Legal Medicine,
Armed Forces Institute of Pathology

1978-1992 Pathology Consultant,
MDS Health Group, Ltd.
Medical Director, Latrobe Laboratory

1985-Pres. Forensic Science Consultants International

1985-1992 Consultant in Pathology, and
Member, Consulting Medical Staff,
Woodville State Hospital

1989-1991 Consultant in Forensic Pathology and Legal
Medicine to the Chief Medical Examiner for
the District of Columbia

1991-1995 Western School of Health Business
Careers, Inc.

1991 Consultant/Technical Advisor, Camelot Productions -
"JFK" - Oliver Stone/Alexander Ho, Producers

1993-1995 Firefighter Autopsy Advisory Panel,
Federal Emergency Management Agency
United States Fire Administration

1998 Honorary Visiting Consultant to the
Ministry of Health, The Bahamas

BOOK AUTHORSHIP:

1993 Co-Author with Mark Curriden and Ben Wecht,
Cause of Death (Published by Dutton Publishing Co.,
New York)

1996 Co-Author with Mark Curriden and Ben Wecht,
Grave Secrets (Published by Dutton Publishing
Co., New York)

1998 Co-Author with Charles Bosworth, Jr.,
Who Killed JonBenet Ramsey? (Published by
Penguin Putnam, Inc., New York)

2003 Co-Author with Greg Saitz and Mark Curriden,
Mortal Evidence (Published by Prometheus
Publishing Co., New York)

EDITORIAL POSITIONS - BOOKS:

- 1969-1979 Series Editor, Legal Medicine Annual (Published by Appleton-Century-Crofts Publishing Co.)
- 1980-1994 Series Editor, Legal Medicine (Published by W.B. Saunders Co. to 1984; from 1985 Published by Praeger Publishing Co.; from 1989 Published by Butterworth Legal Publishers; 1994- Published by Michie Company)
- 1972 Editor, Exploring the Medical Malpractice Dilemma (Published by Futura Publishing Co.)
- 1980 Editor, Microscopic Diagnosis in Forensic Pathology (Published by Charles C. Thomas Co.)
- 1982-Pres. Editor, FORENSIC SCIENCES - Five Volumes (Published by Matthew Bender & Co., Inc.)
- 1987-Pres. Associate Editor, TRAUMA (Published by Matthew Bender & Co., Inc.)
- 1987-Pres. Co-Editor, HANDLING SOFT TISSUE INJURY CASES: MEDICAL ASPECTS - Three Volumes (Published by The Michie Company)
- 1989-Pres. Co-Editor, PREPARING AND WINNING MEDICAL NEGLIGENCE CASES - Three Volumes (Published by The Michie Company)
- 1991 Co-Editor, Medicolegal Primer (Published by American College of Legal Medicine Foundation)
- 2002-Pres. Associate Editor, Legal Medicine (6th Edition), American College of Legal Medicine

EDITORIAL POSITIONS - PROFESSIONAL PUBLICATIONS:

- 1966-Pres. Editor, Scalpel and Quill (Official Publication of the Pittsburgh Institute of Legal Medicine)
- 1966-1994 Editorial Board, Milton Helpern International Microfilm Journal of Legal Medicine
- 1967-1997 Editorial Board, International Reference Organization in Forensic Medicine (INFORM)
- 1969-1979 Editorial Consultant, Medical Economics

1971-1974 Editor, MXR (Malpractice X-posure Reports)
(Published by Didactic, Inc.)

1971-Pres. Editorial Advisor for the Americas, International Forensic Sciences Journal (Published by Elsevier Publishing Co., Amsterdam, The Netherlands)

1972-1977 Editorial Board, The Barrister (Official Publication of the Pennsylvania Trial Lawyers Association)

1972-Pres. Editorial Board, Journal of Legal Medicine (Official Publication of the American College of Legal Medicine)

1973-1977 Medical-Legal Reviewer, Health Com (Health Communications, Inc.)

1973-1978 Editorial Board, INCL Brief (Published by the Section of Insurance, Negligence, and Compensation Law, American Bar Association)

1974-Pres. Editorial Board, Journal of the American Society of Law & Medicine, Inc.

1974-2000 International Editorial Board, Forensic Science Section, Excerpta Medica (Published by Excerpta Medica, Amsterdam, The Netherlands)

1977-1978 Associate Editor, Legal Aspects of Medical Practice (Official Publication of the American College of Legal Medicine)

1978-1990 Editor, Legal Aspects of Medical Practice

1978-1980 Editorial Advisory Board, CURRENT PRESCRIBING (Published by Medical Economics Company)

1978-Pres. International Board of Editors, International Journal for Medicine and Law (Published by The Society for Medicine and Law in Israel)

1978-1988 Editorial Advisory Board, The Medical Cost Containment Journal (Published by Panel Publishers, Greenvale, New York)

1978-1980 Editorial Board, News and Views in Forensic Pathology (Published by American Academy of Forensic Sciences and Forensic Sciences Foundation)

1978-1989 CME Board of Advisors and Councilors, American Medical Education Network

1979-Pres. Editorial Board, The American Journal of Forensic Medicine and Pathology (Official Publication of the National Association of Medical Examiners)
Feature Editor - 1979-1992

1984-Pres. Editor/Contributor, Forensic Medicine Section, Law, Medicine & Health Care (Official Publication of the American Society of Law & Medicine)

1984-1990 Editorial Board, Medical Malpractice Prevention (Published by World Medical Communications)

1989-1999 Editorial Committee, Medicine and Law (Official Publication of the International Centre of Medicine and Law of Southern Africa)

1990-1999 Editorial Board, IM-INTERNAL MEDICINE FOR THE SPECIALIST

1990-1993 Editorial Board, Iatrogenics (Journal of the International Society for the Prevention of Iatrogenic Complications)

1990-2000 Manuscript Reviewer, American Journal of Obstetrics & Gynecology

1991-2001 Book and Article Reviewer, Journal of the American Medical Association

1991-Pres. Editorial Board, Legal Medicine Perspectives (Official Publication of the American College of Legal Medicine)

1991-Pres. Editorial Board, Medical-Legal Lessons (Official Publication of the American College of Legal Medicine)

1998-Pres. Editorial Board, The Forensic Echo (Monthly Newsmagazine of Psychiatry, Law & Public Policy)

UNITED STATES OF AMERICA)	
	)	Government Response
v.	)	to Defense Motion to
	)	Compel Appointment of Defense
SAVILLE, JACK M.	)	Expert Consultant
1LT, U.S. ARMY)	
)	
Headquarters and Headquarters Company,)	
3rd Brigade, 4th Infantry Division (Mechanized)	)	2 December 2004
Fort Hood, Texas 76544)	

Pursuant to the Rules for the Trial of Courts-Martial in the 3d Judicial Circuit, United States Army, the Government hereby submits the following response to the Defense Motion to Compel Appointment of Defense Expert Consultant. Because the Defense Motion has not satisfied its burden of proof, the motion should be denied.

BURDEN OF PROOF AND STANDARD OF PROOF

The Government does not object to the Defense characterization of the burden of proof and standard of proof.

FACTS

1LT Saville is charged under Article 119, UCMJ with causing the death of an Iraqi national, Zaydun Mamoun, on 3 January 2004. Zaydun's family discovered the body on 15 January 2004 downstream in the Tigris River, and the family buried it later that same day. The family reported the incident and the surviving victim, Marwan Fadhil, gave a statement to the U.S. Army Criminal Investigation Division (CID) on 16 January 2004. On 5 February 2004, Zaydun's family consented to exhuming his body for the purposes of an autopsy, and received consent from an Islamic Imam to do so on 9 February 2004. Zaydun's father also consented to the autopsy and requested the presence of an Iraqi doctor during the exhumation.

On 24 February 2004, Agent Connor, CID, a Forensic Science Officer, advised that the autopsy would not reveal the cause of death because there is no "test" for determining drowning as the cause of death. An autopsy might reveal what the decedent did not die of, i.e., a bullet wound, through exhumation of the deceased's remains. Furthermore, due to lack of medical and dental records, as well as the passage of time between death and authorization to exhume the body, DNA testing would only reveal that the body came from the matrilineal line of the mother. In essence, DNA testing would reveal only that the mother and the victim were related.

On 29 August 2004, the government inquired again about efforts to exhume the body and conduct an autopsy. Based on the continued fact that minimal evidentiary value was available and the operational state of the Samarra area, it was concluded that an autopsy would not a feasible nor insightful course of action.

LAW

The Government relies on the following authorities in support of its motion:

Article 46, UCMJ
RCM 703
Ake v. Oklahoma, 470 U.S. 68 (1985)

WITNESSES AND EVIDENCE

The Government does not request witnesses for the purposes of deciding this Motion to Compel Appointment of Defense Expert Consultant.

ARGUMENT

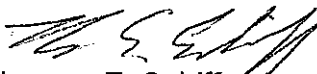
The defense requests an expert consultant. The expert was requested for the purposes of assisting the defense with scientific evidence relating to DNA testing and autopsy results. However, the government is not producing any scientific evidence in this court martial. As such, the need for any expert assistance for the defense is precluded because there is no evidence upon which to advise or consult.

The argument put forth by defense relies heavily on principles established in Ake v. Oklahoma. The present case is easily distinguishable from Ake. First, the defense is not using the expert to help prepare an affirmative defense. The defense in the present case need only cast reasonable doubt upon the evidence the government puts forth. Here, the government does not plan on putting forth any forensic evidence.

Further, as the Government does not intend on presenting forensic evidence, the playing field is level. The government is not trying to operate at a strategic advantage in any way by arguing against providing an expert in this case. However, if an autopsy is ordered by the court, the value an expert will add to the defense's case will be minimal. At present time, an autopsy will yield very little information, and such information will not be so open to interpretation as to require an expert.

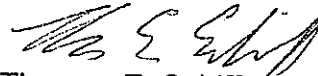
CONCLUSION

The request for an expert consultant should be denied because there is no need for an expert consultant. The government is not producing any scientific evidence, DNA testing, or autopsy results in its case in chief. Thus, expert assistance for the defense is not necessary in this case.


Thomas E. Schiffer
CPT, JA

Trial Counsel

I certify that I have served or caused to be served a true copy of the above on Military Judge and trial defense counsel on 2 December 2004.



Thomas E. Schiffer

CPT, JA

Trial Counsel

UNITED STATES)

v.)

Jack M. SAVILLE)

1LT, U.S. Army)

Headquarters & Headquarters Company)

3rd Brigade Combat Team)

4th Infantry Division (Mechanized))

Fort Hood, Texas 76544)

MOTION TO ABATE PROCEEDINGS
OR GRANT APPROPRIATE RELIEF

29 November 2004

COMES NOW the accused, 1LT Jack M. Saville, by and through counsel, to move the Court to abate the proceedings or grant appropriate relief in order to provide the accused and counsel access to potential exculpatory evidence in accordance with Article 46, UCMJ, and R.C.M. 701, 703 and 906(b)(7).

A. RELIEF SOUGHT

The defense respectfully requests that the defense Motion to Abate be granted and that the Court terminate further proceedings in the case until the defense's right to access potentially exculpatory evidence has been granted.

B. BURDEN OF PROOF & STANDARD OF PROOF

The defense, as the moving party, bears the burden of this motion by a preponderance of the evidence. R.C.M. 905(c).

C. FACTS

1LT Saville is charged with causing the death of an Iraqi national, "Fadhil, Zaydun Ma'Mun", under Article 119, UCMJ. Although 1 LT Saville waived his Article 32 hearing, in the related case of United States v. Perkins evidence was presented both at his Article 32 hearing and by pretrial motion, questioning whether the decedent is in fact dead. The alleged victim's body is purportedly buried in a known grave in Iraq, identified as such by relatives of the alleged victim. Thus, there is a significant question that is capable of being conclusively resolved, i.e., whether the body in the grave is the victim whose name appears on 1LT Saville's charge sheet. At this time, the government is unable to conclusively establish that the body in the grave is the victim identified in the Charge sheet and the cause of death. No scientific evidence is known to exist that confirms the identity of the body and the cause of death.

Common sense suggests that it is relatively easy to physically verify whether the remains in the grave are truly those of the alleged victim and that if qualified experts perform an unbiased autopsy, it will be possible to determine time and manner of death. The defense requested the appointment of a civilian pathologist as an expert consultant to assist in preparing this motion

APPELLATE EXHIBIT 

10098

and advising the defense on related issues. Because the government has not formally responded to that request, a separate motion to compel the appointment of an expert is being filed with this motion.

If, in fact, the bodily remains in the grave are not those of the victim or the cause of death is shown to be different than that alleged in manner (drowning) or timing, then this evidence should be available to the defense to present at trial and to use in cross-examining prosecution witnesses. It is not known whether Iraqi officials will cooperate in exhuming the remains for testing and performing an autopsy by qualified experts, subject to independent verification. As reflected in the case law below, the government should exhaust all avenues to obtain potentially exculpatory evidence before proceeding to trial.

As a related, but separate matter, defense counsel in U.S. v. Perkins identified and requested witnesses who were Army Intelligence informants that possess exculpatory evidence favoring SFC Perkins and 1LT Saville, who face the same Article 119 allegations. 1LT Saville joins in requesting the government to produce these witnesses or otherwise abate the proceedings until such time as they are produced.

D. LAW

The defense relies on the following authorities in support of its motion:

Article 46, UCMJ

R.C.M. 701(e)

R.C.M. 703(f)

R.C.M. 906

Brady v. Maryland, 373 U.S. 83 (1963)

United States v. Burnside, 824 F.Supp. 1215, 1254 (D.Ct.S.Ill. 1991)

United States v. Simmons, 38 M.J. 376 (C.M.A. 1993)

United States v. Eiland, 39 M.J. 566 (N.M.C.M.R. (1993)

Paikin, "Problems in Obtaining Evidence in Foreign States for Use in Federal Criminal Prosecutions," 22 Colum. J. Transnat'l L. Rev. 233 (1984)

E. EVIDENCE & WITNESSES

The defense requests argument on this Motion to Abate. The defense requests consideration of the following documents:

- a. Charge Sheet, dated 8 June 2004
- b. U.S. v. Perkins, Article 32 Report (including DD Form 457, the IO's Memorandum for Record, dated 19 Aug 2004, and the summarized transcript)
- c. U.S. v. Perkins, Defense Motion to Compel Production of Witnesses, dated 24 October 2004

The defense requests government production of the Staff Judge Advocate's Pretrial Advice prepared in accordance with R.C.M. 406 for consideration by the Court.

The defense does not request government production of witnesses for this motion.

F. ARGUMENT

Without question, an accused is entitled to equal access to evidence and especially to evidence of an exculpatory nature. Obviously, this access can be restricted when the evidence is under the control of a foreign government. There are recognized means available, however, to procure access to such evidence or provide relief. The remedy is set forth in R.C.M. 703(f)(2), (which tracks R.C.M. 703(b)(3), unavailable witness), as follows:

[A] party is not entitled to the production of evidence which is destroyed, lost, or otherwise not subject to compulsory process. However, if such evidence is of such central importance to an issue that it is essential to a fair trial, and if there is no adequate substitute for such evidence, the military judge shall grant a continuance or other relief in order to attempt to produce the evidence or shall abate the proceedings, unless the unavailability of the evidence is the fault of or could have been prevented by the requesting party.

In Paikin, "Problems of Obtaining Evidence in Foreign States for Use in Federal Criminal Prosecutions", 22 Colum. J. Transnat'l L. Rev. 233 (1984), the author identifies methods whereby the United States government can seek and obtain evidence for criminal trials in the United States. While it may be difficult and cumbersome to obtain evidence, regardless of the party that it favors, there are avenues of recourse available. The defense maintains that these avenues should be explored in this case. By way of illustration, in United States v. Eiland, 39 M.J. 566 (N.M.C.M.R. 1993), the appellate court upheld a trial judge's decision to abate proceedings when two Spanish witnesses did not appear on behalf of the defense, despite government efforts to procure their testimony. There is no indication the government is willing to undertake similar efforts here.

Proving that the alleged victim died and, if so, the cause of death are undeniably central issues in this case. There is evidence that the alleged victim did not die. A grave has been identified and government witnesses are prepared to testify that the body in the grave is the remains of the alleged victim. There are scientific means for conclusively identifying bodily remains and ascertaining the cause and timing of death. To deny the defense access to the body for testing and examination by qualified experts will result in an unfair trial and a potentially guilty verdict subjecting the accused to punishment for a crime he did not commit.

In a second and related issue, the defense also moves to abate the proceedings until such time that the government produces the witnesses identified in the attached motion to compel filed in the related case of United States v. Perkins for the same reasons cited therein, which is hereby incorporated by reference. Because 1LT Saville faces the same charge under Article 119 that

SFC Perkins is facing, the same arguments exist. These witnesses are informants identified in classified documents who will apparently testify that they saw the alleged victim after he was reported to have died and/or they otherwise possess critical information that undermines the credibility of the government's witnesses.

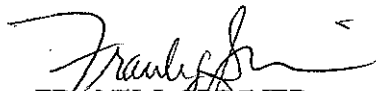
Appropriate Remedy

The appropriate relief in this case for the accused is abatement of the proceedings until such time as the government provides the defense access to the bodily remains of the alleged victim for testing by qualified experts and such time as the government produces the informants requested.

G. CONCLUSION

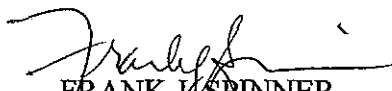
The defense respectfully requests that this Court grant the defense's Motion to Abate.

RESPECTFULLY SUBMITTED:


FRANK J. SPINNER
Defense Counsel

CERTIFICATE OF SERVICE

I certify that this defense Motion to Abate was served on the government via e-mail to Thomas.Schiffer@us.army.mil and on the military judge via e-mail on 29 November 2004.


FRANK J. SPINNER
Defense Counsel

UNITED STATES OF AMERICA)	
	)	Government Response
v.	)	to Defense Motion to
	)	Abate Proceedings or Grant
SAVILLE, JACK M.	)	Appropriate Relief
1LT, U.S. ARMY)	
)	
Headquarters and Headquarters Company,)	
3rd Brigade, 4th Infantry Division (Mechanized)	)	2 December 2004
Fort Hood, Texas 76544)	

Pursuant to the Rules for the Trial of Courts-Martial in the 3d Judicial Circuit, United States Army, the Government hereby submits the following response to the Defense Motion to Abate Proceedings or Grant Appropriate Relief. Because the Defense Motion has not satisfied its burden of proof, the motion should be denied.

BURDEN OF PROOF AND STANDARD OF PROOF

The Government does not object to the Defense characterization of the burden of proof and standard of proof.

FACTS

1LT Saville is charged under Article 119, UCMJ with causing the death of an Iraqi national, Zaydun Mamoun, on 3 January 2004. Zaydun's family discovered the body on 15 January 2004 downstream in the Tigris River, and the family buried it later that same day. The family reported the incident and the surviving victim, Marwan Fadhil, gave a statement to the U.S. Army Criminal Investigation Division (CID) on 16 January 2004. On 5 February 2004, Zaydun's family consented to exhuming his body for the purposes of an autopsy, and received consent from an Islamic Imam to do so on 9 February 2004. Zaydun's father also consented to the autopsy and requested the presence of an Iraqi doctor during the exhumation.

On 24 February 2004, Agent Connor, CID, a Forensic Science Officer, advised that the autopsy would not reveal the cause of death because there is no "test" for determining drowning as the cause of death. An autopsy might reveal what the decedent did not die of, i.e., a bullet wound, through exhumation of the deceased's remains. Furthermore, due to lack of medical and dental records, as well as the passage of time between death and authorization to exhume the body, DNA testing would only reveal that the body came from the matrilineal line of the mother. In essence, DNA testing would reveal only that the mother and the victim were related.

On 29 August 2004, the government inquired again about efforts to exhume the body and conduct an autopsy. Based on the continued fact that minimal evidentiary value was available and the operational state of the Samarra area, it was concluded that an autopsy would not be a feasible nor insightful course of action.

LAW

The Government relies on the following authorities in support of its motion:

Article 46, UCMJ

RCM 701(e)

RCM 703(f)

United States v. Birbeck, 35 M.J. 519 (A.F.C.M.R. 1992)

United States v. Figueroa, 55 M.J. 525 (A.F.C.M.R. 2001)

WITNESSES AND EVIDENCE

The Government requests the following witnesses for the purposes of deciding this Motion to Abate Proceedings or Grant Appropriate Relief:

Agent Irene Cintron, CID

Agent Patrick Connor, CID

Memorandum For Record dated 23 November 2004

ARGUMENT

In its motion, the defense relies on several cases discussing the government's duty to disclose information in its possession, regardless of what agency within the government controls the information. However, these cases are easily distinguished with the facts of this case. The government is not refusing to disclose information within its control. Nor is the government failing to exercise due diligence in discovering exculpatory information within other government files or agencies. Rather, the defense is asking the court to compel the government to take on quests for other information on the defense's behalf. Additionally, the defense does not know whether the information requested is exculpatory, inculpatory, or neutral.

In United States v. Birbeck and United States v. Figueroa, the court succinctly stated: "Generally, the government has no responsibility to create records to satisfy demands for them. There can be no discovery of documents or things not in the Government's possession." That is precisely what the defense is asking the government to do—create government evidence in order to subsequently request that evidence.

The evidence sought by the defense is not of such central importance that it is essential to a fair trial—it is neutral or inconclusive at best. Cause of death will not be revealed by autopsy because there is no test for drowning. The identity of the decedent will also not be revealed to any scientific certainty, as the DNA will only confirm that the mother and decedent are somehow related. There is little evidentiary value gained with an autopsy, thereby lessening the importance of such information. The defense is

requesting the government undertake a task that will provide little, if any, insight into the identity or cause of death of Zaydun.

There is no issue with respect to equal access to information under Article 46, UCMJ and RCM 701(e). The government and defense currently have equal access to information with respect to scientific evidence and the decedent's body. Moreover, the government is held to the same limits regarding evidentiary admissibility and weight as the defense. This renders moot any cases cited by the defense relating to the government's advantage in access to information. In essence, both parties are operating on a level playing field.

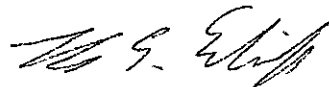
Operational concerns have played, and continue to play, a large role in the feasibility of conducting an exhumation and autopsy. Iraq is currently a hostile fire area and a combat zone. Within Iraq, several areas are particularly more hostile than others, to include Samarra. Any operations in or near Samarra expose soldiers to heightened danger. With this in mind, any operations outside operating bases in the Samarra area must be carefully weighed against the purpose of such an operation. Given the minimal evidentiary value of an autopsy, either today or in February 2004, any endeavor to exhume the body would be substantially outweighed by the operational risk. American forces do not routinely announce the time and location of troop activity in future operations for force protection purposes. In this case, any exhumation would require such coordination. The defense misplaces its emphasis on international cooperation concerns in arranging for the production of the body. In fact, the state of affairs in Samarra, Iraq is what hinders the free flow of information between Iraq and the United States. The issue is not one of cumbersome international bureaucracy, but one of commanders willing to put their soldiers at risk for an operation that will provide minimal benefit.

The defense requests production of informants that report that Zaydun is alive after 3 January 2004. The government endeavored to identify and produce these informants for several weeks. Attached to this motion is a memorandum for record detailing the government's efforts to produce these witnesses. In summary, the informants are not willing to reveal their identity and are unwilling to testify in a military trial. Abating proceedings will not provide any useful remedy for the purpose of identifying and producing these witnesses.

CONCLUSION

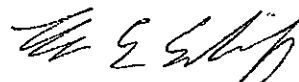
The government respectfully requests that the court martial not be abated. Further delay will not produce any further information of central importance, and the government and defense are operating on the same set of facts concerning identity and

cause of death. Any further evidence gained by an autopsy is minimal and must be considered in light of the operational reality of Samarra, Iraq.



Thomas E. Schiffer
CPT, JA
Trial Counsel

I certify that I have served or caused to be served a true copy of the above on Military Judge and trial defense counsel on 2 December 2004.



Thomas E. Schiffer
CPT, JA
Trial Counsel



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

REPLY TO
ATTENTION OF:

AFYB-JA-CL

As of 23 November 2004

MEMORANDUM FOR Record

SUBJECT: Record of Search for Iraqi Witnesses for Defense in U.S. v. Perkins and United States v. Saville

1. The purpose of this memorandum is to record government efforts to identify and produce informants that may have exculpatory information in the case of United States v. Tracy E. Perkins and United States v. Jack M. Saville. On 26 October 2004, the military judge in Perkins ruled the case was continued in order to search for informants that state Zaydun, the alleged victim of manslaughter, is alive. CPT Alex Williams is the former 1-8 Infantry Battalion S-2. He informed defense counsel that these witnesses can be found in Iraq.

2. Listed below is a chronology of government efforts to identify, and secure as witnesses, any informants that told CPT Williams Mr. Zaydun was alive.

a. Government counsel spoke with CPT Williams on 26 October 2004 in order to determine exactly what he knows and what information was passed on to 1-8 Infantry Battalion's replacement unit, 1-77 Armor Battalion. CPT Williams generally explained the informant network he had in Iraq, how informant information was passed to him, and which informants knew what information. After getting a general overview from CPT Williams, government counsel sought specific details concerning the informants, how to find them, their names, and other particular information in order to find them. Generally, CPT Williams was uneasy about passing along informant information to government counsel. As a remedy, government counsel arranged a face-to-face meeting between CPT Williams and CPT Daniel Hull, the 4ID Analysis and Collection Element (ACE) commander, in order to facilitate a full and thorough exchange of information. Prior to meeting CPT Hull, CPT Williams insisted on speaking with defense counsel before proceeding with any information sharing and reiterated that he was present at Fort Hood on SFC Perkins' behalf.

b. CPT Hull, ACE commander, 4ID, spoke with CPT Williams on 26 October 2004. During this discussion, CPT Hull elicited the following information:

(1) CPT Williams turned over a list of informants to CPT Booker, S2, 1-77 AR BN, 2BCT, 1ID. He also turned over a list of high value targets (HVTs) and the local Black List. CPT Williams stated that he introduced the informants to CPT Booker during the transfer of authority from 4ID to 1ID. The battle handover between 1-8 Infantry and 1-77 Armor occurred in February and March 2004 in Balad, Iraq.

(2) CPT Williams did not report any information concerning informants to higher headquarters, to include the 4ID HQ or 3BCT, 4ID HQ. He stated he did not send the information to higher headquarters because "the fight was at the company and platoon level, and brigade was doing their own thing." CPT Williams did not enter informants into any databases. The specific report at issue in this case was passed to his battalion commander and battalion executive officer. No tactical human intelligence team (THT) operated at the battalion level and thus no information was passed to a THT team. A digital copy of the report at issue was not passed to brigade or division.

(4) On about 15 January 2004, CPT Williams gave the informants a photo of Zaydun, the first two names of Zaydun, and a tribal name. The photo used was a head and shoulders picture in front of a flower and UFO backdrop; essentially, it was a low cost studio portrait. Zaydun had no easily identifying marks or scars on his face. He then asked the informants to "see if he is alive." On 23 January 2004, the informants came back and stated that they had positively identified Zaydun as alive.

(5) CPT Williams said he met with the informants on a weekly basis, and was always approached by them; that is, he never approached the informants with requests to meet with them. CPT Williams describes the group by the name of Gez Gazonies (phonetic spelling), and stated they are former Iraqi Intelligence Service (IIS) members and part of a religious fanatical group. The group used Thuraya phones to talk and could provide latitude/longitude grids to locations. The group always presented information in pre-written Arabic documents, which would then be translated into English by translators on the FOB. CPT Williams stated that he does not have any copies of either the Arabic or English documents because they were all destroyed. CPT Williams did not turn over any copies of these reports to CPT Booker and 1-77 AR. CPT Williams never paid these informants and therefore there is no money transactions logged or recorded. He only knew the first names of the informants: Ameer Abdula and Mahamed.

(6) CPT Williams said he passed the informants on to CIA agents working in the area of operations (AO). The CIA AO covered an area north of Baghdad that was roughly the size of two brigades' AO. It included the cities of Baqubah and Balad. CPT Williams could only provide the first names of the CIA agents—Cliff, Peter and John.

c. On 26 October 2004, CPT Hull pulled up the enemy prisoner of war (EPW) log for 1-8 Infantry during the deployment, sorting the data by date-time group. CPT Hull reported that there was no log of the two detainees that were pushed off the bridge, but there were other curfew violators listed in the EPW log. CPT Hull acknowledged the lack of entry could be a result of the unit not reporting the information to the battalion.

d. On 27 October 2004, the ACE Chief, MAJ John Murphy, requested a download from 2nd BDE, 1ID in Iraq. Specifically, MAJ Murphy requested 1-8 Infantry's databases, as they existed from the battle handover from 1-8 Infantry to 1-77 Armor. The ACE received 1-77 Armor's S2 database, which was created with 1-8 Infantry's initial battle handover information and built upon by 1-77 Armor since the handover, creating a comprehensive rollup of data for that AO. This database is being researched for any pertinent data relating to the informants in this case.

e. On 27 October 2004, the ACE NCOIC, SFC Forsman, ran a check on the Gez Gazonies using open source methods. SFC Forsman received no hits using several different phonetic spellings. The closest conceivable match found was a group called the GEZ. This group existed in Northern Iraq in the predominantly Kurdish areas around Kirkuk and north of Kirkuk.

f. On 28 October 2004, a copy of the secret report was provided to the ACE. Using various data provided in the report in question, the ACE will run checks of the 1-77/1-8 databases for matches.

g. On 28 October 2004, MAJ Murphy, ACE Chief, reviewed the document in question and requested further information from MAJ Joe Barber, the 2BCT, 1ID S2 in Iraq. MAJ Barber responded that information was difficult to track because much of it was destroyed or erased prior to the battle handover with 1-77 Armor.

h. On 2 November 2004, government counsel met with CPT Hull to obtain a status update. CPT Hull reported that the ACE was conducting ongoing database searches for any information related to the informants and no matches were found yet. CPT Hull recommended obtaining the hard drives from the 1-8 IN S2 office in order to conduct additional searches for information. He also stated that the 1-77 AR source registry will be requested in order to cross check the names given by CPT Williams.

i. On 3 November 2004, the government emailed CPT Booker, 1-77 AR requesting additional information on the informants and his personal knowledge of the identity and location of the informants. On 4 November, the government received a response from CPT Booker, who stated that he knew which informants I was asking about and had a copy of CPT Williams' report. He also stated any further detailed information would have to be transmitted via SIPRNET. On 4 November, the government sent a SIPRNET email to CPT Booker outlining all of the information requested.

j. On 8 November 2004, the government contacted CPT Booker via telephone. We discussed the SIPR email sent to him and generally the task at hand. He stated that he would reply to the SIPR email by the next day. On the telephone we discussed his ability to contact the informants. He stated that he could possibly contact them, but that these informants have not been used for almost three months. He does not know whom the informants receive their information from and does not know the identity of the informant network. He stated that it would be impossible to find the identities of the network because the informants will not reveal their identity. He stated that he has used these informants before and they were reliable and accurate. He stated that he could possibly have the informants answer a list of questions or complete a sworn statement if he can regain contact with them.

k. On 9 November 2004, the government emailed CPT Booker additional questions via SIPR and requested a response to the original email.

l. On 10 November, CPT Booker replied to the original email and the subsequent email with answers to all questions concerning the identity of the informants and our ability to produce them. The gist of his response was that he has been trying to contact the informants again but has not been able to do so; that he would not be able to produce the network of individuals with firsthand information; and the informants expressed reluctance to continue working with the Americans over the past few months. (Background: Over the past few months, detainee operations have changed so that the standard of proof required to keep individuals detained is higher. As a result, more detainees are being released after a short period of detention. This in turn is creating a general reluctance for informants to come forward, as the detainees are being released and informants are more fearful for their personal safety.) Thus, CPT Booker has not been in contact with this informant for almost three months. He has been trying to contact the informant for the past month to no avail.

m. On 14 November 2004, CPT Booker sent a SIPR email stating the informant walked on to his forward operating base unannounced. The government responded on 16 November 2004, and provided to CPT Booker a list of questions for the informant to answer. The questions pertain to the identities of the informant network, the identity of the informant, and his willingness to testify at a military court. On 19 November 2004, the government sent another email to CPT Booker because there was no word back from CPT Booker whether the informant is still available or whether the informant returned again to answer the questions. The government sent another SIPR correspondence on 22 November 2004 requesting an update.

n. On 16 November 2004, the government met with CPT John Shermer, the intelligence officer for 1-66 Armor Battalion, 4th Infantry Division. 1-66 Armor's area of operations during the deployment was the city of Samarra. As such, all of CPT Shermer's intelligence information in his databases pertains to

the Samarra area. CPT Shermer ran a database search of the intelligence report produced by CPT Williams. CPT Shermer cross-referenced all names, grids and significant locations from the report with his database, and there were no hits except for two names. The two names hit were unrelated to the incident in question. One name was a local HVT that feigned his death and was subsequently captured by U.S. Forces. The other was a local HVT commonly known in the Samarra area; the report alleges that other relatives of Zaydun have ties to the individual. CPT Shermer could not provide any further information concerning the informants or the basis of their knowledge, but did run a check of the substantive information of the report.

o. On 22 November 2004, the ACE/ 104 MI Battalion, 4th Infantry Division sent an update about their search for information. The ACE reported the following actions since 3 November 2004:

(1) Requested, obtained, and searched the 1-8 Infantry detainee log for any information concerning the alleged victims or the informants with negative results.

(2) Requested the informant source registry covering January 2004 to the 1ID ACE.

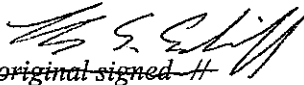
(3) Tasked the counter intelligence/ human intelligence (CI/ HUMINT) section with confirming or denying any key facts relating to the report or the informants. Negative results after searching the CI/ HUMINT databases and online resources.

(4) Submitted a formal request for information (RFI) to 1ID ACE requesting a confirmation or denial of the key facts from the intelligence report generated by CPT Williams.

p. On 23 November 2004, the government spoke to CPT Booker. CPT Booker stated that the informant was given the list of questions on 17 November 2004. The informant clarified that he did not have personal information on the incident. CPT Booker told the informant to have the network contact with first hand information answer the questions and come to the Forward Operating Base (FOB). On 19 November 2004, the informant returned to the FOB and stated the network contact was unwilling to answer any questions or appear in person. The informant stated the reason for his unwillingness to appear in person was not case-specific, but a general unwillingness to come forward for fear of his identity being revealed. CPT Booker reiterated that the informant initiated contact with U.S. Forces, and CPT Booker's ability to contact the informant is contingent on the informant's willingness to meet with U.S. forces.

q. On 19 November 2004, the informant gave the Tactical HUMINT Team attached to 1-77 Armor Battalion a large list of names and leads. He also indicated that he would not be returning, and the THT believes this is the last time they will see or use this informant.

3. The POC for this memorandum is the undersigned at (254) 287-1781/ thomas.schiffer@us.army.mil.


// original signed //
THOMAS E. SCHIFFER
CPT, JA
Chief of Military Justice

**SCIENTIFIC
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Paul C. Giannelli
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CHAPTER 19

PATHOLOGY*

- § 19-1. In General.
- § 19-2. The Pathologist.
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- § 19-4. Identity of Decedent.
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 - § 19-10(A). Necessity for Pathological Testimony.
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- § 19-11. Selected Bibliography.

§ 19-1. In General.

The forensic pathologist serves as a medical detective¹ and has a critical role in the forensic investigation of death. The pathologist is one of the best qualified experts on the subject of cause of death, and is the best qualified expert on the manner or mode of death. The pathologist's opinions are vital not only because of his expertise but also because other experts' opinions on these subjects are so often wrong. In one study, researchers contrasted pathologists' opinions after an autopsy with other professionals' opinions formed before the autopsy.² In the case of male decedents, the other professionals'

*The authors wish to express their appreciation to Dr. Michael Graham, St. Louis University School of Medicine, who reviewed this chapter in both editions of this text.

1. Feegel, "The Medical Detective," 14 *Trial* 22 (Oct. 1978).

2. Asnaes & Paaaske, "The Significance of Medicolegal Autopsy in Determining Mode and Cause of Death," 14 *Forensic Sci. Int'l* 23 (1979). See also Ajiki, Fukunaga, Saijoh & Sumino, "Recent Status of the Medical Examiner System in Japan:

opinions on cause of death were erroneous in 23.4% of the cases, and their opinions on manner of death erred in 46.9% of the cases. Moreover, the forensic pathologist plays a pivotal role coordinating the work of other forensic investigators. During the autopsy, the pathologist may collect samples for analysis by criminalists, serologists, and toxicologists; the pathologist typically provides these other investigators with general guidance as to the type of tests they should conduct. If the pathologist is serving as medical examiner, the other experts may be members of his staff.

This chapter discusses both forensic pathology and the law governing the admission of pathological testimony. After reviewing the pathologist's qualifications and the autopsy procedure, the chapter reviews the various scientific determinations made by the pathologist — the identity of the decedent; how — in what manner did the decedent die; when — what was the time of death; and where — the place of death. Finally, legal limitations on pathologists' testimony are discussed.

§ 19-2. The Pathologist.

For centuries scientists have contributed to the resolution of legal disputes, including controversies revolving around deaths.⁴ However, before the Middle Ages, scientists' involvement in the legal system was sporadic and informal.⁵ During the Middle Ages, two major systems emerged for ensuring scientific input into the investigation of death.⁶ One system developed in continental Europe.⁷ In Europe, scientific institutes were created to conduct medicolegal investigations; the institutes were relatively free from political influence.⁸ By the 18th and 19th centuries, numerous European universities had well-devel-

Demographic Variation of Medicolegal Deaths in Hyogo Prefecture and Uncertainty in Medicolegal Investigations Conducted by Medical Practitioners," 51 *Forensic Sci. Int'l* 35 (1991); Albreksten & Thomsen, "Detection of Injuries in Traumatic (sic) Deaths. The Significance of Medico-Legal Autopsy," 42 *Forensic Sci. Int'l* 135 (1989) (in 34% of 218 deaths investigated, the hospital missed injuries detected in a subsequent autopsy; in 5% of the cases, the overlooked injuries were the cause of death); Segerberg-Kontinen, "Determination of Cause and Mode of Death Before and After Medicolegal Autopsy: A Comparative Study," 33 *J. Forensic Sci.* 441 (1988).

3. *Id.*

4. Wecht, "Science and the Law: Hard Evidence for the Courtroom," 19 *Trial* 48 (Jan. 1983).

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

oped curricula in legal medicine.⁹ A second, competing model emerged in England. The position of coroner was created in 1194.¹⁰ In contrast to his European counterpart, the English coroner was an appointed political functionary. Soon after the creation of the coroner's office, the coroner was assigned the duty of investigating deaths.¹¹ Justices of the peace assumed this duty for a period of time; but in the late 19th century, the duty was again assigned to coroners.¹²

When the colonies were founded in North America, they had to establish their own system of death investigation. Since the English represented the majority in most colonies, it was expectable that the colonies initially embraced the English coroner model.¹³ The colonies modified the coroner's position by making the office elective.¹⁴ The result was that many coroners had absolutely no legal or medical background.¹⁵

Eventually the continental medical examiner system gained a foothold in the United States. The first American medical examiner offices were created in Boston's Suffolk County in 1877 and New York City in 1915.¹⁶ The medical examiner is appointed; and to be eligible for appointment, the person must possess certain minimum medical qualifications.¹⁷ Twenty-three states have statewide medical examiner systems, and another 13 states have medical examiner offices in particular localities, usually major cities.¹⁸ In most of these states, the appointee must be a pathologist.¹⁹ In the remaining states including Delaware, Iowa, Rhode Island, New Jersey, and Tennessee, there is a preference for forensic pathologists.²⁰

Within the medicolegal community, the medical examiner divides the labor of medicolegal death investigation with the coroner.²¹ In a jurisdiction employing the coroner system, the coroner may have some legal authority such as subpoena power; but the key tribunal is the jury of inquest.²² The jury can order an autopsy and, on the basis of

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 49.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. Wecht, "Use of Forensic Pathology in Defending Criminal Cases," in 2 *Forensic Science* 25-12 (C. Wecht ed. 1983).

20. *Id.*

21. Gantner, "The Autopsy and the Law," 69 *Am. J. Clin. Path.* 235 (1978).

22. *Id.* at 236.

that autopsy, issue official rulings on the cause and manner of death. The coroner has administrative responsibility for the presentation of evidence to the inquest jury. The coroner may hire a non-pathologist physician, general pathologist or, occasionally, a forensic pathologist to conduct an autopsy and testify about the autopsy before the jury at the inquest.

The forensic pathologist plays a larger role in death investigation in jurisdictions opting for the medical examiner model. To begin with, the medical examiner typically has broader jurisdiction than a coroner. The enabling legislation creating coroner offices usually limits the coroner's jurisdiction to the investigation of unnatural deaths, untended deaths, and deaths in which no physician is prepared to execute a death certificate.²⁵ The medical examiner's office has authority over more types of cases. The enabling legislation for such offices frequently contains lengthy, detailed lists of cases such as drownings, criminal abortions, and electrocutions that the medical examiner must investigate.²⁶

Furthermore, the forensic pathologist serving as a medical examiner has greater independence during the investigation. The forensic pathologist personally conducts the autopsy; directs the investigative efforts of the other forensic investigators in the medical examiner's employ; and personally rules on the cause and manner of death.

Within the medical community, the forensic pathologist shares responsibility for death investigation with the general pathologist.

The broad field of pathology has two major subdivisions: anatomic pathology and clinical pathology.²⁹ Anatomic pathologists study the structural alterations or changes caused by disease and injury processes.³⁰ The primary work of clinical pathologists consists of the laboratory examination of samples removed from the body such as blood specimens and other body fluids.³¹ To qualify as a pathologist, either anatomic or clinical, a physician must complete five years of specialized training (a residency) after graduating from medical school.

23. *Id.*

24. Wecht, *supra* note 19, at 25-12-13.

25. *Id.* at 25-12.

26. *Id.* at 25-13.

27. Gantner, *supra* note 21, at 236.

28. Wecht, "Forensic Pathology: A New Prescription for Civil Cases," 19 *Trial* 4 (June 1978).

29. A. Moenssens, F. Inbau & J. Starrs, *Scientific Evidence in Criminal Cases* § 5.0 at 270 (3d ed. 1986).

30. *Id.*

31. *Id.*

school.³² After qualifying, the pathologist is capable of performing many types of work, including research. Most will go on to fellowships for an additional one or two years of subspecialty training. However, in fact, many pathologists go to work either in hospital medical schools or on medical examiner staffs.

There is a marked contrast between the orientations of hospital and forensic pathology. It is true that to qualify at all as a pathologist, the hospital pathologist must have four or five years of specialized training. However, even during that extended period, he probably participated in only 100 autopsies. Moreover, albeit specialized, the training does not extensively cover such subjects as wound interpretation, manner of death determination, or time of death in depth. The hospital and forensic pathologists differ not only in their training; they also differ in the nature of their work. In the overwhelming majority of hospital autopsies, the pathologist knows the identity of the decedent and has a relatively exhaustive clinical history, including detailed observations of the person before death.³³ During the autopsy, the hospital pathologist is usually not concerned about the manner of death; almost all the deaths that he will study are natural deaths.³⁴ The hospital pathologist is primarily concerned with the extent of the disease, the effects of the disease on the body, and the effect of the treatment of the disease rather than the cause of the disease.³⁵

The forensic pathologist has a different background and function. Forensic pathology has been a recognized specialty since 1959.³⁶ In addition to the training that a hospital pathologist receives, a forensic pathologist requires another year of specialized work. In that period, the pathologist receives training in addition to previous training in anatomic pathology or in both anatomic and clinical pathology.³⁷ There are roughly 30 approved training programs in forensic pathology.³⁸ The programs vary in content. While most qualify the student to sit for the forensic pathology certification examination in addition to anatomic or anatomic/clinical pathology, other programs lead to combined certification in anatomic and forensic pathology.³⁹ However, whatever the

32. *Id.* at 218-19.

33. Wecht, *supra* note 28, at 42.

34. *Id.*

35. *Id.* at 42-43.

36. Wecht, "Forensic Pathology for Trial Lawyers," in *Scientific and Expert Evidence* 1141, 1143 (2d ed. 1981); A. Moenssens, F. Inbau & J. Starrs, *supra* note 29, at § 5.01, at 270 n.1.

37. *Id.* at 219.

38. Feegel, "The Forensic Pathologist as an Expert in Civil Cases," in 1 *Forensic Sciences* 23-6 (C. Wecht ed. 1983).

39. *Id.* at 23-6-7.

program of study, the forensic pathologist will be exposed to such subjects as wound interpretation, firearm residue analysis, anthropology, toxicology, trace evidence, serology, and legal causation. By the end of these four or five years of graduate training, the pathologist will probably have observed or participated in 400-500 autopsies. After a minimum of one year of intensive training at an accredited forensic pathology center and performance of autopsies at the center, the candidate is eligible to sit for the examination for certification as a forensic pathologist by the American Board of Pathology.⁴⁰

During an autopsy, the forensic pathologist is concerned with an entirely different set of questions than the hospital pathologist. The decedent's identity may be unknown, and the forensic pathologist must guide the investigation to uncover the identity.⁴¹ Even if the decedent's identity is established, the forensic pathologist has a different focus than the hospital pathologist. The forensic pathologist must determine the causation and manner of the death.⁴²

Whenever a serious question as to the cause or manner of a death arises during a legal proceeding, the question should be studied by a certified forensic pathologist.⁴³ A coroner may have no medical expertise at all, and a hospital pathologist lacks the specialized training and orientation to conduct an optimal investigation. Unfortunately, there is an acute shortage of forensic pathologists in the United States. At the present time, there are approximately 500 forensic pathologists in America, and only half of them work full-time in the field of forensic pathology.

§ 19-3. The Autopsy and Other Procedures.

There are various tools at the pathologist's disposal. The primary tool, the autopsy, is an examination that the pathologist personally conducts. Many of the tools such as toxicological tests are conducted by consulting experts and members of the medical examiner's staff subject to the pathologist's supervision.

§ 19-3(A). Autopsy.

Obtaining the Body for Autopsy

In some cases, the body has already been buried; and it must be exhumed for autopsy. In almost all jurisdictions, either by statute or

40. Wecht, *supra* note 36, at 1143.

41. Wecht, *supra* note 28, at 43.

42. *Id.*

43. *Id.* at 43.

common law, courts have the power to order disinterment.⁴⁴ The court may enter the order on the motion of a defendant or an appropriate representative of the state, such as a prosecutor or medical examiner.⁴⁵ The party moving for a disinterment order must ordinarily establish the following facts:

First, the condition of the corpse is such that its examination will probably yield certain forensic evidence.⁴⁶ If the time lapse is too substantial and decomposition has probably progressed too far, the cadaver may no longer yield forensic evidence.⁴⁷

Second, the forensic evidence will be material to establishing the defendant's guilt or innocence.⁴⁸

Third, the forensic evidence cannot be obtained by any reasonably available, alternative means. The evidence will not be merely cumulative or corroborative.⁴⁹ The existence of several eyewitnesses may make disinterment unnecessary.⁵⁰

If the body has not been buried yet, the autopsy laws determine whether the body will be delivered to the pathologist for autopsy. Those laws vary widely from jurisdiction to jurisdiction.⁵¹ In a few jurisdictions the autopsy law is set out in the state constitution, but in most states the law has been codified in statute.

These laws require that: Certain types of deaths be reported to the medical examiner; the body be delivered to the medical examiner; and the medical examiner investigate the death to determine its cause and manner. In some jurisdictions, the autopsy law contains a detailed list of the types of reportable deaths, including abortions, electric shock, explosions, industrial deaths, deaths of prisoners and other persons in custody, lightning, medication overdose, poisoning, suffocation, vehicular accidents, and cases in which no physician is willing to sign a death certificate. However, the typical statutory pattern is to list major categories of deaths, notably accidents, homicides, suicides, sudden deaths under suspicious or unusual circumstances, and deaths involving contagious or infectious diseases. In sum, in jurisdictions granting the medical examiner the most expansive jurisdiction, the medical examiner will investigate any death other than an expected death with

44. Annot., 63 A.L.R.3d 1294, 1300 (1975).

45. *Id.* at 1302.

46. *Id.* at 1298.

47. *Id.* at 1299, 1319-20.

48. *Id.* at 1298.

49. *Id.* at 1299.

50. *State v. Whiteaker*, 499 S.W.2d 412, 416-17 (Mo. 1973), *cert. denied*, 415 U.S. 949 (1974).

51. For an excellent compilation of the state autopsy laws, see Wecht, "Autopsy Laws and Procedures," in 2 *Forensic Sciences* 26-90-212 (C. Wecht ed. 1983).

a known natural cause. In most states, roughly 30% of the deaths fall within the medical examiner's jurisdiction.⁵²

Conducting the Autopsy

After the body is delivered to the forensic pathologist, the pathologist must determine the type of investigation necessary. Autopsy procedures and protocol vary not only from state to state but also from one medical examiner's office to another within the same state.⁵³ The following is a description of the procedures that many offices follow.

If an exhumation has been authorized, the body and coffin are carefully removed from the ground.⁵⁴ Rough handling can cause new damage to the body — artefactual injuries — that may mislead the pathologist during the autopsy.⁵⁵ In some cases, when the body and coffin are removed, the investigators will take samples of the surrounding earth and ground water.⁵⁶ Toxins in the earth or water may have seeped into the body, and the toxins may result in an error in the toxicological tests ordered by the pathologist.⁵⁷

Whether the body is delivered to the pathologist immediately after discovery or only after exhumation, the pathologist's first task is to decide upon the proper scope of the investigation. Suppose, for example, that the case seems relatively simple and straightforward:

52. Feegel, *supra* note 1, at 23. Autopsy rates vary widely from state to state. The following is a list of the percentage of deaths involving children under age nine which result in autopsies: Rhode Island 67.3%, Vermont 61.3%, New Hampshire 59.1%, Washington 59%, Nebraska 58.4%, Nevada 58.3%, Colorado 58%, Massachusetts 57.8%, Minnesota 57.4%, Alaska 56.7%, Wisconsin 55.6%, Illinois 54.8%, Montana 53.9%, California 53.8%, Iowa 52.6%, Oregon 52.1%, Delaware 50.7%, Washington, D.C. 50.7%, Ohio 50.2%, Michigan 50%, Missouri 50%, Idaho 50.3%, North Dakota 49.7%, Florida 48.8%, New York 48.8%, New Mexico 45.9%, Pennsylvania 45.5%, Texas 45.4%, New Jersey 45%, Utah 44.4%, Maryland 43.8%, Kansas 43.7%, Louisiana 41.5%, Wyoming 41.1%, Connecticut 40.8%, Arizona 40.7%, South Carolina 40.5%, Hawaii 39.4%, North Carolina 39.2%, Oklahoma 38.9%, Maine 38.6%, Alabama 38.5%, South Dakota 37.7%, Indiana 37.5%, West Virginia 37.5%, Georgia 37.1%, Virginia 35.6%, Kentucky 35.4%, Arkansas 31.4%, Mississippi 28.8%, and Tennessee 23.1%. Lundstrom & Sharpe, "Some Parents Getting Away with Murder," *The Sacramento Bee*, Apr. 21, 1991, at A20. There are also marked regional differences in autopsy rates: Pacific 54%, New England 53%, W. North Central 51%, E. North Central 51%, Mountain 49%, Mid-Atlantic 47%, W. South Central 43%, S. Atlantic 42%, and E. South Central 31%. *Id.*

53. See generally Wecht, "Autopsy Laws and Procedures," in 2 *Forensic Sciences* ch. 26 (C. Wecht ed. 1983).

54. *Id.* at 26-17.

55. *Id.*

56. *Id.*

57. *Id.*

There is likely to be little dispute over the cause or manner of death.⁵⁸ In this event, the pathologist may examine the body externally and remove fluids from only the heart, spinal canal, eyes, and bladder for toxicological examination.⁵⁹ In selected non-homicide cases in which there is little doubt about the circumstances of death, such a limited examination — often called a postmortem view — may be warranted.⁶⁰

However, there are often latent clues to the true cause or manner of death that will be discovered only by a more thorough examination.⁶¹ For this reason, experienced pathologists usually err on the side of caution and conduct a more comprehensive investigation.⁶² A complete examination also affords the pathologist a better opportunity to assess, among other things, the length of survival and the potential for carrying out activity after an injury.

A comprehensive investigation usually begins with a meticulous study of the clothing and personal effects associated with the body. This physical evidence can help answer the key questions in medicolegal death investigation. Identification in the pocket of a pair of pants may help answer the question of who was the decedent. Soot from the discharge of a firearm on the jacket may be of aid in deciding how the decedent died. Heavy clothing will affect the rate of cooling and be relevant in estimating when death occurred. Trace evidence such as fibers or soil on the body or clothing may assist in identifying the place of death.

After examining the clothing and personal effects, the pathologist makes a careful external examination of the body. This examination should include: scalp, eyes, nose, ears, mouth, neck, thorax, abdomen, back, genitalia, upper extremities, and lower extremities.⁶³

An internal examination of the body cavity follows the external examination. Depending upon his preference, the pathologist initially makes a U-, V-, or Y-shaped primary incision to expose the body cavity. The pathologist carefully inspects the following internal areas: the neck, thorax, abdomen, cranial cavity and, when appropriate, the spinal cord.⁶⁴ In each area, the pathologist examines the various organs *in situ* (in place). Organs needed for subsequent study are then removed. The pathologist may remove the organs one by one or *en bloc* (as a group).

58. Bucklin, "Forensic Pathology for Attorneys," 12 Cal. W.L. Rev. 197, 199 (1976).

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. J. Weston & V. McCarty, *The Medicolegal Investigation of Death in New Mexico* 99-101.

64. *Id.* at 113-15.

While conducting the external and internal examinations, the pathologist gathers samples for other forensic experts on the medic examiner's staff. During the inspection of the decedent's clothing at the external examination, the pathologist gathers samples for the criminalists specialized in trace evidence analysis.⁶⁵ The samples may include the clothing itself, hair from various regions of the body, fingernail clippings, and tracings of imprints on the body.⁶⁶ During the internal examination, the pathologist collects samples for serologists and toxicologists. The serological samples might include blood and swabbings from the mouth, vagina and rectum, in cases of suspected rape.⁶⁷ Chapter 20 discusses the samples collected for toxicological studies.⁶⁸

During the external and internal examinations, the pathologist should ensure that his observations are recorded in a permanent fashion. Some pathologists dictate to a secretary or assistant during the examinations while others prefer to tape record their verbal descriptions of the observations simultaneously with the observations.

Memorializing the Autopsy in a Report

Just as autopsy procedures vary widely, the format of autopsy reports varies. Figure 19-1 is a sample autopsy report prepared by a forensic pathologist.⁶⁹ The report is typical in the sense that it contains the types of data commonly found in most autopsy reports.

Doe, John

AUTOPSY #5000-82

ST. LOUIS COUNTY MEDICAL EXAMINER

Pathologist: George E. Gantner, M.D.

Pathologist: Michael Graham, M.D.

Pathologist: Elizabeth Laposata, M.D.

Name of Deceased: Doe, John

Address: 233 Woodbourne Drive, St. Louis, Mo., 63105

Date and Time of M.E. Notification: 2/10/82/7:30 PM

Date/Time of Pronounced Death: 2/10/82/7:00 PM

[Known rather precisely from reports]

Autopsy: 2/10/82 at 9:30 PM

Date and Time of Injury [Best Estimate]: 2/10/82/6:30 PM

Race: White

65. *Id.* at 121.

66. *Id.*

67. *Id.* at 122-23.

68. *Id.* at 123-25.

69. Prepared by Dr. George Gantner, School of Medicine, St. Louis University, St. Louis, Missouri.

Sex: Male
Age: 54 years
Appearance of Age: Approximately as stated
Date of Birth: 6/7/27
Occupation: Not Currently Employed
Marital Status: Never Married
History suggests death by: Homicide
Death Certificate by: County Medical Examiner
Investigator: Mary Fran Ernst
Depth of Investigation: Toxicology plus Autopsy
Body Initially brought from: Public Place
Body then DOA: St. Louis County Hospital
Agency: County Police Department
The body was identified by accompanying papers which matched the body tags.
The police identified the body from eyewitnesses.
Identification by family members.
Medical Examiner's Case

External Examination: No clothing is present on the body. However, a bag of clothing accompanies the body. The body weight is estimated at 150 lbs (67.50 kgms.). The body length is 67 in. (170.18 cm.). The state of preservation is good in this unembalmed body. Rigor mortis is absent. There is a normal state of nutrition. The abdomen is flat. Lividity is unfixed and is primarily found on the posterior body surfaces and right side of the body. Cyanosis is absent. There is no peripheral edema present. Personal hygiene is good. The hair is brown. This represents the apparent natural color. The hair is worn medium length. The face is normally cleanshaven but has not been recently shaved. The body hair is of normal male distribution. The pupils are round, regular, equal and somewhat dilated. There is bilateral orbital ecchymosis present involving primarily the eyeballs. The irises are hazel. The teeth are in a fair state of repair. The gums are normal in appearance. The oral cavity is normal. The male breasts are normal. The skin is of normal color. An operative scar is present. There is an old scar 2 cm. in diameter located 4 cm. right of the umbilicus. This suggests an old gunshot wound. A patent orotracheal airway is in place. Monitor lead connectors are in place. There are marks from a cardiac stimulator. There is a gunshot wound entrance of the chest. There is a contusion of the forehead and neck.

Detailed Description of Specified Injuries

There is a gunshot wound entrance of the chest.

(1) This wound is located left of midline and 22.0 cm. (8.80 in.) below the level of the left shoulder. The hole is up to 12 mm. (.48 in.) in diameter with liquid blood oozing from it. It is round with the edges inverted and smooth. No tissue protrudes from this hole. The edges show an abrasion/contusion ring up to 16 mm. (.64 in.) in total diameter. Powder stipple is present which measures 25 mm. (1.00 in.) in diameter. This cannot be washed off indicating it is due to powder particles. Powder smudging surrounds the hole for a distance of up to 35 mm. (1.40 in.) from the center. It can be washed away. Dried blood from the wound is copious in amount. The pattern suggests a previous run pattern in the 180 compass direction. An incision into the wound shows extensive deeper hemorrhage. A bullet, seen on the X-rays, is found in the left pleural space and is recovered in evidence. Evaluation of this wound suggests that it is an entrance wound involving close range. X-ray shows the path traced with fine lead particles. This wound is related to the bullet found in the pleural space. The path of the

shot is straight, front to back and slightly from above, downward assuming the body in the upright position.

B. There is a contusion of the:

- 1) forehead
- 2) neck

(1) (Forehead) The contusions described measure up to 6.0 cm (2.40 in.) in diameter.

(2) (Neck) This contusion is diffuse in outline measuring up to 10.0 cm (4.00 in.) maximum dimension. It appears to involve deep hemorrhage but is without swelling. The surface is blue and red. The appearance suggests that it occurred around the time of death.

Body Cavities: The body is opened with the usual Y incision. The abdominal fat layer measures 20 mm (.80 in.) in thickness. Hemorrhage is present to match gunshot wounds described above. The peritoneal cavity shows no free fluid or adhesions. Peritoneal adhesions are absent. The right pleural cavity shows no air, fluid or adhesions. The left pleural cavity contains fluid measured at 1650 ml (49.50 fl. oz.). The fluid is bloody. The left pleura shows no adhesions. The blood is carefully sieved and a bullet is found. It is taken in evidence. The pericardial cavity contains fluid measured at 350 ml (10.50 fl. oz.). The fluid is bloody. No adhesions are present.

Neck Organs: The soft tissue of the neck is free of hemorrhage. The hyoid bone is intact. The glottis, laryngeal and tracheal airways are widely patent. The larynx is normal. The thyroid gland is normal. The parathyroids are not identified.

Mediastinum: The thymus gland is grossly normal.

Heart and Thoracic Organs: The heart weighs 475 gms (16.63 oz.). The surface of the heart shows a gunshot wound. A bullet has entered the midportion of the right ventricle anteriorly causing a round hole 12 mm in diameter. It has then passed through the septum and then exited in the posterior left ventricular wall through a 12 mm diameter round hole. The subepicardial fat is less in amount than normally seen. The left ventricle is hypertrophied. The left ventricular wall measures 26 mm (1.04 in.) and the right 3 mm (.12 in.). Blood in the chambers remains unclotted. The endocardium, cardiac valves and chambers are not remarkable. The circumference of the tricuspid valve is 100 mm (4.00 in.), the pulmonary 85 mm (3.40 in.), the mitral 110 mm (4.40 in.), and the aortic 90 mm (3.60 in.). The coronary arteries are found with partial atheromatous obstruction up to 50%. The cut surface of the myocardium is the normal reddish brown color.

Vascular System: The aorta shows moderate atherosclerosis. The systemic arteries in general are normal. The systemic veins are normal.

Lungs: The lungs together weigh 950 gms (33.25 oz.). A gunshot wound is found in the left upper lobe. The lung surface is red and purple in color. The lung tissue throughout is increased in firmness and decreased in crepitation. Both lungs show moderate amounts of congestion and edema fluid. The air passages contain bloody material. The pulmonary arteries are free of emboli, thrombi, and other gross lesions.

Liver: The liver weighs 1540 gms (53.90 oz.). The liver is reddish brown in color and of normal consistency. The surface and cut section are unremarkable.

Biliary Tract: The gallbladder and biliary tract are normal and free of stones.

Pancreas: The pancreas is normal in consistency and in appearance.

Gastrointestinal Tract: The esophagus is normal. The stomach contains undigested food material. The approximate gastric volume is 300 ml. (9.00 fl. oz.). The gastric mucosa is free of ulcers and other lesions. Both small and large intestines are normal.

Spleen: The spleen weighs 185 gms (6.48 oz.) and is normal on the surface and cut section.

Lymphatic System: The lymph nodes are normal in size and appearance.

Bone Marrow: The bone marrow is normal.

Adrenals: The adrenals are well supplied with lipoid material and are free of hemorrhage, inflammation, and primary and secondary neoplasms. The medullary portions are not remarkable.

Kidneys: The kidneys appear grossly normal and together weigh 275 gms (9.63 oz.). The cortex measures 12 mm (.48 in.) in thickness. The renal capsules strip with ease to reveal a normally smooth surface. There are no abnormalities of the cut surface of the kidney. The renal pelvis and ureter are not remarkable.

Urinary Bladder: The bladder contains urine measured at 150 ml (4.50 fl. oz.). The urine is clear and yellow. A diverticulum is present in the dome of the bladder. This is attached by a 2 cm. neck. The diverticulum is 8 cm. in diameter and is roughly spherical. No stones are present.

Male Genital System: The prostate gland is nodular. The cut surface exudes cloudy fluid. Both testes are normal. The penis is normal and circumcised. The scrotum is normal.

Cranial Cavity: The reflected scalp shows no evidence of contusion, hematoma, or other lesion. The calvarium and bones at the base of the skull are not remarkable. The dura mater and pia arachnoid are normal in appearance. The weight of the unfixed brain is 1520 gms (53.20 oz.). The cerebral hemispheres are symmetrical and normal in appearance. No brain injury is detected on careful search. Cut sections of brain substance show essentially normal structures throughout. The circle of Willis and other intracranial vessels are normal. The ventricular system and spinal fluid are normal. The pituitary gland is grossly normal. The pineal gland is not identified.

Spinal Cord: The spinal cord is not examined in this case.

Specimens saved for Toxicology and other studies include: Blood Urine Bile.

Special Studies available from the Medical Examiner's Office on this case include: Gross Polaroid photographs, Gross photographic color transparencies, X-rays as necessary, Blood type.

Special Studies Presumably available from the Police Laboratory include: Gross photographs for identification purposes, Gross photographs of injury patterns, Clothing examinations of various types, Bullet evidence or fragments, Fingerprints.

Police Officer Seizing Evidence: Evidence collected by Officer Daniel Jones DSN 364.

§ 19-3(A)

SCIENTIFIC EVIDENCE

Doe, John

AUTOPSY #5000-82

ST. LOUIS COUNTY MEDICAL EXAMINER

Final Diagnoses

SNOMED

- | | |
|--|--------------|
| 1. Gunshot wound entrance, Chest | TY2100M14520 |
| A. Gunshot wound of Myocardium | T33011M14510 |
| B. Gunshot wound, Left upper lobe | T28600M14610 |
| 1. Left hemothorax | TY2120M37000 |
| 2. Pericardial hemorrhage | T31000M37000 |
| 2. Coronary arteries, Atherosclerosis | T43000M52110 |
| A. Left ventricular hypertrophy | T32600M71000 |
| 3. Aorta, moderate atherosclerosis | T42000M52110 |
| 4. Fundus of urinary bladder, Diverticulum | T74100M32700 |
| 5. Prostate hypertrophy | T77100M72450 |

PATHOLOGY

§ 19-3(A)

Doe, John

AUTOPSY #5000-82

ST. LOUIS COUNTY MEDICAL EXAMINER

Data for Death Certificate

Part I Cause of Death

(Immediate cause): Gunshot wound left chest

Manner of Death: Homicide

Toxicology Notes:

Ethanol, drug and narcotic screen pending

George E. Gantner, M.D.

Michael Graham, M.D.

Figure 19-1

The first part of the report records demographic data, including such information as race, sex, age, occupation, marital status, and the time when the person was pronounced dead.

The next section memorializes the external examination of the body. This section begins with the body's uppermost parts and proceeds downward to the lowermost extremities. In the process, the section gives a detailed description of each injury exhibited by the body. The pathologist should provide an especially explicit description of any apparently significant wounds (e.g., gunshot wounds); the pathologist characterizes each wound as entrance or exit, and, among other things, describes its location, appearance (round, stellate, etc.), and states the dimensions of the wound. Any discolorations on the body's surface as well as any marks or scars that could serve as identifying marks are also mentioned. Many pathologists include diagrams of the front and rear views of the body and indicate the location of each wound, mark, or scar on the diagrams. Many medical examiner offices use a set of symbols to signify the wounds on the body. Figure 19-2 is a list of symbols that are commonly used in one medical examiner facility:

The next part of the report describes the results of the internal examination of the body cavities. While writing this part of the report, the pathologist attempts to correlate his observations of internal injuries with the external injuries mentioned in the previous part of the report. If the external injury was a bullet wound, the pathologist provides a detailed description of the pathway of the projectile in the body. The description will include the direction, path, and dimensions of the bullet track.

The next to last section of the report might be a list of final diagnoses. The pathologist would list, often in order of significance, each injury and disease process observed during the autopsy.

The last section of the report includes the data for the death certificate. This section customarily sets out the pathologist's opinions as to the decedent's cause and manner of death. If there have been serological, toxicological, or other studies, the pathologist could list those findings here.

Although the pathologist often sets out the initial demographic data in outline form, the balance of the autopsy report is usually written in complete sentences as a narrative. The narrative is likely to include a good deal of technical terminology. For that reason, while the attorney is reading the report, the attorney should have on his or her desk a medical dictionary or glossary. A list of useful references is included in the bibliography in § 19-11. Figure 19-3 lists some frequently encountered terms and abbreviations.

COMMON SYMBOLS TO INDICATE TYPES OF INJURIES⁷⁰
















Abrasion	
Abrasion with contusion	
Contusion	
Contusion, multiple, small	
Decubitus ulcer	
Gunshot wound, stellate	
Incision	
Laceration	
Laceration with contusion	
Mincing	
Mole	
Scar, irregular	
Scar, straight	
Scar, surgical	
Tattoos, diagram	

Figure 19-2

Glossary of terms in common use in medical records:

Laceration — any tear in the skin or other tissues that is caused by blunt force injury (e.g., dull instrument)

Contusion — any bruise

Abrasion — scrape

Ecchymosis — blue-purple, non-elevated patch of skin due to hemorrhage

⁷⁰ J. Weston & V. McCarty, *supra* note 63, at 104. Reprinted with permission.

PERLA — pupils equal reactive to light and accommodation. Normal response of eye during examination of a living person
NSR — normal sinus rhythm — normal heart rhythm
SOB — short of breath
Discomfort — uncomfortable, uneasy; may be painful
Significant Discomfort — readily apparent discomfort
Excoriation — any superficial loss of substance such as a scratch
ETOH — alcohol as in ETOH on breath; ethanol
AOB — alcohol on breath
CAP — clear to auscultation and percussion — normal chest exam
Vaginal Vault — vaginal cavity
Introitus — area around vaginal opening
Posterior fornix — back part of vagina at the cervix (uterus)
Anterior — front
Posterior — back
Ventral — front
Dorsal — back
Superior — toward head; situated above
Inferior — toward feet; situated below
Distal — remote; farther from the point of reference (opposite of proximal)
Medial — toward midline of body (opposite of lateral)
Phalanx, Phalanges — finger(s)
Forearm — forearm
Arm — upper arm
Pectoral — breast area
Precordial — middle of chest
Epigastric — stomach area; upper central abdomen
LLQ — left lower quadrant of abdomen
RUQ — right upper quadrant of abdomen
RLQ — right lower quadrant of abdomen
LUQ — left upper quadrant of abdomen
Substernal — mid chest; behind breastbone
Manubrial — mid chest
Mandibular — pertaining to the lower jaw
Maxillary — pertaining to the upper jaw
Orbital — around eye
Pinna — ear
Cervical — neck
Tarsal — having to do with the ankle/foot
Incision — a cut

Figure 19-3⁷¹

71. Wright, Medical Evidence — Outline for Trial Advocacy for Prosecutors (unpublished manuscript on file with the National College of District Attorneys, Bates College of Law, University of Houston, Houston, Texas). Reprinted with permission of the National College of District Attorneys.

§ 19-3(B). Other Procedures.

As a medical examiner, the pathologist heads or is a part of a multidisciplinary team. The team includes criminalists who conduct trace analyses, bacteriologists, serologists, anthropologists,⁷² and toxicologists. Many of these experts will be employees of the medical examiner's office; others serve as independent contractors; and still others work on the staff of other agencies such as police departments. Whatever the employment status of these other experts, the forensic pathologist coordinates their efforts. This coordination is a cooperative partnership; the pathologist collects samples for these other experts, and in turn they analyze the samples and submit their findings to the pathologist. During his or her training and experience, the pathologist comes to learn a good deal about other disciplines such as firearms examination and toxicology. In many cases, in addition to submitting samples for general analysis, the pathologist will suggest that the samples be subjected to particular tests. At the conclusion of the medicolegal investigation, the pathologist must integrate all the experts' findings and arrive at conclusions about cause and manner of death, consistent with those findings.

§ 19-4. Identity of Decedent.

A forensic pathologist can make a unique contribution to the fact-finding process in criminal cases. Attorneys and judges usually call upon the forensic pathologist for aid in answering four basic questions: How did the decedent die — the cause, mechanism, or manner of death? When did the decedent die? Where did the decedent die? And who was the decedent?

In most cases, there is little doubt about the identity of the decedent. However, in some instances, even after the initial police investigation, the decedent's identity is unknown or in serious doubt. In those cases, the forensic pathologist must address the question of identity. The pathologist and allied experts can sometimes answer the question definitively; in other cases, they can narrow the class of persons that the decedent belonged to.

⁷² Mann & Ubelaker, "The Forensic Anthropologist," 59 F.B.I. Law Enf. Bull. 20 (July 1990).

§ 19-4(A). Identifying the Decedent.

A number of techniques can lead to the scientific identification of the decedent.

The most well-known technique is fingerprinting, which is discussed in Chapter 16. That technique involves a comparison between prints lifted from the body and antemortem fingerprint records of known individuals. The fingerprint examiner may be able to make a positive identification even though the body has undergone extensive putrefaction.⁷³ If the epidermis or outer skin surface is still intact, the examiner can inject a special solution under the skin to bring out the prints.⁷⁴

If identity cannot be established by fingerprints, a forensic odontologist, a dentist specializing in medicolegal problems, may be able to identify the decedent. Forensic odontology is discussed in Chapter 13. Human dentition is extremely durable; the teeth can, for instance, survive a fire that would destroy the skin and make fingerprinting impossible. Like fingerprinting, this technique is comparative. The odontologist compares postmortem findings with antemortem dental records.⁷⁵

If neither fingerprinting nor forensic odontology establishes identity, a forensic radiologist may be able to make an identification based on peculiarities in the recovered portions of the skeleton.⁷⁶ (Even when

73. Bucklin, *supra* note 58, at 201.

74. *Id.*

75. Rudnick, "The Identification of a Murder Victim Using a Comparison of the Postmortem and Antemortem Dental Records," 29 J. Forensic Sci. 349 (1984). See also Skinner & Anderson, "Individualization and Enamel History: A Case Report in Forensic Anthropology," 36 J. Forensic Sci. 939 (1991) ("We report the presence, in the dental enamel of the primary and secondary dentition, of stress markers, termed striae of Retzius; whose locations correspond well with anecdotal reports and ... medical records which describe the timing of specific episodes of stress. The enhanced probability of personal identification from dental histological stress markers is evaluated"); Lorton, Rethman & Friedman, "The Computer-Assisted Postmortem Identification (CAPMI) System: Sorting Algorithm Improvements," 34 J. Forensic Sci. 996 (1989) (the researchers have refined the CAPMI software algorithms); Williams, Friedman & Lorton, "A New Algorithm for Use in Computer Identification," 34 J. Forensic Sci. 682 (1989) (the researchers revised the CAPMI software to list the records in the database by minimum number of mismatches); Lorton, Rethman & Friedman, "The Computer-Assisted Postmortem Identification (CAPMI) System: A Computer-Based Identification Program," 33 J. Forensic Sci. 977 (1988) (a computerized dental identification software program developed by the U.S. Army Institute of Dental Research (USAIDR)).

76. Marlin, Clark & Standish, "Identification of Human Remains by Comparison of Frontal Sinus Radiographs: A Series of Four Cases," 36 J. Forensic Sci. 1765 (1991); Jabonlonski & Shum, "Identification of Unknown Human Remains by Comparison of Antemortem and Postmortem Radiographs," 42 Forensic Sci. Int'l 221 (1989); Dailey & Furue, "A Photographic Technique for the Restoration of Damaged Radiographs," 33 J.

other identification modalities are possible, X-ray identification may be used for convenience or expediency.) This technique has enormous potential. Millions of medical X-rays have been taken and are still available in physicians' and hospitals' files.⁷⁷ The number of X-rays may exceed the number of fingerprints and dental records. Radiologic identification has been used successfully in the identification of victims of mass disasters such as the 1949 fire on the Great Lakes liner *Noronic*, which claimed 119 lives.⁷⁸ In a one-year comparative study in the St. Louis metropolitan area, the medical examiner made more identifications through medical X-rays than through fingerprints and dental records combined.⁷⁹

Radiologic identification is similar to fingerprints and forensic odontology in that the technique necessitates locating antemortem X-rays for comparison. The radiologist can attempt to superimpose the antemortem and postmortem X-rays to determine whether there is a match⁸⁰ — whether they both contain a unique anatomic feature or evidence of surgical procedure.

Forensic Sci. 1273 (1988); Sauer, Brantley & Barondess, "The Effects of Aging on the Comparability of Antemortem and Postmortem Radiographs," 33 *J. Forensic Sci.* 1223 (1988) ("even though bone is a flexible tissue and changes constantly during life, aspects of the criteria chosen are quite stable and ... even after two-and-a-half decades the ability to make positive identifications from postcranial axial material is not necessarily diminished"); Yoshino, Miyasaka, Sato & Seta, "Classification of Frontal Sinus Patterns by Radiography. Its Application to Identification of Unknown Skeletal Remains," 34 *Forensic Sci. Int'l* 289 (1987); Messmer, "The Use of Mammographic Equipment in Mass Disaster Identification," 27 *J. Forensic Sci.* 723 (1982); Murphy & Gantner, "Radiologic Examination of Anatomic and Skeletonized Remains," 27 *J. Forensic Sci.* 9 (1982); Murphy, Spruill & Gantner, "Radiologic Identification of Unknown Human Remains," 25 *J. Forensic Sci.* 727 (1980); Sanders, Woesner, Ferguson & Noguchi, "A New Application of Forensic Radiology: Identification of Deceased From a Single Clavicle," 115 *Am. J. Roent.* 619 (1972); Singleton, "The Roentgenological Identification of Victims of the 'Noronic' Disaster," 66 *Am. J. Roent.* 375 (1951); Tsunenari, Uchimura, Yonemitsu & Oshiro, "Unusual Personal Identification With Characteristic Features in Chest Roentgenograms," 3 *Am. J. Forensic Med. & Path.* 357 (1982).

77. Murphy, Spruill & Gantner, *supra* note 76, at 734.

78. Singleton, *supra* note 76, at 375.

79. Murphy, Spruill & Gantner, *supra* note 76, at 728.

80. Tsunenari, Uchimura, Yonemitsu & Oshiro, *supra* note 76, at 358. See also *United States v. Webb*, 796 F.2d 60, 64 (5th Cir. 1986), *cert. denied*, 479 U.S. 1038 (1987); Nickerson, Fitzhorn, Koch & Charney, "A Methodology for Near-Optimal Computational Superimposition of Two-Dimensional Digital Facial Photographs and Three-Dimensional Cranial Surface Meshes," 36 *J. Forensic Sci.* 480 (1991); Dong-Sheng, Yu-Wen, Cheng, Run-Ji, Yong-Chuan, Jian-Hai, Wei-Dong & Jiang, "A Study on the Standard for Forensic Anthropologic Identification of Skull-Image Superimposition," 34 *J. Forensic Sci.* 1343 (1989); Brocklebank & Holmgren, "Development of Equipment for the Standardization of Skull Photographs in Personal Identifications by

Another potentially useful technique is facial reconstruction.⁸¹ Given the shape and dimensions of the skull, including the jaw, cheekbones, and dentition, a forensic anthropologist can approximate the decedent's facial appearance.⁸² American police have already used these techniques as an investigative tool to assist them in identifying an unknown decedent.⁸³ Crime laboratories are now using DNA typing to make identifications. Chapter 18 discusses DNA typing in detail.

§ 19-4(B). Narrowing the Class.

In some cases, it is impossible to identify definitively the decedent. Nevertheless, the pathologist and allied experts may be able to furnish the police with valuable information, narrowing the class of persons the decedent belonged to. Specifically, the pathologist may be able to determine whether the remains are human and, if so, the decedent's sex, race, and approximate age and stature.

Human Origin

The initial question facing the anthropologist is whether the remains are of human origin. This question can be troublesome

Photographic Superimposition," 34 J. Forensic Sci. 1214 (1989); Chee & Cheng, "Skull and Photographic Superimposition: A New Approach Using a Second Party's Interpupil Distance to Extrapolate the Magnification Factor," 34 J. Forensic Sci. 708 (1989) (the authors discuss the difficulty of determining the correct magnification factor to use in the superimposition technique); Iten, "Identification of Skulls by Video Superimposition," 32 J. Forensic Sci. 173 (1987); Bastiaan, Dalitz & Woodward, "Video Superimposition of Skulls and Photographic Portraits — A New Aid to Identification," 31 J. Forensic Sci. 1373 (1986).

81. Rhine, "Coming to Terms with Facial Reproduction," 35 J. Forensic Sci. 960 (1990); Venezis, Blowes, Linney, Tan, Richards & Neave, "Application of 3-D Computer Graphics for Facial Reconstruction and Comparison with Sculpting Techniques," 42 J. Forensic Sci. Int'l 69 (1989) (although anthropologists have traditionally used manual sculpting techniques in facial reconstruction, they are now experimenting with 3-D computer graphics); Stephens & Hegler, "Use of Glue Gun in Forensic Anthropology and Pathologic Bone Reconstruction Cases," 34 J. Forensic Sci. 454 (1989); Mittleman, Souviron, Valor & Lugo, "Facial Reconstruction, Publicity, and Photography Leading to Identification of Deceased Persons," 52 F.B.I. Law Enf. Bull., 21 (Aug. 1983); Stewart, "The Points of Attachment of the Palpebral Ligaments: Their Use in Facial Reconstructions of the Skull," 28 J. Forensic Sci. 858 (1983).

82. Hoffman, McConathy, Coward & Saddler, "Relationship Between the Piriform Aperture and Interalar Nasal Widths in Adult Males," 36 J. Forensic Sci. 1152 (1991); George, "The Lateral Craniographic Method of Facial Reconstruction," 32 J. Forensic Sci. 1305 (1987); Gatliff, "Facial Sculpture on the Skull for Identification," 5 Am. J. Forensic Med. & Path. 327 (1984); Mittleman, Souviron, Valor & Lugo, *supra* note 81, at 21.

83. *Id.* See also McKenna, Jablonski & Fearnhead, "A Method of Matching Skulls with Photographic Portraits Using Landmarks and Measurements of the Dentition," 29 J. Forensic Sci. 787 (1984).

because the long bones of bears and some apes are superficially similar to those of human beings. However, a firm conclusion can be based on detailed examination and serologic tests.⁸⁴

Sex

Next, the anthropologist can determine the sex of the person who was the source of the skeletal remains.⁸⁵ Several anatomic features help to differentiate male from female decedents. The bones of the male tend to be larger, heavier, and have more prominent ridges. The female skull is more rounded than that of the male. The shape of the pelvis area is also an important indicator of sex. The male sacrum is curved, long, and narrow; in contrast, the female sacrum is flat, short, and wide.⁸⁶ In addition, in the female the sciatic notch is wide at an obtuse angle; the male sciatic notch is small at an acute angle.⁸⁷

84. Chilvarquer, Katz, Glassman, Prihoda & Cottone, "Comparative Radiographic Study of Human and Animal Long Bone Patterns," 32 J. Forensic Sci. 1645 (1987).

85. Inoue, "Fourier Analysis of the Forehead Shape of Skull and Sex Determination by Use of Computer," 47 Forensic Sci. Int'l 101 (1990); Johnson, O'Higgins, Moore & McAndrew, "Determination of Race and Sex of the Human Skull by Discriminant Function Analysis of Linear and Angular Dimensions," 41 Forensic Sci. Int'l 41 (1989); Wu, "Sex Determination of Chinese Femur by Discriminant Function," 34 J. Forensic Sci. 1222 (1989) (this technique correctly determined sex in over 80% of the cases); Berrizbeitia, "Sex Determination with the Head of the Radius," 34 J. Forensic Sci. 1206 (1989) (92% sexing accuracy); Holland, "Use of the Cranial Base in the Identification of Fire Victims," 34 J. Forensic Sci. 458 (1989) (the cranial base can be used to sex skeletalized individuals, but some pathologists believe that shrinkage resulting from burning can preclude the use of the technique; these researchers found that the shrinkage caused by a low-temperature burning such as an average hour fire "does not significantly impair" the accuracy of the technique); Taylor, DiBernardo, Linares, Goldman & DeForest, "Metropolitan Forensic Anthropology Team (MFAT) Studies in Identification: 1. Race and Sex Assessment by Discriminant Function Analysis of the Postcranial Skeleton," 29 J. Forensic Sci. 798 (1984).

86. Bucklin, *supra* note 58, at 202; Sutherland & Suchey, "Use of the Ventral Arc in Pubic Sex Determination," 36 J. Forensic Sci. 501 (1991) ("In the present study, focus was placed on the ventral arc which, when used alone, provided 96% accuracy in sex determination"); MacLaughlin & Bruce, "The Accuracy of Sex Identification in European Skeletal Remains Using the Phenice Characters," 35 J. Forensic Sci. 1384 (1990) ("Three documented European skeletal series were examined to assess the accuracy and reliability of the pubic variables described by Phenice for correctly identifying the sex of adult human skeletal remains. The accuracy and objectivity of these variables, as reported by Phenice ..., could not be confirmed on this European material. In general, the subpubic concavity feature, when used alone, proved to be the most reliable variable for sex identification"); Hunt, "Sex Determination in the Subadult Iliac: An Indirect Test of Weaver's Nonmetric Sexing Method," 35 J. Forensic Sci. 881 (1990).

87. Bucklin, *supra* note 58, at 202; Schulter-Ellis & Hayek, "Sexing North American Eskimo and Indian Innominate Bones with the Acetabulum/Pubis Index," 33 J. Forensic Sci. 697 (1988).