

COURT-MARTIAL RECORD

NAME WELSHOFER, LEWIS E, JR CW3

SSN [REDACTED]

ACTIONS CODED:

INITIAL

SEP 6 2006

ACCA

FINAL

COMPANION(S):

ASSIGNED TO:

PANEL

EXAM DIV.

CRIM LAW

RETURN THIS FILE TO:

OFFICE OF THE CLERK OF COURT

US ARMY JUDICIARY

901 NORTH STUART STREET, SUITE 1200

ARLINGTON, VA 22203-1837

VOL I OF IV VOL(S)

VOLUME IV IS CLASSIFIED

ARMY 20060064

G

Reporter: D. Hart

No. companion cases:

SUMMARIZED RECORD OF TRIAL

(and accompanying papers)

of

WELSHOFFER, Lewis D., Jr. [Redacted] Colonel, Warrenton, Ore. (Name Last, First, Middle Initial) (Social Security Number) (Rank) (Place)

Regimental Headquarters and U.S. Army Fort Carson, Colo. (Unit/Command Name) (Branch of Service) (Station or Ship) 80913
Headquarters, 1st Troop, 3rd Armored Cavalry Regiment (Rear) (Provisional)

By
GENERAL COURT-MARTIAL

Convened by [Redacted] Commander (Title of Convening Authority)

Headquarters, 7th Infantry Division and Fort Carson (Unit/Command of Convening Authority)

Tried at

Fort Carson, Colorado on 8 June 2005
Peterson AFB (Judge Advocate), Colorado on 17 Oct 2005
Fort Carson, Colorado on 17 Oct 2005 & 23 Jan 2006
Fort Carson, Colorado on 16 Jan 2006

ACTION OF JUDGE ADVOCATE OR GENERAL COURT-MARTIAL CONVENING AUTHORITY (SPCM)/JAG (GCM) (RCM 111 and 112, MCM, 1984)

UNIT/COMMAND NAME	LOCATION OF JUDGE ADVOCATE OR GENERAL COURT-MARTIAL CONVENING AUTHORITY/JAG	DATE RECORD RECEIVED
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ACTION	DATE	REMARKS
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FINAL DISPOSITION: Findings and sentence, as approved by convening authority, correct in law and fact, to file		<p style="text-align: center;"><i>Received</i></p> <p style="text-align: center;">_____</p> <p style="text-align: center;">AUG 16 2006</p> <p style="text-align: center;">CLERK OF COURT U.S. ARMY JUDICIARY</p>
OR Findings and sentence, as modified or corrected (see remarks), correct in law and fact, to file		
Acquittal or sentence set aside (see remarks), to file		
Copies of CMO disposed of in accordance with departmental regulations		

JUDGE ADVOCATE OR LAW SPECIALIST	RANK	DATE SIGNED
SIGNATURE		

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

CHRONOLOGY SHEET

In the case of CWS Lewis E. WELSHOFFER

(Rank and Name of Accused: Last, First, Middle Initial)

Date of alleged commission of earliest offense filed: 19 November 2003
(Enter Date)

Date record forwarded to The Judge Advocate General: 10 August 2006
(Enter Date)

KENT RC MEYER, COL, USA, SJA

Kent RC Meyer

(Signature and Rank of Staff Judge Advocate or Legal Officer)

1. In a case forwarded to the Judge Advocate General, the staff judge advocate or legal officer is responsible for completion of the Chronology Sheet. Trial counsel should report any authorized deductions and reasons for unusual delay in the trial of the case.

2. Of officer conducting review under Article 64(a) (MCM, 1984; RCM, 11112)

3. In computing days between two dates, disregard first day and count last days. The actual number of days in each month will be counted.

4. Item 1 is not applicable when accused is not restrained (see MCM, 1984; RCM, 304) or when he/she is in confinement under a sentence or court martial at time charges are preferred. Item 2 will be the zero date if Item 1 is not applicable.

5. May not be applicable to trial by special court-martial.

6. Only this item may be deducted.

7. If no further action is required, items 4 to 8 will be completed, and chronology signed by such convening authority or his/her representative.

8. When further action is required under Article 64 or service directives.

ACTION	DATE	CUMULATIVE ELAPSED DAYS
1. Accused placed under restraint by military authority	2004/06	
2. Charges preferred (date of affidavit)		
3. Article 52 investigation (date of report)		
4. Charges received by convening authority		
5. Charges referred for trial		
6. Sentence or acquittal		
Less days:		
Accused sick, in hospital, or AWOL		
Delay at request of defense		
Total authorized deduction:		
7. Nec elapsed days to sentence or acquittal		
8. Record received by convening authority		
Action 7		
9. Record received by officer conducting review under Article 64(a)		
Action 8		

REMARKS: ROI Comp by CRE 23 March 06

MJ Auth 15 May 06

SEE ATTACHED CHRONOLOGY SHEET

Number of days from start of investigation of most serious uncharged offenses to date of arraignment: 932

DD Form 490 Government Chronology and DC Delays

<u>DATE</u>	<u>EVENT</u>	<u>GOV'T TIME</u>	<u>DC DELAY</u>
	CW3 Welshofer was not restrained.	0	0
1 October 04	Charge Preferred	0	0
16 October 04	IO Appointed	15	0
18 October 04	DC Requests Delay till 29 Nov 04	18	0
20 October 04	DC Delay Granted till 2 November 04	20	13
1 November 04	SPCMCA Grants Delay Till 2 December 04	32	43
2 December 04	Williams 32 Begins	64	43
3 December 04	ACCA Halts 32, Gov't Halts Welshofer 32	65	43
23 February 05	ACCA Rules	147	43
24 February 05	Gov't Requests 32 date of 28 February 05	148	43
30 March 05	32 Reconvened	178 ?	43
31 Mar - 1 Apr 05	Welshofer Delay 28 February 05 - 31 March 05, 32 Waived	210	74
1 May 05	Charges Received by CA	241	74
26 May 05	Charges Referred	301	74
8 June 05	Welshofer Arraigned, DC Requests Delay till 15 August 05	315	142
17 October 05	MRE 505 Hearing, DC Requests Delay till 12 December 05	380	198
16 November 05	<i>Grunden</i> 39a, DC Delay Till 16 January 06	410	232
16 January 06	39a UCI Motion	471	232
17 - 21 January 06	Findings Announced	476	232
23 January 06	Sentence Announced	478	232
15 May 06	MJ Authenticated ROT	590	232
18 May 06	ROT Received by CA	593	232
22 June 06	Action	628	232
		628 minus	232 = 396 days
2 August 06	Date of Dispatch to JALS	670	232

Chronology

Article 32 Investigations

United States v. CW3 Lewis E. Welshofer, Jr.

United States v. CW2 Jefferson L. Williams

United States v. SFC William J. Sommer

United States v. SPC Jerry L. Loper, Jr.

16 October 2004

Appointed Article 32 Officer for each accused soldier and received the Article 32 packet.

Notified all counsel by e-mail that I was appointed the Article 32 Office and tentatively set the Article 32 Investigation for 20 October 2004.

18 October 2004

Notified that CPT David Drake and Mr. Frank Spinner are representing CW3 Welshofer and received a request for delay until 29 November 2004.

Granted a defense delay for CW3 Welshofer until 2 November (within my authority) and requested Trial Counsel forward CPT Drake's delay request to COL McMaster for action (further delay approval).

19 October 2004

Notified that CPT Robin Bunch is representing SPC Loper. CPT Bunch requested a delay until 29 November 2004.

Notified that CPT Peter Kagiliery, Mr. Bill Cassara, and Mr. Phil Cave are representing CW2 Williams. Mr. Cassara requested a delay until 16 November.

Notified that CPT Michael Melito is representing SFC Sommer. CPT Melito requested a delay until 29 November 2004.

20 October 2004

Notified all counsel by e-mail that I delayed the Article 32 investigation for each accused soldier until 2 November 2004.

I requested Trial Counsel forward each delay request to COL McMaster for action (further delay approval).

26 October 2004

Notified all counsel of potential witnesses and requested Trial Counsel locate documentary photographs mentioned in the autopsy report as well as identifying "Interpreter #2" in SPC Loper's sworn statement. Explained that I would notify each accused soldier by written memoranda once an established date for the Article 32 hearing was clear.

1 November 2004

COL McMaster approved a delay for each accused soldier until 2 December 2004.

- 3 November 2004 Received a delay request for CW3 Welshofer for 9 December 2004.
- 16 November 2004 Prepared written notification of 2 December date for CW2 Williams, SFC Sommer, and SPC Loper. Provided to Trial Counsel.
- 18 November 2004 Prepared written notification of 9 December date for CW3 Welshofer while awaiting delay approval from COL McMaster. Provided to Trial Counsel.
- 29 November 2004 COL McMaster approves a delay until 9 December for CW3 Welshofer's Article 32 Investigation.
- 2 December 2004 Article 32 Investigation begins for CW2 Williams, SFC Sommer, and SPC Loper.
- 3 December 2004 The Army Court of Criminal Appeals (ACCA) orders the Article 32 Investigation halted pending review of closing all portions of the proceedings.
- 7 December 2004 Coordinated COL McMaster's approval of an administrative (appellate) delay pending ACCA's review and action.
- 23 February 2005 ACCA issues opinion.
- 28 February 2005 Government Counsel asserts they are ready to proceed.
- 30 March 2005 Reconvened Article 32 investigation for CW2 Williams, SFC Sommer, and SPC Loper. Redacted transcript is provided to the Denver Post per ACCA's order.
- 31 March 2005 Completed the Article 32 investigation hearing for CW2 Williams, SFC Sommer, and SPC Loper. CW3 Welshofer waived his right to an Article 32 Investigation.
- 5 May 2005 Completed my Investigating Officer's Reports, DD Form 457. Provided these reports to Trial Counsel for distribution to Defense Counsel and COL McMaster.

UNITED STATES

V.

WELSHOFER, Lewis CW3
66th MI Company,
3d Squadron,
3d Armored Cavalry Regiment (Rear),
Fort Carson, CO 80913

)
) POST TRIAL RIGHTS
)
)
)
)
)
)
) 21
) 20 January 2006

I, CW3 Lewis Welshofer, the Accused in the case cited above, certify that my trial defense counsel has advised me of the following post-trial and appellate rights in the event that I am convicted of a violation of the Uniform Code of Military Justice:

1. In exercising my rights, or in making any decision to waive them, I am entitled to the advice and assistance of military counsel provided free of charge or civilian counsel provided by me at no expense to the government.
2. After the record of trial is prepared, the convening authority will act on my case. The convening authority can approve the sentence adjudged (as limited by any pretrial agreement), can approve a lesser sentence, or disapprove the sentence entirely. The convening authority cannot increase the sentence. He can also disapprove some or all of the findings of guilty. The convening authority is not required to review the case for legal errors, but may take action to correct legal errors.
3. I have the right to submit any matters I wish the convening authority to consider in deciding what action to take in my case. Before the convening authority takes action, the staff judge advocate will submit a recommendation to him. This recommendation will be sent to me and/or my defense counsel before the convening authority takes action. If I have matters that I wish the convening authority to consider, or matters in response to the staff judge advocate's recommendation, such matters must be submitted within 10 days after I or my counsel receive a copy of the record of trial or I and/or my counsel receive the recommendation of the staff judge advocate, whichever occurs later. Upon my request, the convening authority may extend this period, for good cause, for not more than an additional 20 days.
4. If the convening authority approves a dismissal or confinement for a year or more, the Army Court of Criminal Appeals (ACCA) will review my case. I am entitled to be represented by counsel before such court. If I so request, military counsel will be appointed to represent me at no cost to me. If I so choose I may also be represented by civilian counsel at no expense to the United States.
5. After the Army Court of Criminal Appeals completes its review, I may request that my case be reviewed by the U.S. Court Appeals for the Armed Forces. If that Court reviews my case, I may request review by the Supreme Court of the United States. I have the same rights to counsel before those courts as I have before the ACCA.
6. If a punitive discharge is not approved, my case will be examined by a military attorney for legal errors. The Judge Advocate General (TJAG) may take corrective action as appropriate. This mandatory review under Article 69(a), UCMJ, will constitute the final review of my case unless TJAG directs review by the Army Court of Criminal Appeals.

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Appellate Exhibit LVII

20060064

Post Trial and Appellate Rights, U.S. v. Welshofer

7. I may waive or withdraw review by the appellate courts (subparagraph 4, above) or the Office of The Judge Advocate General (subparagraph 6, above) at any time before such review is completed. I understand that if I waive or withdraw review:

(a) My decision is final and I cannot change my mind.

(b) My case will then be reviewed by a military lawyer for legal error. It will also be sent to the court-martial convening authority for final action.

(c) Within 2 years after the sentence is approved, I may request The Judge Advocate General to take corrective action on the basis of newly discovered evidence, fraud on the court-martial, lack of personal or subject matter jurisdiction, error prejudicial to my substantial rights, or the appropriateness of the sentence.

8. I have read and had my post-trial rights explained to me by counsel and I acknowledge these rights and make the elections set forth below. (Please initial where appropriate.)

REW a. I understand my post-trial and appellate review rights.

REW b. I understand that a copy of the authenticated record of trial will be served on me, or if I so request, to my defense counsel pursuant to R.C.M. 1104(b). Choose one of the following and initial to indicate your selection:

I want the record of trial sent to me; or

I request that the record of trial be forwarded to my defense counsel; or

REW I want the record of trial sent to me AND I request that my defense counsel, receive a copy at the same time I receive my copy in order to expedite the preparation of post-trial matters.

REW I further understand that individual copies of the Staff Judge Advocate's post trial recommendation will be served on my defense counsel and myself pursuant to R.C.M. 1106(f).

REW c. My defense counsel, CPT Ryan W. Rosauer, will submit R.C.M. 1105 matters in my case.

REW d. I want to be represented before the Army Court of Criminal Appeals by Appellate Defense Counsel appointed by The Judge Advocate General of the Army. I understand that I may contact my Appellate Defense Counsel by writing to Defense Appellate Division, U.S. Army Legal Services Agency (JALS-DA), 901 N. Stuart St., Arlington, VA 22203.

REW e. I have been informed that I have the right to retain civilian counsel at my own expense, whose name and address are provided herein: Not Applicable

9. I understand that any period of confinement included in my sentence generally begins to run from the date the court martial adjudges my sentence. I may request that the convening authority defer commencement of any period of confinement; however, deferral is solely within the discretion of the convening authority.

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APPELLATE EXHIBIT LVII

20060064

Post Trial and Appellate Rights, U.S. v. Welshofer

10. Any adjudged forfeitures in my case are effective 14 days after the sentence is adjudged or when the convening authority takes final action, whichever occurs first. I may petition the convening authority to defer forfeitures until the time of final action, but such relief is solely within the discretion of the convening authority, which may withdraw deferment at any time.

11. Pending appellate action on my case, I can be contacted, or a message may be left for me, at the following address:

NAME: John Welshofer

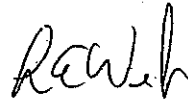
STREET:

CITY/STATE/ZIP CODE:

AREA CODE/TELEPHONE NUMBER:

E-MAIL ADDRESS:

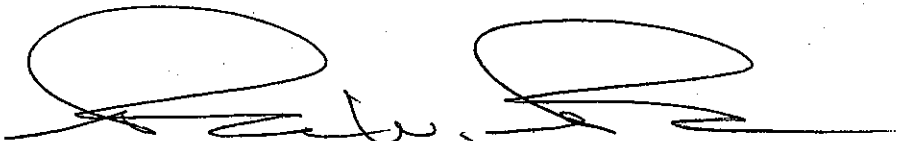
DATE 21 JAN 06



LEWIS E. WELSHOFER
CW3, U.S.A.
Accused

I certify that I have advised CW3 Lewis E. Welshofer regarding the post-trial and appellate rights as set forth above, that he/she has received a copy of this document, and that he/she has made elections concerning appellate counsel.

21 JAN 06
DATE



RYAN W. ROSAUER
CPT, JA
Defense Counsel

APPELLATE EXHIBIT

LVII

P1066103

20060064

COURT-MARTIAL DATA SHEET

1. OJAG NUMBER

2. NAME (Last, First, Middle Initial)

WELSHOFER, Lewis E., Jr.

3. SOCIAL SECURITY NO.

4. RANK

CW3

5. UNIT/COMMAND NAME Regimental HQ & HQ Troop,
3d Armored Cavalry Regiment (Rear)
(Provisional), Fort Carson, CO 80913

INSTRUCTIONS

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

KEY TO USE

TC - Trial Counsel. This column will be completed in all cases in which a finding of guilty is returned.

SPCMCA - Special Court-Martial Convening Authority who is not empowered to convene a general court-martial. This column will be completed in each special court-martial case by the SPCMCA or his/her designated representative.

GCM or JA - General Court-Martial Convening Authority or Judge Advocate. This column will be completed in any case in which the record is forwarded by the commander exercising general court-martial jurisdiction to The Judge Advocate General of the branch of service concerned. If the record is reviewed under Article 64(a), UCMJ, this column will be completed by the judge advocate accomplishing the review.

OJAG - Appropriate appellate agency in the Office of The Judge Advocate General of the branch of service concerned. This column will be disregarded if a record of trial was reviewed under Article 64, UCMJ, and in cases where there are no approved findings of guilt.

References - all references are to the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial, United States (MCM), 1984.

SECTION A - PRETRIAL AND TRIAL PROCEDURE

	TC		SPCMCA		GCM or JA		OJAG	
	YES	NO	YES	NO	YES	NO	YES	NO
6. a. If a general court-martial, was the accused represented in the Article 32 investigation by civilian or military counsel of his/her own selection or by counsel qualified within the meaning of Article 27(b), UCMJ?	/		/	/	/			
b. If not, did the accused waive his/her right to such representation?			/	/	/	/		
7. Does the record show place, date, and hour of each Article 39(a) session, the assembly and each opening and closing thereafter?	/				/			
8. a. Are all convening and amending orders of courts to which charges were referred entered in the record?	/				/			
b. Are court members named in the convening orders, detailed military judge (if any), counsel and the accused accounted for as present or absent?	/				/			
c. Was less than a quorum present at any meeting requiring the presence of court members (RCM 805(b))?		/				/		
d. Does the record show that after each session, adjournment, recess, or closing during the trial, the parties to the trial were accounted for when the court reopened (A13-5)?	/				/			
e. If the military judge or any member present at assembly was thereafter absent, was such absence the result of challenge, physical disability or based on good cause as shown in the record of trial (RCM 505(c)(2)(A))?	/	/			/	/		
9. Were the reporter and interpreter, if any, sworn or previously sworn?	/				/			
10. a. Was the military judge properly certified (RCM 502(c))?	/				/			
b. Was the military judge properly detailed (RCM 503(b))?	/				/			
c. Was the military judge present during all open sessions of the court?	/				/			
11. a. Was the accused advised that								
(1) He/she had the right to be represented free of charge by a military lawyer of his/her own selection, if reasonably available, in which case detailed counsel might be excused (RCM 506(a))?	/				/			

COURT-MARTIAL DATA SHEET

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

COURT-MARTIAL DATA SHEET

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

COURT-MARTIAL DATA SHEET

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

COURT-MARTIAL DATA SHEET

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

55. REMARKS

COURT-MARTIAL DATA SHEET

55. REMARKS (Continued)

56. TRIAL COUNSEL

a. TYPED NAME <i>(Last, First, Middle Initial)</i> MATT, Elana S.	b. RANK CPT	c. SIGNATURE FOR T-OL TIGRAN OLAN	d. DATE SIGNED 19 APR 06
--	--------------------	---	---------------------------------

57. CONVENING AUTHORITY OR HIS/HER REPRESENTATIVE

a. TYPED NAME <i>(Last, First, Middle Initial)</i>	b. RANK	c. SIGNATURE	d. DATE SIGNED
--	---------	--------------	----------------

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

a. TYPED NAME <i>(Last, First, Middle Initial)</i> MEYER, KENT R.	b. RANK COL	c. SIGNATURE Kent R. Meyer	d. DATE SIGNED 10 April 2006
--	--------------------	-----------------------------------	-------------------------------------

59. ACTION IN THE OFFICE OF THE JUDGE ADVOCATE GENERAL

a. ACTION

b. INDIVIDUAL COMPLETING DATA SHEET

(1) TYPED NAME <i>(Last, First, Middle Initial)</i>	(2) RANK	(3) SIGNATURE	(4) DATE SIGNED
---	----------	---------------	-----------------

DNA Processing Required. 10 USC 1565

DEPARTMENT OF THE ARMY
Headquarters, 7th Infantry Division and Fort Carson
Fort Carson, Colorado 80913-4145

GENERAL COURT-MARTIAL ORDER
NUMBER 8

22 June 2006

CW3 Lewis E. Welshofer, Jr., U.S. Army, Regimental Headquarters and Headquarters Troop, 3rd Armored Cavalry Regiment (Rear) (Provisional), Fort Carson, Colorado 80913, was arraigned at Fort Carson, Colorado, on the following offenses at a General Court-Martial convened by the Commander, 7th Infantry Division and Fort Carson, Fort Carson, Colorado.

Charge I. Article 92. Plea: Not Guilty. Finding: Guilty.

The Specification: In that CW3 Lewis E. Welshofer, Jr., who knew or should have known of his duties at or near Al Qaim, Iraq, on or about 26 November 2003, was derelict in the performance of those duties in that he willfully failed to properly safeguard the physical health, welfare, and treatment of MG Abid Mowhosh, as it was his duty to do. Plea: Not Guilty. The military judge amended the specification by deleting the words, "or reasonably should have known." Finding: Not Guilty of willful dereliction of duty, but Guilty of negligent dereliction of duty.

Charge II. Article 118. Plea: Not Guilty. Finding: Not Guilty, but Guilty of a violation of Article 134, UCMJ.

The Specification: In that CW3 Lewis E. Welshofer, Jr., did, at or near Al Qaim, Iraq, on or about 26 November 2003, murder MG Abid Mowhosh by means of suffocating him with the use of a sleeping bag and electrical cord. Plea: Not Guilty. Finding: Not Guilty of murder, but Guilty of negligent homicide.

The Additional Charge: Article 128. Plea: Not Guilty. Finding: Not Guilty.

The Specification: In that CW3 Lewis E. Welshofer, Jr., did, at or near Al Qaim, Iraq, on or about 19 November 2003, unlawfully strike an Iraqi detainee, whose name is unknown, by slapping and punching the detainee, throwing the detainee to the ground, by wrapping the detainee in a sleeping bag, and by throwing the weight of his body onto the detainee's torso. Plea: Not Guilty. Finding: Not Guilty.

SENTENCE

Sentence adjudged on 23 January 2006: To be reprimanded; to forfeit \$1,500.00 pay per month for four months; to be restricted for 60 days to the limit of his place of duty, place of worship, and barracks.

AFZC-JA-CL
SUBJECT: Recommendation of the Staff Judge Advocate – CW3 Lewis E. Welshofer, Jr.

CERTIFICATE OF SERVICE

I certify that a copy of the record of trial and a copy of the Recommendation of the Staff Judge Advocate in the case of US v. Welshofer was served on CPT Ryan Rosauer the Trial Defense Counsel of record on _____ 2006.

CRIMINAL LAW DIVISION
REPRESENTATIVE SIGNATURE

RECEIPT BY DEFENSE COUNSEL

I received a copy of the record of trial and the Recommendation of the Staff Judge Advocate. I am aware of the right to submit matters within 10 days of the accused receiving the Recommendation in rebuttal or explanation and to challenge, correct, or comment upon any part thereof. I (do)(do not) desire to do so.

18 MAY 06
DATE

DEFENSE COUNSEL SIGNATURE

DISPATCH TO ACCUSED

On 18 May 2006, the Recommendation of the Staff Judge Advocate was served on the CW3 Welshofer. CW3 Welshofer was informed that he would be granted access to the unclassified portions of the SJA copy of his Record of Trial at any time during duty hours by calling 526-0040. The classified portion will be available by requesting access at least 24 hours prior and upon presenting proof of a valid security clearance to the security manager at the OSJA. CW3 Welshofer's copy was sent to CPT Rosauer for eratta on 23 March 2006. CPT Rosauer will retain CW3 Welshofer's copy until after completion of R.C.M. matters, at which time he will mail the unclassified portion of the ROT to the accused.

CRIMINAL LAW DIVISION
REPRESENTATIVE SIGNATURE

RECEIPT OF POST-TRIAL MATTERS FROM DEFENSE COUNSEL

On 19 June 2006, I received the post-trial matters from the defense counsel.

CRIMINAL LAW DIVISION
REPRESENTATIVE SIGNATURE

AFZC-JA-CL

SUBJECT: Recommendation of the Staff Judge Advocate – CW3 Lewis E. Welshofer, Jr.

CERTIFICATE OF SERVICE

I certify that a copy of the record of trial and a copy of the Recommendation of the Staff Judge Advocate in the case of US v. Welshofer was served on CPT Ryan Rosauer the Trial Defense Counsel of record on 18 MAY 2006. *by Fax trans receipt attached.*

Roger Lane
CRIMINAL LAW DIVISION
REPRESENTATIVE SIGNATURE

RECEIPT BY DEFENSE COUNSEL

I received a copy of the record of trial and the Recommendation of the Staff Judge Advocate. I am aware of the right to submit matters within 10 days of the accused receiving the Recommendation in rebuttal or explanation and to challenge, correct, or comment upon any part thereof. I (do)(do not) desire to do so.

DATE

DEFENSE COUNSEL SIGNATURE

DISPATCH TO ACCUSED

On _____ 2006, the Recommendation of the Staff Judge Advocate was served on the CW3 Welshofer. CW3 Welshofer was informed that he would be granted access to the unclassified portions of the SJA copy of his Record of Trial at any time during duty hours by calling 526-0040. The classified portion will be available by requesting access at least 24 hours prior and upon presenting proof of a valid security clearance to the security manager at the OSJA. CW3 Welshofer's copy was sent to CPT Rosauer for eratta on 23 March 2006. CPT Rosauer will retain CW3 Welshofer's copy until after completion of R.C.M. matters, at which time he will mail the unclassified portion of the ROT to the accused.

CRIMINAL LAW DIVISION
REPRESENTATIVE SIGNATURE

RECEIPT OF POST-TRIAL MATTERS FROM DEFENSE COUNSEL

On _____ 2006, I received the post-trial matters from the defense counsel.

CRIMINAL LAW DIVISION
REPRESENTATIVE SIGNATURE

OFFICE OF THE STAFF JUDGE ADVOCATE
ATTN: AFZC-JA-CL/POST-TRIAL
FORT CARSON, COLORADO 80913-5003

DATE: 18 MAY 2006

TO: CPT Ryan Rosauer, USATDS, Fort Riley Field Office, Fort Riley, KS

FAX: DSN: 856-0573

PHONE: DSN: 856-3430

FROM: ROGER R. (RAY) LANE OR SPC COOPER PHONE: 6-0040, Comm: 719-526-0040
Post-Trial Section FAX: 6-1469 Comm: 719-526-1469
Criminal Law Division

CPT R, I LEFT A VOICEMAIL FOR LAMONT ABOUT THE SJAR AND ALSO THAT I WAS GOING TO SEVE C23 W TODAY IF POSSIBLE. IF YOU HAVE A GOOD CONTACT # FOR HIM COULD YOU PLEASE GIVE ME A HOLLER. AS YOU CAN SEE THE SERVICE PAGES OF THE SJAR HAVE BEEN ALTERED SLIGHTLY TO ACCOUNT FOR THE FACT THAT YOU HAVE HIS COPY OF THE ROT, BUT TO LET HIM KNOW THAT HE CAN HAVE A LOOK AT MINE ANYTIME HE WANTS DURING NORMAL DUTY HOURS. I WAS NOT SURE IF HIS CLEARANCE WAS STILL INTACT SO THAT IS THE REASON FOR THE OTHER VERBAGE IN THE NOTICE AND RECEIPT. SHOULD YOU NEED A DELAY FOR SUBMISSION OF 1105 MATTERS A FAX OR EMAIL WILL BE FINE. IF/WHEN YOU TALK TO YOUR CLIENT I WILL HAVE TOLD HIM THAT WHEN HE GETS HIS COPY OF THE ROT IT WILL HAVE A PAGE ATTACHED TO IT EXPLAINING THAT THE CLASSIFIED PORTION OF THE ROT CANNOT BE RELEASED AND MUST BE HELD IN OUR SECURE ROOM. IF YOU HAVE ANY QUESTIONS CALL ME. RAY LANE.

6 PAGES INCLUDING COVER SHEET.

BTW: MJ TOOLE had per state.
Ray

10671

20060064

TRANSMISSION VERIFICATION REPORT

TIME : 05/18/2006 11:48
NAME : OSJA FORT CARSON
FAX : 7195261469
TEL : 7195260276

DATE, TIME	05/18 11:47
FAX NO. /NAME	88560573
DURATION	00:01:37
PAGE(S)	06
RESULT	OK
MODE	STANDARD ECM

AFZC-JA-CL

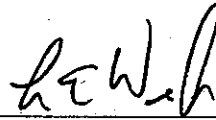
SUBJECT: Recommendation of the Staff Judge Advocate – CW3 Lewis E. Welshofer, Jr.

**RECEIPT BY CW3 LEWIS E. WLESHOFER, JR.
FOR THE SJA RECOMMENDATION**

I received the Recommendation of the Staff Judge Advocate and understand that I may review volumes 1 and 2 of the SJA copy at any time during duty hours. The classified portion will be available by requesting access at least 24 hours prior and upon presenting proof of a valid security clearance to the security manager at the OSJA. I have been informed that CPT Ryan Rosauer has my copy of the ROT and will provide the unclassified portion to me after submission of matters on my behalf in rebuttal or explanation and to challenge, correct, or comment upon any part thereof, within 10 days of his receiving the Recommendation.

18 MAY 06

DATE



ACCUSED'S SIGNATURE

AFZC-JA-CL

SUBJECT: Recommendation of the Staff Judge Advocate – CW3 Lewis E. Welshofer, Jr.

**RECEIPT BY CW3 LEWIS E. WELSHOFER, JR.
FOR THE VOLUME 1 and 2 of RECORD OF TRIAL**

I have today received the Record of Trial (volume 1 and 2) in my case. I understand that Volume 3 is classified and that should the need arise in the future either myself or counsel may review that volume after prior coordination with post-trial personnel at Fort Carson, OSJA at 526-0040 or OSJA admin at 526-5361.

5 Jul 06
DATE

LEWIS E. WELSHOFER, JR.
ACCUSED'S SIGNATURE

DEPARTMENT OF THE ARMY
Headquarters, 7th Infantry Division and Fort Carson
Office of the Staff Judge Advocate
Fort Carson, Colorado 80913-4303

JUN 22 2006

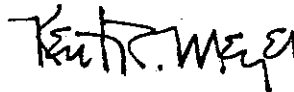
AFZC-JA-CL

MEMORANDUM FOR Commander, 7th Infantry Division and Fort Carson, Fort Carson, Colorado
80913-4145

SUBJECT: Addendum to the Recommendation of the Staff Judge Advocate, United States v.
CW3 Lewis E. Welshofer, Jr.

1. As required by Rules for Courts-Martial 1105 and 1106, this Addendum identifies the post-trial matters submitted by CW3 Welshofer through his defense counsel (Encl 1). The enclosed post-trial matters must be considered in addition to the information provided in the Recommendation (Encl 2).
2. CW3 Welshofer, through his defense counsel, requests that you grant him clemency by disapproving the findings of his court-martial.
3. CW3 Welshofer's defense counsel has submitted matters for your consideration in determining the merits of his request for clemency (Encl 1). In these matters, CW3 Welshofer's defense counsel states that there are two legal issues to consider when determining whether to disapprove the findings or to grant other clemency. 1. The military judge erred when he failed to give the requested instruction to the panel on reasonable doubt. 2. SA Hughes purposefully testified that CW3 Welshofer invoked his right to counsel, and the Military Judge's refusal to grant a mistrial based on that testimony was error.
4. I disagree with both allegations of legal error on the part of the military judge and SA Hughes. The defense counsel's arguments, the attached memorandum from CW3 Welshofer, and the enclosed newspaper articles (LA Times, 5 Jun 06 and NY Times, 17 Jun 06, respectively) do not convince me that the requested clemency is warranted. Accordingly, I adhere to my original recommendation.

2 Encls
as


KENT R. MEYER
COL, JA
Staff Judge Advocate

10675

20060064

DEPARTMENT OF THE ARMY
Office of the Staff Judge Advocate
7th Infantry Division and Fort Carson
Fort Carson, Colorado 80913-4303

AFZC-JA-CL

18 MAY 2006

MEMORANDUM FOR Commander, 7th Infantry Division and Fort Carson, Fort Carson,
Colorado 80913-4145

SUBJECT: Recommendation of the Staff Judge Advocate – CW3 Lewis E. Welshofer, Jr.

1. The record of trial by General Court-Martial in the case of CW3 Lewis E. Welshofer, Jr., U.S. Army, Regimental Headquarters and Headquarters Troop, 3rd Armored Cavalry Regiment (Rear) (Provisional), Fort Carson, Colorado 80913, has been referred to me for a recommendation prior to your action as required by Rule for Courts-Martial 1106, Manual for Courts-Martial, United States (2005 edition) and Article 60(d), Uniform Code of Military Justice.

2. PERSONAL DATA:

a. HISTORY. DOB: 25 April 1962. Marital Status: Married. Dependents: Four. Civilian Education: Baccalaureate Degree in liberal arts. Military Education: Airborne, DLI-Russian, WOCS, Inter Tech WOBC, Strategic Debriefing, WOAC.

b. MILITARY SERVICE. Prior Service: 10 July 1986 - 9 June 1994. BASD: 10 July 1986. Current Term: Indefinite, 9 June 1994. Total Creditable Service: Approximately 19 years and six months at time of trial.

c. MILITARY BACKGROUND. Awards: MSM x 2, ARCOM x 3, AAM x 3, GCM x 2, NDSM x 2, ASUA, HSM, GWOTSM, GWOTEM, NOPDR x 2, ASR, OSR x 4, Parachute Badge.

d. PRIOR DISCIPLINARY ACTIONS/CONVICTIONS. Military: None. Civilian: None.

3. CHARGES:

Charge I. Article 92. Plea: Not Guilty. Finding: Guilty. Correct: Yes.

The Specification: In that CW3 Lewis E. Welshofer, Jr., who knew or should have known of his duties at or near Al Qaim, Iraq, on or about 26 November 2003, was derelict in the performance of those duties in that he willfully failed to properly safeguard the physical health, welfare, and treatment of MG Abid Mowhosh, as it was his duty to do. Plea: Not Guilty. The military judge

AFZC-JA-CL

SUBJECT: Recommendation of the Staff Judge Advocate – CW3 Lewis E. Welshofer, Jr.

amended the specification by deleting the words, “or reasonably should have known.” Finding: Not Guilty of willful dereliction of duty, but Guilty of negligent dereliction of duty. Correct: Yes.

Charge II. Article 118. Plea: Not Guilty. Finding: Not Guilty, but Guilty of a violation of Article 134, UCMJ. Correct: Yes.

The Specification: In that CW3 Lewis E. Welshofer, Jr., did, at or near Al Qaim, Iraq, on or about 26 November 2003, murder MG Abid Mowhosh by means of suffocating him with the use of a sleeping bag and electrical cord. Plea: Not Guilty. Finding: Not Guilty of murder, but Guilty of negligent homicide. Correct: Yes.

The Additional Charge: Article 128. Plea: Not Guilty. Finding: Not Guilty. Correct: Yes.

The Specification: In that CW3 Lewis E. Welshofer, Jr., did, at or near Al Qaim, Iraq, on or about 19 November 2003, unlawfully strike an Iraqi detainee, whose name is unknown, by slapping and punching the detainee, throwing the detainee to the ground, by wrapping the detainee in a sleeping bag, and by throwing the weight of his body onto the detainee’s torso. Plea: Not Guilty. Finding: Not Guilty. Correct: Yes.

4. SENTENCE:

- a. Date Sentence Adjudged: 23 January 2006.
- b. Maximum Permissible Sentence: Forfeiture of all pay and allowances, confinement for three years and three months, and a dismissal.
- c. Sentence Adjudged by panel: To be reprimanded; to forfeit \$1,500.00 pay per month for four months; to be restricted for 60 days to the limits of place of duty, place of worship, and barracks.
- d. Clemency Recommended by the panel: None.
- e. Pretrial Agreement: None.

5. CREDIT:

- a. Days in Pretrial Confinement: None.
- b. Administrative Credit: None.

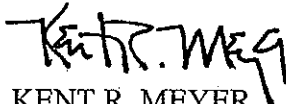
AFZC-JA-CL

SUBJECT: Recommendation of the Staff Judge Advocate – CW3 Lewis E. Welshofer, Jr.

c. Pre-Trial Restraint Not Requiring Sentence Credit: None.

6. RECOMMENDATION: I recommend that you approve the sentence as adjudged and order all approved punishments executed.

Encl
Record of Trial


KENT R. MEYER
COL, JA
Staff Judge Advocate



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE, REGION 1
FORT RILEY BRANCH OFFICE
BUILDING 200 PATTON HALL
FORT RILEY, KANSAS 66442

REPLY TO
ATTENTION OF:

ATZT-JA-TDS

19 June 2006

MEMORANDUM THRU Staff Judge Advocate, 7th Infantry Division and Fort Carson,
Fort Carson, CO 80913

FOR Commanding General, 7th Infantry Division and Fort Carson, Fort Carson, CO
80913

SUBJECT: U.S. v. CW3 Lewis E. Welshofer, Jr., Request for Clemency under R.C.M.
1105

1. Sir, CW3 Lewis E. Welshofer, Jr., respectfully requests you disapprove this court-martial's findings of guilty for negligent dereliction and negligent homicide. Attached to this memorandum is a letter from CW3 Welshofer discussing his service to this country, his thoughts regarding his conduct that served as the basis for the charges, and the effect the entire process had on the Welshofer family. There are two legal issues we would like you to consider when determining whether or not to disapprove this court-martial or grant other clemency.

a. **Military Judge's Refusal to Read Defense-Proposed Instruction.** Before the panel deliberated we asked the Military Judge to instruct the panel that if they did not believe beyond a reasonable doubt that CW3 Welshofer suffocated Major General Abid Mowoush, then they had to acquit not only for the charged murder offense, but the two lesser included offenses of involuntary manslaughter and negligent homicide. We believed there was a risk that the panel, without this instruction, might convict Chief Welshofer of negligent homicide not because they believed he suffocated the General, but because they believed he failed to take due care to, say, call for help or because they believed the interrogation was so stressful it caused the General to have a heart attack. Indeed, we do believe the panel convicted Chief Welshofer of negligent homicide based on a theory other than suffocation. The simple fact of the matter is not only did the government fail to prove Chief Welshofer suffocated MG Mowoush, the government's evidence—evidence it introduced—tended to show Chief Welshofer did not suffocate MG Mowoush. Government witnesses testified MG Mowoush never struggled with Chief Welshofer, that while fluent in English he never complained about not being able to breathe even though he was able to talk and did in fact talk, no one had to hold MG Mowoush's limbs down, that Chief Welshofer, when placing his hand over Mowoush's mouth, only did so for ten to fifteen seconds at a time, and finally after each instance of having Chief's hand put over his mouth, MG Mowoush talked. That fact pattern is not indicative of death by suffocation. A person is incapable of lying on the ground and just letting air be denied him without struggling in some way. Based on those facts alone the panel had to conclude that suffocation or asphyxiation was not the manner of death. Nevertheless, they still convicted CW3 Welshofer of the negligent homicide, and we believe they did so because they were confused about the law. They were confused because the Military Judge did not read to them our proposed instruction.

b. **CID Agent's Testimony.** SA William Hughes, a Criminal Investigation Division agent who participated in the investigation of this case, testified CW3 Welshofer requested an attorney during the investigation. That was an obvious violation of Chief Welshofer's constitutional rights. It was a matter that SA Hughes no doubt knew he could not testify about based on his experience. Furthermore, the trial counsel said on the record that she had personally told SA Hughes just before his testimony to not discuss Chief Welshofer's invocation of his right to an attorney. We asked for a mistrial after SA Hughes divulged that information, but the Military Judge only gave a curative instruction by telling the panel they were not to consider any of SA Hughes' testimony during deliberations. We believe it was too late once the cat was out of the bag. SA Hughes' mistake is an easy one to avoid, and we believe he did it on purpose. We cannot guarantee with any degree of assuredness that the panel was able to disregard this testimony.

2. Chief Welshofer's attached letter portrays a man who was simply trying to do his duty. Reasonable people might disagree about the tactic or even Chief's actions, but the fact reasonable people disagree means the forum for handling this case should have been something less than a court-martial. The panel's sentence certainly reflects that point. Lest there be any notion about whether reasonable people still disagree about interrogation tactics, please refer to the attached articles. The Department of Defense apparently intends to omit from its standard interrogation guidance the Geneva Convention's language about not using humiliating or degrading tactics in interrogations. I am sure that most people in the chain of command for Chief Welshofer who agreed to recommend a court-martial probably assumed that it was not legal to conduct an interrogation in a humiliating or degrading manner. Yet here are people high above our pay-grades who apparently think that tactic is okay. They must, or they would have no problem including the Geneva Convention prohibition against humiliating and degrading treatment into the new interrogation guidance. The second article discusses the confusion that existed regarding interrogation tactics during Chief Welshofer's time in Iraq. As a result of the confusion, the investigating officer decided that there should be no criminal liability on the part of U.S. Army Special Forces soldiers who were using techniques that were in fact prohibited, or at least questionable, at the time. The point is to illustrate to you, Sir, that the debate about whether Chief Welshofer's tactics were legal or not was better suited for the chain-of-command at the Pentagon, in Iraq, and at the Fort Huachuca's interrogation school rather than the courtroom. It is unfair to hold a commissioned warrant officer, and frankly his family, liable for using what the Fort Carson chain-of-command considered illegal tactics when our leadership at the Pentagon and State Department can not agree on these issues. If nothing else, the debate reflected in the attached articles should illustrate the confusion that existed about interrogation tactics in Iraq in 2003 through 2004. The debate continues until this day. Chief Welshofer was conducting a legitimate interrogation on a legitimate target with an interrogation approach his chain-of-command previously approved. Sadly, the man died. While his death is unfortunate, it should not serve as the basis for a federal conviction that will hang around Lewis Welshofer's neck both in the military and civilian world.

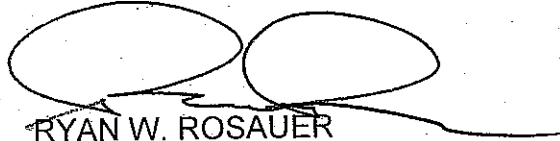
ATZL-SJA-TDS

SUBJECT: U.S. v. CW3 Lewis E. Welshofer, Jr., Request for Clemency under R.C.M.
1105

3. Thank you for your consideration, Sir. POC is the undersigned at (785) 239-6581/3430 or ryan.rosauer@us.army.mil.

3 Attchs.

- 1) Chief Welshofer's letter
- 2) 5 June 2006 article
- 3) 17 June 2006 Article



RYAN W. ROSAUER
CPT, JA
Defense Counsel



DEPARTMENT OF THE ARMY
HEADQUARTERS, 7th INFANTRY DIVISION
OFFICE OF THE G-2
FORT CARSON, CO 80913-5000



AFZC-7ID-G2

19 May 2006

MEMORANDUM FOR General Court Martial Convening Authority, U.S. v. CW3 (P)
Lewis E. Welshofer, Jr.

SUBJECT: Request for Clemency

1. Sir, thank you for considering this letter. I accept full responsibility for my actions. However, my actions did not cause the death of MG Abid Mowoush. I am therefore asking that you please disapprove my court-martial. I have faithfully and honorably served the Army for 20 years. My sole purpose in doing so has been to protect this great nation and my Soldiers. I wish to continue serving my country. I have talked to my branch manager, and he is willing to PCS me to another post where I can continue my service.
2. The negative impact this event has had on my family has been incalculable. Before trial, someone sent a "change of address" postcard to my home's post office saying that my address had changed to the Fort Leavenworth prison. Another time I received mail for migraine headache medicine that had my street address with the name "Abid Mowoush" above it. My children were teased at school about me being court-martialed even though it was those children's mothers and fathers whose lives I was trying to protect. I regularly read in the press about how I am a murderer who deserves to go to jail for the rest of my life. I hear my case compared with the atrocities that occurred at Abu Graib when there is in fact no comparison. None of these critics and talking-heads have any knowledge about the true facts of my case. I did not murder MG Mowoush. I did not kill MG Mowoush through my lack of care. I was operating within the appropriate constraints that both the rules of law, and just as importantly—duty, imposed on me. I have always put the welfare of my country and my Soldiers ahead of my own. My Officer Evaluation Report that covered the period when MG Mowoush died even states that I "saved lives".
3. MG Mowoush died because he was an obese man with heart disease. I have no doubt that he was under stress when I was interrogating him. The simple fact of the matter is that an interrogation is supposed to be stressful, or you will not get information from the person. To put it another way, an interrogation without stress is not an interrogation—it is a conversation. To the extent that there are those who are uncomfortable with the notion of putting a terrorist-detainee under stress to extract

information, then the way to handle it is not to court-martial interrogators, but to eliminate the interrogator MOS entirely from the United States Army.

4. During the interrogation where MG Mowoush died, he not once complained about not being able to breathe. Not only did I have an Arab interpreter at my side during the entire interrogation, but MG Mowoush was also fluent in English. At any time he could have told me he was having difficulty breathing. Instead Mowoush continued to talk about other matters throughout the interrogation. The prosecution and the press have made an issue about the fact that I had my hand on his mouth for five to ten seconds at a time and was also sitting on his chest. I did have my hand on his mouth for about that length of time, but the purpose of putting my hand on his mouth was to keep him from talking, not to keep him from breathing. Every time I lifted my hand off his mouth MG Mowoush *talked* to me, and he would talk to me in a normal tone of voice. If my putting my hand on his mouth was suffocating him, why would he have not complained when he could talk? He never physically struggled either. Regarding my sitting on his chest, while I was straddling his chest, I was not "sitting" on it such that he could not breathe. At six foot three inches I easily put my knees on either side of him and still did not touch his chest. Again, if my weight was causing him to not breathe, then *how* could he have been talking to me? Not once during that interrogation did MG Mowoush physically struggle. He did not wiggle. He did not thrash his head. He simply died. A man who is being suffocated will do whatever it takes to try to get air into his lungs. During the trial the prosecution questioned an expert witness my attorneys called to the stand about a previous case of suffocation where the expert found that police had piled onto the victim, and the weight of the police had caused the man to not breathe. In that case the reason so many police had to jump on the man was because he was struggling because he was trying to breathe. No such struggling, not even the slightest bit, happened with Mowoush. The facts I have discussed in this paragraph are not my facts that I have invented. They are explained very clearly in the record of trial. Indeed the government's own witnesses are the ones who, during government questioning, brought these facts out before the panel.

5. During my almost twenty years of soldiering in the Army I have had the pleasure of performing some unique service for this country, some of which is classified and about which I cannot speak about in this letter. I participated in intelligence operations directed against the Soviet Military Liaison Mission (SMLM) while stationed in Frankfurt, West Germany, in the late 1980's. Our task was to manipulate, befriend, and coerce our targets in an effort to get useful intelligence for the country. I was successful in my performance to the point that a representative from another nation threatened to kidnap my infant son and take him to another country in an attempt to affect my performance. Another time, a foreign power tried to induce me to defect to their country. I spent three years conducting strategic debriefings and providing national level intelligence to strategic and tactical decision makers. During this time, I debriefed the senior American POW captured in Kosovo.

6. Since September 11th I have had the privilege of serving my country in Afghanistan and Iraq. For three months I was the senior reports editor for a theater detention facility in Afghanistan in 2002. I redeployed to Fort Carson, and within one week, accompanied the 3ACR to PCMS as we began preparations for deployment to NTC with a follow-on rotation to OIF I. At NTC, my section was awarded "Hero of the Battlefield" honors because we gathered necessary intelligence and identified and then isolated the key belligerent thereby preventing an attack on the Regimental TOC. I then deployed to Iraq with the 66th MI Company, 3rd Armored Cavalry Regiment, in the spring of 2003 in support of Operation Iraqi Freedom. I served in Iraq for one year.

7. I do not think I could accurately convey through written words the amount of confusion prevalent in conducting interrogation operations during OIF1. These insurgents did not meet the definition of Enemy Prisoners of War (EPW), and our chain-of-command specifically told us we were not to treat the detainees as EPWs. For months we were given no ROE to deal with detainees. We were told that the command, specifically CJTF-7—the commander of land forces in Iraq—was getting tired of mounting U.S. casualties and that it was time to "take the gloves off". We asked for further guidance from CJTF-7 on several occasions, but there was no guidance given on interrogation operations, just on how to process detainees. Capturing units were required to provide sworn statements and a charge sheet for each detainee (inconsistent with EPW status). Each detainee case had to be reviewed at the local JAG level to determine if sufficient evidence was present before they could be sent to Abu Graib. These packets included my "Interrogation Summaries" in which I spoke about close confinement techniques. These summaries were reviewed at the 3ACR level (including by my senior commanders and JAG), the 82nd Airborne Division level, and CJTF-7 level. At no point did anyone at any level call into question my actions even though I was very open with the sleeping-bag technique of close confinement. Indeed, my former commander, MAJ Jessica Voss, testified on the stand during my trial that she knew about and approved this technique. I was not operating in secret. I was completely open about what I was doing. Finally, on 10 September 2003 CJTF-7 sent down guidance that provided great latitude for interrogations. I never saw any other memorandum from CJTF-7 until I started preparing for my trial well after my redeployment to the United States.

8. My interrogation of MG Mowoush was a legitimate interrogation done within guidance CJTF-7 gave us. Mowoush was the leader of the insurgency in the Al Qaim area. During the autumn of 2003 before his death his organization was the gate keeper for most, if not all, insurgents coming into Iraq from Syria to conduct terrorist operations in Iraq. He gave the insurgents shelter, training, money, and weapons. As an example of the kind of operation this man ran, just before we captured him on 10 November 2003 there was an attack on an ODA/OGA patrol. During the attack, a RPG severed a soldier's arm completely off and damaged the remaining arm to the point it had to be amputated. One of Mowoush's attackers held the arm aloft as a trophy and carried it inside a mosque. As the ODA and OGA teams identified the attack cell, it became apparent that the same insurgent group we believed Mowoush was in charge of was

AFZC-7ID-G2

MEMORANDUM FOR General Court Martial Convening Authority, U.S. v. CW3 (P)
Lewis E. Welshofer, Jr.

also responsible for the attack. When we captured Mowoush, we knew we had a treasure trove of information in our hands. His death was unfortunate in that we lost that intelligence information. The last thing on earth I ever wanted to do was hurt, much less kill, this man because with his death died all the valuable intelligence he had. At the time we had not even captured Saddam Hussein, and I am confident that Mowoush had a good idea about where Saddam was hiding at the time.

9. I believe I have a lot to offer the Army and wish to continue serving. I have devoted my entire career to protecting the United States and its citizens. I have put myself, and my family, at risk in the process. I respectfully ask that you disapprove the verdicts and allow me to continue to serve in the United States Army.

10. POC is the undersigned at (719) 526-1159.

//original signed//
LEWIS E. WELSHOFER JR.
CW3 (P), USA
7ID, G2

Los Angeles Times
June 5, 2006
Pg. 1

Army Manual To Skip Geneva Detainee Rule

The Pentagon's move to omit a ban on prisoner humiliation from the basic guide to soldier conduct faces strong State Dept. opposition.

By Julian E. Barnes, Times Staff Writer

WASHINGTON — The Pentagon has decided to omit from new detainee policies a key tenet of the Geneva Convention that explicitly bans "humiliating and degrading treatment," according to knowledgeable military officials, a step that would mark a further, potentially permanent, shift away from strict adherence to international human rights standards.

The decision could culminate a lengthy debate within the Defense Department but will not become final until the Pentagon makes new guidelines public, a step that has been delayed. However, the State Department fiercely opposes the military's decision to exclude Geneva Convention protections and has been pushing for the Pentagon and White House to reconsider, the Defense Department officials acknowledged.

For more than a year, the Pentagon has been redrawing its policies on detainees, and intends to issue a new Army Field Manual on interrogation, which, along with accompanying directives, represents core instructions to U.S. soldiers worldwide.

The process has been beset by debate and controversy, and the decision to omit Geneva protections from a principal directive comes at a time of growing worldwide criticism of U.S. detention practices and the conduct of American forces in Iraq.

The directive on interrogation, a senior defense official said, is being rewritten to create safeguards so that all detainees are treated humanely but can still be questioned effectively.

President Bush's critics and supporters have debated whether it is possible to prove a direct link between administration declarations that it will not be bound by Geneva and events such as the abuses at Abu Ghraib or the killings of Iraqi civilians last year in Haditha, allegedly by Marines.

But the exclusion of the Geneva provisions may make it more difficult for the administration to portray such incidents as aberrations. And it undercuts contentions that U.S. forces follow the strictest, most broadly accepted standards when fighting wars.

"The rest of the world is completely convinced that we are busy torturing people," said Oona A. Hathaway, an expert in international law at Yale Law School. "Whether that is true or not, the fact we keep refusing to provide these protections in our formal directives puts a lot of fuel on the fire."

The detainee directive was due to be released in late April along with the Army Field Manual on interrogation. But objections from several senators on other Field Manual issues forced a delay. The senators objected to provisions allowing harsher interrogation techniques for those considered unlawful combatants, such as suspected terrorists, as opposed to traditional prisoners of war.

The lawmakers say that differing standards of treatment allowed by the Field Manual would violate a broadly supported anti-torture measure advanced by Sen. John McCain (R-Ariz.). McCain last year pushed Congress to ban torture and cruel treatment and to establish the Army Field Manual as the standard for treatment of all detainees. Despite administration opposition, the measure passed and became law.

For decades, it had been the official policy of the U.S. military to follow the minimum standards for treating all detainees as laid out in the Geneva Convention. But, in 2002, Bush suspended portions of the Geneva Convention for captured Al Qaeda and Taliban fighters. Bush's order superseded military policy at the time, touching off a wide debate over U.S. obligations under the Geneva accord, a debate that intensified after reports of detainee abuses at Guantanamo Bay, Cuba, and at Iraq's Abu Ghraib prison.

Among the directives being rewritten following Bush's 2002 order is one governing U.S. detention operations. Military lawyers and other defense officials wanted the redrawn version of the document known as DoD Directive 2310, to again embrace Common Article 3 of the Geneva Convention.

That provision — known as a "common" article because it is part of each of the four Geneva pacts approved in 1949 — bans torture and cruel treatment. Unlike other Geneva provisions, Article 3 covers all detainees — whether they are held as unlawful combatants or traditional prisoners of war. The protections for detainees in Article 3 go beyond the McCain amendment by specifically prohibiting humiliation, treatment that falls short of cruelty or torture.

The move to restore U.S. adherence to Article 3 was opposed by officials from Vice President Dick Cheney's office and by the Pentagon's intelligence arm, government sources said. David S. Addington, Cheney's chief of staff, and Stephen A. Cambone, Defense undersecretary for intelligence, said it would restrict the United States' ability to question detainees.

The Pentagon tried to satisfy some of the military lawyers' concerns by including some protections of Article 3 in the new policy, most notably a ban on inhumane treatment, but refused to embrace the actual Geneva standard in the directive it planned to issue.

The military lawyers, known as judge advocates general, or JAGs, have concluded that they will have to wait for a new administration before mounting another push to link Pentagon policy to the standards of Geneva.

"The JAGs came to the conclusion that this was the best they can get," said one participant familiar with the Defense Department debate who spoke on condition of anonymity because of the protracted controversy. "But it was a massive mistake to have withdrawn from Geneva. By backing away, you weaken the proposition that this is the baseline provision that is binding to all nations."

Derek P. Jinks, an assistant professor at the University of Texas School of Law and the author of a forthcoming book on Geneva called "The Rules of War," said the decision to remove the Geneva reference from the directive showed the administration still intended to push the envelope on interrogation.

"We are walking the line on the prohibition on cruel treatment," Jinks said. "But are we really in search of the boundary between the cruel and the acceptable?"

The military has long applied Article 3 to conflicts — including civil wars — using it as a minimum standard of conduct, even during peacekeeping operations. The old version of the U.S. directive on

detainees says the military will "comply with the principles, spirit and intent" of the Geneva Convention.

But top Pentagon officials now believe common Article 3 creates an "unintentional sanctuary" that could allow Al Qaeda members to keep information from interrogators.

"As much as possible, the foundation is Common Article 3. That is the foundation," the senior official said, speaking on condition of anonymity because the new policies had not been made public. "But there are certain things unlawful combatants are not entitled to."

Another defense official said that Article 3 prohibitions against "outrages upon personal dignity, in particular humiliating and degrading treatment" could be interpreted as banning well-honed interrogation techniques.

Many intelligence soldiers consider questioning the manhood of male prisoners to be an effective and humane technique. Suggesting to a suspected insurgent that he is "not man enough" to have set an improvised explosive device sometimes elicits a full description of how they emplaced the bomb, soldiers say.

The Pentagon worries that if Article 3 were incorporated in the directive, detainees could use it to argue in U.S. courts that such techniques violate their personal dignity.

"Who is to say what is humiliating for Sheikh Abdullah or Sheikh Muhammad?" the second official asked. "If you punch the buttons of a Muslim male, are you at odds with the Geneva Convention?"

Military officials also worry that following Article 3 could force them to end the practice of segregating prisoners. The military says that there is nothing inhumane about putting detainees in solitary confinement, and that it allows inmates to be questioned without coordinating their stories with others.

Human rights groups have their doubts; saying that isolating people for months at a time leads to mental breakdowns.

"Sometimes these things sound benign, but there is a reason they have been prohibited," said Jumana Musa, an advocacy director for Amnesty International. "When you talk about putting people in isolation for eight months, 14 months, it leads to mental degradation."

Jinks, of the University of Texas, contends that Article 3 does not prohibit some of the things the military says it wants to do. "If the practice is humane, there is nothing to worry about," he said.

Defense officials said the State Department and other agencies had argued that adopting Article 3 would put the U.S. government on more solid "moral footing," and make U.S. policies easier to defend abroad.

Some State Department officials have told the Pentagon that incorporating Geneva into the new directive would show American allies that the American military is following "common standards" rather than making up its own rules. Department officials declined to comment for this article about the directive or their discussions with the Pentagon.

Common Article 3 was originally written to cover civil wars, when one side of the conflict was not a state and therefore could not have signed the Geneva Convention.

In his February 2002 order, Bush wrote that he determined that "Common Article 3 of Geneva does not

apply to either Al Qaeda or Taliban detainees, because, among other reasons, the relevant conflicts are international in scope and Common Article 3 applies only to 'armed conflict not of an international character.' "

Some legal scholars say Bush's interpretation is far too narrow. Article 3 was intended to apply to all wars as a sort of minimum set of standards, and that is how Geneva is customarily interpreted, they say.

But top administration officials contend that after the Sept. 11 attacks, old customs do not apply, especially to a fight against terrorists or insurgents who never play by the rules.

"The overall thinking," said the participant familiar with the defense debate, "is that they need the flexibility to apply cruel techniques if military necessity requires it."

New York Times

June 17, 2006

Pg. 1

Pentagon Study Describes Abuse By Units In Iraq

By Eric Schmitt

WASHINGTON, June 16 — United States Special Operations troops employed a set of harsh, unauthorized interrogation techniques against detainees in Iraq during a four-month period in early 2004, long after approval for their use was rescinded, according to a Pentagon inquiry released Friday.

The investigation is the last of 12 major inquiries to be made public that focus on allegations of detainee abuse by American personnel in Cuba, Afghanistan and Iraq, and the first to focus on Special Operations troops, who operate with more latitude than other military units. It detailed harsh treatment that continued at isolated bases even after the abuses first surfaced at the Abu Ghraib prison.

Special Operations interrogators gave some detainees only bread or crackers and water if they did not cooperate, according to the investigation, by Brig. Gen. Richard P. Formica of the Army. One prisoner was fed only bread and water for 17 days. Other detainees were locked for as many as seven days in cells so small that they could neither stand nor lie down, while interrogators played loud music that disrupted their sleep.

The inquiry also determined that some detainees were stripped naked, drenched with water and then interrogated in air-conditioned rooms or in cold weather. General Formica said it appeared that members of the Navy Seals had used that technique in the case of one detainee who died after questioning in Mosul in 2004, but he reported that he had no specific allegations that the use of the technique was related to that death.

Despite the findings, General Formica recommended that none of the service members be disciplined, saying what they did was wrong but not deliberate abuse. He faulted "inadequate policy guidance" rather than "personal failure" for the mistreatment, and cited the dangerous environment in which Special Operations forces carried out their missions. He said that, from his observations, none of the detainees seemed to be the worse for wear because of the treatment. "Seventeen days with only bread and water is too long," the general concluded. But he added that the military command's surgeon general had advised him "it would take longer than 17 days to develop a protein or vitamin deficiency from a diet of bread and water."

General Formica's review focused on the Combined Joint Special Operations Task Force-Arabian Peninsula, which included soldiers from the Army's Fifth and 10th Special Forces Groups. It did not cover the actions in Iraq of more highly classified Special Operations units, including Delta Force and some Navy Seal groups, or other specialized units including Task Force 6-26, a subject of extensive allegations of misconduct that were reported by The New York Times in March. General Formica recommended eight changes, including more training for Special Operations interrogators, minimum standards for detention conditions and new policies regulating the use of indigenous forces who worked with those in Special Operations. Pentagon officials said Friday that all eight had been carried out.

General Formica said that the Special Operations forces mistakenly used 5 of 12 interrogation techniques between February and May 2004 that Lt. Gen. Ricardo S. Sanchez, then the top commander in Iraq, had withdrawn in October 2003 because military lawyers had found they were too harsh. "It is

10690

regrettable," General Formica said in an interview at the Pentagon with three reporters on Friday. "But they were erroneously given the wrong policy."

General Sanchez had approved the harsher techniques, like blaring loud music and using military dogs to frighten Iraqi captives, in September 2003. But confusion over use of the techniques became widespread, even after they were barred a month later except when approved by General Sanchez. Many of the American captors at the Abu Ghraib prison have also said they believed the techniques were authorized, even without General Sanchez's approval.

The report made public on Friday was a heavily redacted copy of the 75-page classified document that General Formica completed 20 months ago. Members of Congress were briefed on it about a year ago. The Pentagon had refused requests since then from The New York Times and other news organizations to provide a declassified version of it. Defense Secretary Donald H. Rumsfeld had promised that declassified versions of all major inquiries would be made public, but this one was released in response to a Freedom of Information Act request by the American Civil Liberties Union.

Senior Defense Department officials said General Formica's review was not intended to be a wide-ranging evaluation of Special Operations' detention and interrogation practices. General Formica conducted interviews regarding three separate episodes of alleged detainee abuse involving Special Operations, some of them referred from another Army inquiry by Maj. Gen. George R. Fay. General Formica also reviewed the findings of seven other instances that had been previously investigated.

General Formica said there was no physical or medical evidence to substantiate allegations by several members of an Iraqi family that American interrogators at Abu Ghraib in December 2003 had beaten and slapped them, and then sodomized them with a water bottle. In addition, he said, the family members were known to be insurgent sympathizers. In a second case, General Formica said two Iraqi detainees at a safe house in April 2004 were fed only bread and water for 13 and 17 days, respectively. But he said allegations that a former Iraqi policeman and an Iraqi-born Lebanese interpreter, both working with the Americans, had beaten and kicked them were unsubstantiated.

General Formica found that in the third case at a Special Operations outpost, near Tikrit, in April and May 2004, three detainees were held in cells 4 feet high, 4 feet long and 20 inches wide, except to use the bathroom, to be washed or to be interrogated. He concluded that two days in such confinement "would be reasonable; five to seven days would not." Two of the detainees were held for seven days; one for two days, General Formica concluded.

Of the seven other previously investigated cases, General Formica concluded that allegations in two were unfounded and that one did not involve Special Operations, the report said. In two other cases, investigations were still pending when General Formica completed his report in November 2004. A Pentagon spokesman, Lt. Col. Mark Ballesteros, said Friday that those inquiries had been completed, but that he would not comment on their findings.

General Formica said in the interview on Friday that he believed that the Special Operations troops thought they were following authorized procedures, and corrected them after he pointed out their error. "I didn't find cruel and malicious criminals that are out there looking for detainees to abuse," he said.

Lane, Roger R CIV USA OSJA

From: Lane, Roger R CIV USA OSJA
Sent: Tuesday, May 30, 2006 11:44 AM
To: 'ryan.rosauer@us.army.mil'
Subject: 1105_del.pdf
Attachments: 1105_del.pdf

CPT R,

Here is the approval of your delay request till 17 June 2006. When your matters are finished please either email or fax them to me and then send the original copy with the ROT. When the prom is finalized I will serve that and the ROT (volumes 1 and 2) on your client. I have already explained to him that there will be a memo notifying him that the third volume, with the classified data, will be held here in our security area. If he should need access to it during the follow-on post-trial reviews by OTJAG, etc, he is more than welcome to contact me. He has my business card.

Ray

ROGER (RAY) LANE
Post-Trial Paralegal Specialist
OSJA, Criminal Law Division
Fort Carson, CO 80913
VOICE: (DSN: 691) (COMM: 719-526) 0040
FAX: (DSN: 691) (COMM: 719-526) 1469



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
Building 200
FORT RILEY, KANSAS 66442

REPLY TO
ATTENTION OF

AFZN-JA-TDS

28 May 2006

MEMORANDUM FOR Staff Judge Advocate, 7th Infantry Division and Fort Carson, Fort Carson, Colorado 80913

SUBJECT: Request for Delay – Submission of Clemency Request, U.S. v. CW3 Lewis Welshofer

1. The defense attorney received the staff judge advocate's recommendation via fax on 18 May 2006. The defense respectfully requests a delay to submit matters under R.C.M. 1105 until 17 June 2006. Because of my schedule and a training exercise CW3 Welshofer is involved in over the next couple weeks, we will need the full 30 days to complete 1105 matters.
2. Thank you, Sir. POC for is request is the undersigned at (785) 239-6581 or ryan.rosauer@us.army.mil.

//original signed//
RYAN W. ROSAUER
CPT, JA
Defense Counsel

The defense request for delay is approved/~~disapproved~~.

30 MAY 2006


KENT R. MEYER
COL, JA
Staff Judge Advocate



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS, RHHT, 3RD ARMORED CAVALRY REGIMENT
(REAR)(PROVISIONAL)
FORT CARSON, COLORADO 80913

AFZC-GC

DATE: 13 MAY 05

MEMORANDUM THRU

Commander, 3rd Armored Cavalry Regiment (Rear)(Provisional), Fort Carson, Colorado 80913
Commander, U.S. Army Garrison, Fort Carson, Colorado 80913

FOR Commander, 7th Infantry Division and Fort Carson, Colorado 80913


SUBJECT: Transmittal of Court-Martial Charges (CW3 WELSHOFER, Lewis E.)

1. Court-Martial charges against the following named individual are forwarded herewith. Witness statements, any evidence of previous misconduct, and the accused's personnel records are attached:
CW3 WELSHOFER, LEWIS E., RHHT, 3d Armored Cavalry Regiment
(Rear)(Provisional), Fort Carson, Colorado 80913

2. I recommend:

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

() Special Court-Martial
() General Court-Martial


DAVID RICHKOWSKI
CPT, AR
Commanding



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS, 3RD ARMORED CAVALRY REGIMENT
(REAR)(PROVISIONAL)
FORT CARSON, COLORADO 80913

AFZC-GC

DATE: 13 May 05

MEMORANDUM THRU Commander, U.S. Army Garrison, Fort Carson, Colorado 80913

FOR Commander, 7th Infantry Division and Fort Carson, Colorado 80913


SUBJECT: Transmittal of Court-Martial Charges (CW3 WELSHOFER, Lewis E.)

1. Court-Martial charges against the following named individual are forwarded herewith. Witness statements, any evidence of previous misconduct, and the accused's personnel records are attached: **CW3 WELSHOFER, LEWIS E., RHHT, 3d Armored Cavalry Regiment (Rear)(Provisional), Fort Carson, Colorado 80913**

2. I recommend:

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

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


 MARK SOLOMON
 MAJ, AR
 Commanding



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY GARRISON
FORT CARSON, COLORADO 80913

AFZC-GC

DATE: MAY 16 2005

MEMORANDUM FOR Commander, 7th Infantry Division and Fort Carson, Colorado 80913

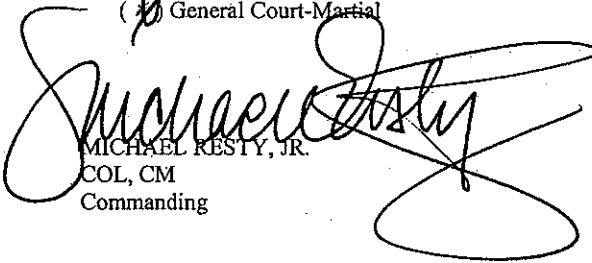
SUBJECT: Transmittal of Court-Martial Charges (CW3 WELSHOFER, Lewis E.)

1. Court-Martial charges against the following named individual are forwarded herewith. Witness statements, any evidence of previous misconduct, and the accused's personnel records are attached:
CW3 WELSHOFER, LEWIS E., RHHT, 3d Armored Cavalry Regiment
(Rear)(Provisional), Fort Carson, Colorado 80913

2. I recommend:

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

- () Special Court-Martial
() General Court-Martial


MICHAEL RESTY, JR.
COL, CM
Commanding



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
3D SQUADRON, 3D ARMORED CAVALRY REGIMENT
FORT CARSON, COLORADO 80913



AFZC-R-K-CO

DATE: 1 OCT 2004

MEMORANDUM THRU Commander, 3d Armored Cavalry Regiment, Fort Carson, Colorado 80913

MEMORANDUM FOR Commander, 7th Infantry Division and Fort Carson, Fort Carson, Colorado 80913

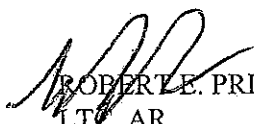
SUBJECT: Transmittal of Court-Martial Charges (CW3 WELSHOFER, Lewis E., Jr.)

1. Court-Martial charges against the following named individual are forwarded herewith. Witness statements, any evidence of previous misconduct, and the accused's personnel records are attached:
CW3 WELSHOFER, Lewis E., Jr., , 66th Military Intelligence Company, 3d Squadron,
3d Armored Cavalry Regiment, Fort Carson, Colorado 80913

2. I recommend:

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

- () Special Court-Martial
- (M) General Court-Martial


ROBERT E. PRICE
LTC, AR
Commanding



DEPARTMENT OF THE ARMY
Headquarters, 7th Infantry Division and Fort Carson
Fort Carson, Colorado 80913

REPLY TO
ATTENTION OF:

AFZC-CG

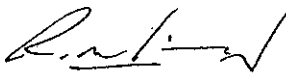
FEB 03 2005

MEMORANDUM FOR RECORD

SUBJECT: Adoption of Court-Martial Panel Selections and Ratification of Courts-Martial Referrals

1. On 27 January 2005, I assumed command of the 7th Infantry Division and Fort Carson.
2. On 8 July 2004, Major General Robert Wilson, then commander of the 7th Infantry Division and Fort Carson, issued Court-Martial Convening Order (CMCO) Number 2, CMCO Number 3, CMCO Number 4, CMCO Number 5, and selected alternate members for these courts (see enclosures).
3. I have determined that the members and alternates selected by Major General Wilson are qualified under Article 25, UCMJ, and hereby adopt and ratify the selection of the members and alternates selected, and direct that CMCO Number 2, CMCO Number 3, CMCO Number 4, CMCO Number 5, and the selection of the alternates shall remain in effect.
4. All cases and charges previously referred for trial to the courts-martial convened by CMCO Number 2, CMCO Number 3, CMCO Number 4, and CMCO Number 5 shall continue as referred.

- 5 Encls
1. CMCO 2
 2. CMCO 3
 3. CMCO 4
 4. CMCO 5
 5. Alternate List


ROBERT W. MIXON, Jr.
Major General, USA
Commanding

RECORD OF TRIAL

LINE FROM

CORRECTION TO BE MADE

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OR AUTH BY

PAGE NO

TOP

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REMARKS

15	11-2		Peterson Air Force Base	Fort Carson	DC	RWR	✓
18	2a		Carroll	Carroll	DC	RWR	✓
164	23		Smotherly	Smotherly	DC	RWR	✓
210	45		ratchety	ratcheted	DC	RWR	✓

(completed by ~~Miss Dolan~~ CPT Rosauer)

SUMMARIZED
RECORD OF TRIAL

of

WELSHOFER, Lewis E., Jr.
(Name: Last, First, Middle Initial)

(Social Security Number)

Chief Warrant Officer
(Rank) **Three**

Regimental Headquarters and
(Unit/Command Name)
Headquarters Troop, 3d
Armored Cavalry Regiment
(Rear) (Provisional)

U.S. Army
(Branch of Service)

Fort Carson, Colorado
(Station or Ship) 80913

By

GENERAL **COURT-MARTIAL**

Convened by _____
(Title of Convening Authority) Commander

Headquarters, 7th Infantry Division and Fort Carson
(Unit/Command of Convening Authority)

Tried at

Fort Carson, Colorado on 8 June 2005

(Place or Places of Trial)
Peterson Air Force Base, Colorado on 17 Oct & 16 Nov 05 & 16 Jan 06
(Date or Dates of Trial)
Fort Carson, Colorado on 17 through 21 & 23 Jan 06

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10703

**TESTIMONY
PROSECUTION**

Name of Witness	Direct and Redirect	Cross and Recross	Court
[at 39a)]			
COL DAVIS, B. Shannon	28	29	
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SGT COX, Brian D.	33, 35	34, 35	
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CW3 WILLIAMS, Jefferson	50, 59, 61	58, 60	61
SGT LAMB, Justin A.	62, 67	65, 68	68
MAJ VOSS, Jessica R.	68, 73, 74, 122	70, 74, 122	74
MAJ ROSSIGNOL, Anne B., M.D.	75, 78	77, 78	
SA RYAN, Curtis E.	79		
PRATT, Gerald M.	90, 95	94	95
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[in rebuttal on sentencing]			
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MAJ SHORT, Robert	23, 27	25	
MAJ O'HARA-HULETT, Ross M.	36		
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COL TEEPLES, David	102	105	
WECHT, Cyril H., M.D.	150, 166, 167	159, 166	167
CW3 WELSHOFER, Lewis E., Jr. (Acc)	168, 193	184, 193	192
LTC AGUTO, Antonio	194	196	
MARLOW, Marielena R.	197		
GLEATON, Raymond L. III	198	199	
CPT FALK, Jesse L.	199	201	201
REESE, James B.	202, 203, 204	203, 204	204
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LTC CALVERT, Paul	246	249	
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CPT DYLEWSKI, Bonny C.	262		
CPT MOREHOUSE, Lynne A.	262		

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		Offered	Admitted
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Pros Ex 2	photo of TOC area	47	47
Pros Ex 3	photo of TOC area	47	47
Pros Ex 4	photo, interrogation room	47	47
Pros Ex 5	photo, interrogation doorway	47	47
Pros Ex 6	photo, interrogation doorway	47	47
Pros Ex 7	photo, Blacksmith Hotel	47	47
Pros Ex 8	photo, Blacksmith Hotel	47	47
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Pros Ex 12	electrical cord	47	47
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Def Ex J	promotion packet	241	241
Def Ex K	awards of accused	241	241
Def Ex L	OERs of accused	241	241
Def Ex M	character letters	241	241
Def Ex N	family photos	241	241

DEPARTMENT OF THE ARMY
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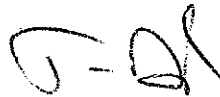
COURT-MARTIAL CONVENING ORDER
NUMBER 2

12 January 2006

In the event that the current panel falls below quorum, the following members are detailed to the General Court-Martial convened by Court-Martial Convening Order Number 10, this headquarters, dated 12 July 2005, for the trial of United States v. Chief Warrant Officer (W3) Lewis E. Welshofer, 66th Military Intelligence Company, 3d Squadron, 3d Armored Cavalry Regiment, Fort Carson, Colorado 80913, only:

LTC MARK A. CHIN, MS, USA MEDDAC
CPT ANDREW S. HEIMBROCK, OD, 60th OD, 68th CSB, 43d ASG
1LT KENNETH W. STURTZ, IV, MS, USA MEDDAC
1LT MONICA L. SIMPSON, AG, REPL DET, USAG
1LT JOHN D. MOORE, OD, 60th OD, 68th CSB, 43d ASG
CW5 TERRANCE L. LAPP, AV, HHC, USAG

BY COMMAND OF MAJOR GENERAL MIXON:



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TIERNAN DOLAN
MAJ, JA
Chief, Criminal Law Division

Court-Martial Convening Order Number 22 was the last of the series for 2005.

DEPARTMENT OF THE ARMY
Headquarters, 7th Infantry Division and Fort Carson
Fort Carson, Colorado 80913

COURT-MARTIAL CONVENING ORDER
NUMBER 1

11 January 2006

The following members are detailed to the General Court-Martial convened by Court-Martial Convening Order Number 10, this headquarters, dated 12 July 2005, for the trial of United States v. Chief Warrant Officer (W3) Lewis E. Welshofer, 66th Military Intelligence Company, 3d Squadron, 3d Armored Cavalry Regiment, Fort Carson, Colorado 80913, only:

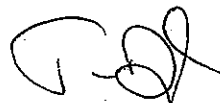
COL DAVID G. SAFFOLD, OD, HHC, 7th ID
LTC JOHN R. BURGER, EN, HHC, USAG
MAJ JOSEPH G. BYRUM, MI, HHC, USAG
MAJ ZORN T. SLIMAN, TC, HHC, 2d BSB, 2d BCT
CPT BONNY C. DYLEWSKI, QM, HHC, 2d BSB, 2d BCT
CPT CHRIS J. MAESTAS, 3/361st TSBn, 2d BDE, 91st DIV

VICE:

COL JOHN M. CHO, MS, USA MEDDAC
LTC NORMAN E. BRUBAKER, TC, HHC, 7th ID
MAJ JOHN M. CREAN, AD, HHC, 7th ID
MAJ MAURICE L. MCDUGALD, CM, HQ, 10th SFG
MAJ ROSS C. POPPENBERGER, AG, HHC, USAG
CPT CARRIE A. BRUNNER, QM, HHC, 7th ID

Relieved for the trial of United States v. Chief Warrant Officer (W3) Lewis E. Welshofer, 66th Military Intelligence Company, 3d Squadron, 3d Armored Cavalry Regiment, Fort Carson, Colorado 80913, only.

BY COMMAND OF MAJOR GENERAL MIXON:



TIERNAN DOLAN
MAJ, JA
Chief, Criminal Law Division

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DEPARTMENT OF THE ARMY
Headquarters, 7th Infantry Division and Fort Carson
Fort Carson, Colorado 80913

COURT-MARTIAL CONVENING ORDER
NUMBER 10

12 July 2005

Pursuant to authority contained in General Order Number 10, Department of the Army,
9 April 1981, a general court-martial is convened with the following members:

COL SCOTT A. LANG, QM, 43d ASG
COL JOHN M. CHO, MC, USA MEDDAC
LTC THERESA S. LEVER, AG, HHC, 7ID
LTC THOMAS C. POWELL, 2/362d, 2/91st DIV
LTC NORMAN E. BRUBAKER, TC, HHC, 7ID
MAJ JOHN M. CREAM, HHC, 7ID
MAJ MAURICE L. MCDUGALD, CM, HQ, 10th SFG
MAJ ROSS C. POPPENBERGER, AC, USAG
CPT LYNNE A. MOREHOUSE, QM, HHC, 43d ASG
1LT CARRIE A. BRUNNER, QM, HHC, 7ID

In the case where an enlisted panel is requested, the following members will be detailed:

COL JOHN M. CHO, MC, USA MEDDAC
LTC THERESA S. LEVER, AG, HHC, 7ID
LTC NORMAN E. BRUBAKER, TC, HHC, 7ID
MAJ JOHN M. CREAM, HHC, 7ID
1LT CARRIE A. BRUNNER, QM, HHC, 7ID
SGM CARLOS R. BASSATTORRES, HHC, 7ID
SGM MARCUS E. MARKHAM, USAG
SFC EMILY C. KENT, HHC, 7ID
SFC MIGUEL A. CALZADILLA, HHD, 3/10th SFG
SGT JILL M. BERGERON, USAG

All cases referred to the general court-martial convened by order Number 4, this headquarters,
dated 8 July 2004, in which the court has not been assembled in accordance with R.C.M. 911,
will be brought to trial before the court-martial hereby convened.

BY COMMAND OF MAJOR GENERAL MIXON:



TIERNAN DOLAN
MAJ, JA
Chief, Criminal Law Division

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DEPARTMENT OF THE ARMY
Headquarters, 7th Infantry Division and Fort Carson
Fort Carson, Colorado 80913

COURT-MARTIAL CONVENING ORDER
NUMBER 4

8 July 2004

Pursuant to authority contained in General Order Number 10, Department of the Army,
9 April 1981, a general court-martial is convened with the following members:

COL SCOTT A. LANG, QM, HHC 43d ASG
COL HERBERT R. MCMASTER JR., AR, RHHT, 3d ACR
LTC RICHARD B. O'CONNOR II, OD, HHT, Spt Sqdn, 3d ACR
LTC CHRISTOPHER M. HICKEY, AR, HHT, 2/3 ACR
LTC LAURA C. LOFTUS, EN, HHC, 4th Eng Bn
MAJ MARK W. SOLOMON, AR, HHT, 3/3 ACR
MAJ DAVID G. ROGERS, OD, HHC, 64th FSB
MAJ WESLEY A. MORGAN, AN, USA MEDDAC
CPT ZACHARY J. BUETTNER, OD, 183d Maint Co, 68th CSB
CPT NORINE M. AMATO, SC, HHC, 10th CSH


In the case where an enlisted panel is requested, the following members will be detailed:

COL SCOTT A. LANG, QM, HHC 43d ASG
LTC RICHARD B. O'CONNOR II, OD, HHT, Spt Sqdn, 3d ACR
LTC CHRISTOPHER M. HICKEY, AR, HHT, 2/3 ACR
LTC LAURA C. LOFTUS, EN, HHC, 4th Eng Bn
MAJ MARK W. SOLOMON, AR, HHT, 3/3 ACR
CSM FREDERICK L. THOMPSON, HHT, 1st Sqdn, 3d ACR
CSM GERALD L. KINLOCH, HHC, 4th Eng Bn
CSM NORMAN C. HAMPTON, HHC, USAG
SGM JOHN P. HICKENBOTTOM, HHC, 43d ASG
SGM MICHAEL R. BARNES, Co B, 2d Bn, 10th SFG (A)

All cases referred to the general court-martial convened by order Number 7, this headquarters,
dated 27 June 2002, in which the court has not been assembled in accordance with R.C.M. 911,
will be brought to trial before the court-martial hereby convened.

BY COMMAND OF MAJOR GENERAL WILSON:

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Reference Set (1)


KERRY L. CUNEO
MAJ, JA
Chief, Criminal Law Division

1 MJ: Court is called to order.

2 ATC: This court is convened by Court-Martial Convening Order
3 Number 4, Headquarters, Fort Carson, dated 8 July 2004, a copy of
4 which has been furnished to the military judge, counsel, the accused,
5 and to the reporter for insertion at this point into the record.

6 The charges and additional charges have been properly
7 referred to this court for trial and were served on the accused on
8 1 July [sic] 2005 at my direction.

9 MJ: I have been properly certified, sworn, and detailed to
10 this case.

11 ATC: The accused and the following persons detailed to this
12 court-martial are present:

13 Military judge, Colonel Donna M. Wright;
14 Trial counsel, Captain Elana Matt;
15 Assistant trial counsel, Captain Joe Strawn;
16 Civilian defense counsel, Mr. Frank Spinner.

17 The military defense counsel is Captain David Drake, who
18 is not present.

19 The members are absent.

20 The prosecution is ready to proceed in the arraignment in
21 the case of *The United States versus Chief Warrant Officer Three*
22 *Lewis E. Welshofer, Jr.*, 66th Military Intelligence Company, 3d
23 Squadron, 3d ACR, who is present in court.

1 Mrs. Diane Hart has been detailed reporter for this court
2 and has been previously sworn.

3 All members of the prosecution have been detailed to this
4 court-martial by Colonel Kent R. Meyer, SJA, Fort Carson. All
5 members of the prosecution are qualified and certified under Article
6 27-Bravo and sworn under Article 42-Alpha. No member of the
7 prosecution has acted in any manner which might tend to disqualify
8 them in this case.

9 MJ: Mr. Welshofer, at this time I'm going to explain to you
10 your rights to counsel so that I can make sure you understand what
11 they are.

12 You are currently represented by Captain Drake, your
13 detailed military defense counsel. He is a lawyer certified by
14 The Judge Advocate General of the Army as qualified to act as your
15 defense counsel in this case, and he is a member of the United States
16 Army Trial Defense Service.

17 You have the right to request to be represented at this
18 court-martial by another military lawyer of your own selection if
19 reasonably available. However, if you request another military
20 lawyer and that lawyer is made available, then your detailed defense
21 counsel, Captain Drake, would normally be excused because you are
22 usually only entitled to one free military attorney unless the

1 detailing authority, at your request, makes more than one free
2 military attorney available.

3 You may also be represented at this court-martial by a
4 civilian attorney provided by you at no expense to the United States
5 Government in addition to your military defense counsel, who would
6 also be present in court unless specifically excused by you.

7 Do you understand your rights as to counsel and
8 representation at these proceedings?

9 ACC: Yes, ma'am.

10 MJ: And by whom do you wish to be represented?

11 ACC: Mr. Frank Spinner and Captain David Drake.

12 MJ: Okay, now, Captain Drake's not here. My understanding is
13 he's TDY to Fort Bragg this week, and he's getting ready to PCS. So,
14 do you agree to proceeding with this arraignment today with just
15 Mr. Spinner here?

16 ACC: Yes, ma'am.

17 MJ: Mr. Spinner--the court notes Mr. Frank Spinner is present
18 in court--please state for the record your full name and business
19 address.

20 CDC: Frank J. Spinner. My business address is 7035 Campus
21 Drive, Suite 904, Colorado Springs, Colorado 80920.

22 MJ: Of what state bar are you a member in good standing?

1 CDC: Texas, admitted to practice before the highest courts of
2 that state.

3 MJ: Have you acted in any manner inconsistent with your
4 representation of Mr. Welshofer in this court-martial?

5 CDC: I have not.

6 MJ: Please raise your right hand.

7 [The military judge administered an oath to the civilian defense
8 counsel.]

9 MJ: Thank you. You may be seated.

10 Now, it's also my understanding, Mr. Spinner, that Captain
11 Drake is getting ready to PCS and will be PCS'ing to another position
12 outside TDS before this case is tried. And you've been in
13 communication with the folks in TDS, but at this point you don't have
14 another detailed counsel identified, and you have not IMC'd anybody;
15 is that correct?

16 CDC: That's correct, Your Honor. We hope to have that decision
17 made no later than the end of next week.

18 MJ: Okay.

19 CDC: As soon as Captain Drake gets back.

20 MJ: Okay. If you run into problems in that regard, contact
21 either me or the judge who's going to take over this case if there's
22 any--

23 CDC: Right.

1 MJ: --issues with TDS not identifying somebody.

2 CDC: I understand.

3 MJ: Do you agree with that, Mr. Welshofer, that you anticipate
4 releasing Captain Drake from this case because he's getting ready to
5 PCS?

6 ACC: Yes, ma'am.

7 MJ: Okay. And you understand what your rights to--how the IMC
8 process works versus a detailed counsel?

9 ACC: Yes, ma'am.

10 MJ: Okay.

11 All right, it appears, at this point at least, that
12 counsel for both sides have the requisite qualifications and all
13 personnel required to be sworn have been sworn.

14 Has there been any pretrial confinement or other pretrial
15 restraint in this case?

16 ATC: No, ma'am.

17 CDC: No, ma'am.

18 MJ: All right. And as to Article 13 punishment, defense, I'll
19 allow you to defer. If you believe there are any issues with regard
20 to the accused being subject to pretrial punishment, please raise
21 that at the time I give you for raising other motions.

22 CDC: Yes, ma'am.

1 MJ: Trial counsel, you may proceed with the general nature of
2 the charges.

3 ATC: The general nature of the charges in this case is one
4 charge, one specification, Article 92, dereliction in the performance
5 of duties; and one charge, one specification, Article 118, murder.
6 The general nature of the additional charge is one charge, one
7 specification, Article 128, assault.

8 Both were forwarded with recommendations as to disposition
9 by Major Mark Solomon and Colonel Michael Resty, Jr.

10 The accused waived the Article 32 investigation.

11 The military judge will not be a witness for the
12 prosecution. If the military judge is aware of any matters which she
13 believes may be ground for challenge by either side against him
14 [sic], she should now state such matters.

15 MJ: I am aware of no such matters.

16 ATC: The prosecution has no challenge for cause against the
17 military judge. Does the accused desire to challenge the military
18 judge for cause?

19 CDC: No questions, no challenge.

20 MJ: All right, the court has before it what's been marked as
21 Appellate Exhibit I, which is an unconditional waiver of the
22 Article 32. Mr. Welshofer, I'm sure you went over this with your

1 counsel before you waived it, but I just want to make sure you
2 understand what you did when you waived it.

3 Do you have a copy of Appellate Exhibit I at your table?

4 CDC: We don't have it right now, Your Honor.

5 MJ: Okay, why don't--just hand the original to your client.

6 [The civilian defense counsel retrieved the document from the
7 military judge.]

8 CDC: I'm handing Appellate Exhibit I to my client.

9 MJ: Mr. Welshofer, is that your signature on the left-hand
10 side of the page?

11 ACC: Yes, ma'am, it is.

12 MJ: Okay. Now, I want to advise you concerning the Article 32
13 investigation. I'm sure you went over this with your defense counsel
14 before you agreed to waive it, but I want to make sure that you
15 understood what you were waiving at the time you waived it.

16 Congress has constructed an elaborate system designed to
17 protect the rights of individual soldiers when they come into contact
18 with military justice authorities. Among those protections are that
19 no one can be brought to trial at a general court-martial, which is
20 where we are, on any specification unless that specification has been
21 investigated under the provisions of Article 32.

22 At an Article 32, an impartial officer would review the
23 charges and specifications; he would hold a hearing at which you

1 would have the right to be present with counsel; he would review
2 evidence, call witnesses. You would have the right to confront and
3 cross-examine the government witnesses, and you could produce
4 testimony and evidence on your own behalf. Your attorney would have
5 an excellent opportunity to conduct discovery. Those are among the
6 many rights you would have at an Article 32.

7 You may legally waive that investigation, but it's
8 important that you know what you are doing before you waive it. Did
9 you discuss what an Article 32 was and how it could help you with
10 your defense counsel before you agreed to waive it?

11 ACC: Yes, ma'am.

12 MJ: And did you discuss it--I see Captain Drake's signature is
13 on there. Did you also discuss that with Mr. Spinner?

14 ACC: Yes, ma'am.

15 MJ: Mr. Spinner, is that correct?

16 CDC: Yes, it is. I was present; I just didn't sign the form.

17 MJ: And my understanding is that is an unconditional waiver,
18 so it was not tied in any way to any pretrial agreement. Is that
19 correct?

20 CDC: That's correct, ma'am.

21 MJ: Is that your understanding, government?

22 ATC: Yes, Your Honor.

1 MJ: All right. Mr. Welshofer, at this time I want to explain
2 to you your rights as to forum so that I can make sure you understand
3 what they are.

4 When I say "forum rights," what I mean is that it is your
5 decision as to how you will be tried in this case. Since this is a
6 general court-martial, you may be tried by a court consisting of at
7 least five officer members; that is, commissioned and/or warrant
8 officers, or you may request to be tried before the military judge
9 alone.

10 No member of the court could be junior in rank to you. In
11 a trial before members, two-thirds of the members, voting by secret,
12 written ballot, must agree on all findings of guilty. If you are
13 found guilty of any offense, then two-thirds of the members, voting
14 by secret, written ballot, must agree on a sentence. If the sentence
15 included confinement over 10 years, then three-fourths of the members
16 would have to agree.

17 In a trial before military judge alone, the military judge
18 alone will determine whether you are guilty or not guilty. If you
19 are found guilty of any offense, then the military judge alone will
20 determine an appropriate sentence.

21 Do you understand the differences between trial before
22 members and trial before military judge alone?

23 ACC: Yes, ma'am.

1 MJ: And have you discussed the various options as to the ways
2 in which you may be tried with your defense counsel?

3 ACC: Yes, ma'am.

4 MJ: Defense, did you want to select or defer forum?

5 CDC: Defer at this time, Your Honor.

6 MJ: Forum selection may be deferred.

7 Prior to arraignment, defense counsel, have you received
8 Section III disclosure?

9 CDC: We have, Your Honor.

10 MJ: The accused will now be arraigned.

11 ATC: All parties to the trial have been furnished with a copy
12 of the charges. Does the accused desire that they be read?

13 CDC: No.

14 MJ: The reading of the charges may be omitted. The reading of
15 the charges and the additional charge may be omitted.

16 [End of page. The charge sheets follow as four unnumbered pages.]

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (<i>Last, First, MI</i>) WELSHOFER, Lewis E., Jr.			2. SSN	3. GRADE OR RANK CW3	4. PAY GRADE CW3
5. UNIT OR ORGANIZATION 66 th Military Intelligence Company, 3d Squadron 3d Armored Cavalry Regiment, Fort Carson, Colorado 80913				6. CURRENT SERVICE	
				a. INITIAL DATE 9 JUN 94	b. TERM Indef.
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED None	9. DATE(S) IMPOSED N/A	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL			
\$4,291.80	None	\$4,291.80			

II. CHARGES AND SPECIFICATIONS

10. CHARGE I: VIOLATION OF THE UCMJ, ARTICLE 92.

SPECIFICATION:

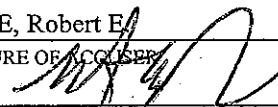
In that Chief Warrant Officer Three Lewis E. Welshofer Jr., U.S. Army, who knew or should have known of his duties at or near Al Qaim, Iraq, on or about 26 November 2003, was derelict in the performance of those duties in that he willfully failed to properly safeguard the physical health, welfare, and treatment of Major General Abid Mowhosh, as it was his duty to do.

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 118.

SPECIFICATION:

In that Chief Warrant Officer Three Lewis E. Welshofer Jr., U.S. Army, did, at or near Al Qaim, Iraq, on or about 26 November 2003, murder Major General Abid Mowhosh by means of suffocating him with the use of a sleeping bag and electrical cord.

III. PREFERRAL

11a. NAME OF ACCUSER (<i>Last, First, MI</i>) PRICE, Robert E.	b. GRADE LTC	c. ORGANIZATION OF ACCUSER. 3d SQDN, 3d ACR
d. SIGNATURE OF ACCUSER 		e. DATE OCT 1 2004

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 1 day of October, 2004, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

KELLY T. DAVISON

Typed Name of Officer

Captain

Grade


Signature

Office Of The Staff Judge Advocate

Organization of Officer

Judge Advocate

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

12. On 1 OCT, 20 04, 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).

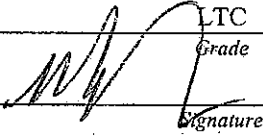
RICHARD E. PRICE

Typed Name of Immediate Commander

3d SQDN, 3d ACR, Fort Carson, CO

Organization of Immediate Commander

LTC
Grade


Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1600 hours, 1 OCTOBER 20 04 at 3d Armored Cavalry Regiment
Designation of Command or
Fort Carson, Colorado 80913
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE ¹ XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

H. R. McMASTER

Typed Name of Officer

Regimental Commander

Official Capacity of Officer Signing

Colonel
Grade


Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY HO, 7th ID and Fort Carson b. PLACE Fort Carson, CO 80913 c. DATE 26 May 2005

Referred for trial to the general court-martial convened by court-martial convening order number 4
dated 8 July 20 04, subject to the following instructions:² None.

By COMMAND of MAJOR GENERAL MIXON
Command or Order

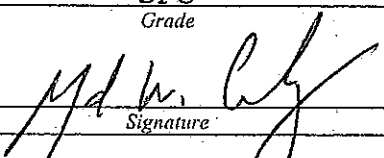
MARK W. COLBY

Typed Name of Officer

NCOIC, Criminal Law

Official Capacity of Officer Signing

SFC
Grade


Signature

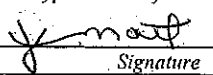
15. On 1 June, 20 05, I (caused to be) served a copy hereof on (each of) the above named accused.

JESSE MATT

Typed Name of Trial Counsel

CPT

Grade or Rank of Trial Counsel


Signature

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

10725

CHARGE SHEET

I. PERSONAL DATA

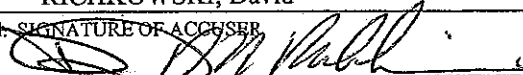
1. NAME OF ACCUSED (<i>Last, First, MI</i>) WELSHOFER, Lewis E., Jr.			2. SSN	3. GRADE OR RANK CW3	4. PAY GRADE W-3
5. UNIT OR ORGANIZATION Regimental Headquarters and Headquarters Troop, 3d Armored Cavalry Regiment (Rear)(Provisional), Fort Carson, Colorado 80913				6. CURRENT SERVICE	
				a. INITIAL DATE 09 June 1994	b. TERM INDEF
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED None	9. DATE(S) IMPOSED N/A	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL			
\$4,442.10	None	\$4,442.10			

II. CHARGES AND SPECIFICATIONS

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

SPECIFICATION: In that Chief Warrant Officer Three Lewis E. Welshofer, Jr., U.S. Army, did, at or near Al Qaim, Iraq, on or about 19 November 2003, unlawfully strike an Iraqi detainee, whose name is unknown, by slapping and punching the detainee, throwing the detainee to the ground, by wrapping the detainee in a sleeping bag, and by throwing the weight of his body onto the detainee's torso.

III. PREFERRAL

11a. NAME OF ACCUSER (<i>Last, First, MI</i>) RICHKOWSKI, David	b. GRADE CPT	c. ORGANIZATION OF ACCUSER RHHT, 3 rd ACR (R)(P), Fort Carson, CO 80913
d. SIGNATURE OF ACCUSER 		e. DATE 13 MAY 05

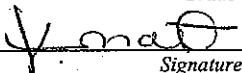
AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 13th day of May, 2005, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military 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.

JESSE A. MATT
Typed Name of Officer

HHC, 7th IN DIV, Fort Carson, CO 80913
Organization of Officer

Captain
Grade

Judge Advocate


Signature

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

12. On 13 May, 20 05, 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).

DAVID RICHKOWSKI
Typed Name of Immediate Commander

RHHT, 3rd ACR (R)(P), Fort Carson, CO 80913
Organization of Immediate Commander

CPT
Grade

[Signature]
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 0800 hours, 16 May 20 05 at HQ, United States Army Garrison, Fort Carson, Colorado 80913
Designation of Command or Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE ¹ XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

MICHAEL RESTY, JR.
Typed Name of Officer

Garrison Commander
Official Capacity of Officer Signing

COL
Grade

[Signature]
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY
HQ, 7th ID and Fort Carson

b. PLACE
Fort Carson, CO80913

c. DATE
26 May 2005

Referred for trial to the general court-martial convened by court-martial conveying order number 4

dated 8 July 20 04, subject to the following instructions:² To be tried in conjunction with the original charges.

By COMMAND of MAJOR GENERAL MIXON
Command or Order

MARK W. COLBY
Typed Name of Officer

NCOIC, Criminal Law
Official Capacity of Officer Signing

SEC
Grade

[Signature]
Signature

15. On 1 June, 20 05, I (caused to be) served a copy hereof on (each of) the above named accused.

JESSE MATT
Typed Name of Trial Counsel

CPT
Grade or Rank of Trial Counsel

[Signature]
Signature

FOOTNOTES: 1 — When an appropriate command is ~~not~~ personally, inapplicable words are stricken.
2 — See R.C.M. 601(e) concerning instructions. If none, so state.

1 ATC: The charges are signed by Lieutenant Colonel Robert E.
2 Price; the additional charge is signed by Captain David Richkowski--
3 both are persons subject to the Code--as accusers; are properly sworn
4 to before a commissioned officer of the armed forces authorized to
5 administer oaths; and are properly referred to this court for trial
6 by Major General Robert W. Nixon, the convening authority.

7 MJ: Accused and counsel, please rise.

8 Chief Warrant Officer Three Lewis E. Welshofer, Jr., I now
9 ask you, How do you plead? Before receiving your plea, I must advise
10 you that any motion to dismiss any charge or to grant other
11 appropriate relief should be made at this time.

12 CDC: Your Honor, we request to defer entering pleas.

13 MJ: And motions?

14 CDC: And motions, right.

15 MJ: You may be seated.

16 Motions and plea may be deferred.

17 Prior to proceeding, we had an RCM 802 session, present at
18 which were both trial counsel, civilian defense counsel, and myself,
19 the military judge. At that time we discussed some trial dates. The
20 defense counsel has a pretty heavy schedule in the next couple of
21 months and has requested a delay for motions sessions until the week
22 of 15 August. And based on that, I have set the motions session for
23 15 August, and trial will be held the week of 17 October. With that

1 in mind, forum, pleas, and motions are due to the government by
2 1 August. Government, you will respond to those motions within the
3 time constraints as set out in the rules of practice before Army
4 courts-martial. Also, any witnesses being requested in accordance
5 with RCM 703(c)(2)(C) for merits witnesses and RCM 1001(e)(2) for
6 sentencing by 1 August. If, as a result of the motions, those
7 witness requests need to be supplemented, then the supplemented
8 witness list should be provided to the government by 15 September.

9 Any disagreement with the characterization of the 802, or
10 either side have anything to add with regard to that?

11 ATC: No, ma'am.

12 CDC: No, ma'am.

13 MJ: Do you wish to be heard on any objection to the delay? I
14 didn't really ask for your opinion on it, but is it correct you're
15 ready to go sooner?

16 ATC: Yes, Your Honor. We just want to make it known that we
17 would like to get this done as quickly as possible.

18 MJ: But you don't have any specific objection to the delay,
19 like you're going to lose any particular witness or anything like
20 that?

21 ATC: No, ma'am.

22 MJ: Okay. And, Mr. Welshofer, your counsel has asked for a
23 fairly lengthy delay in the case. I have, at least at this point,

1 granted--inclined to grant that delay because of his schedule. But
2 you're the one who's pending charges this whole time, and I
3 understand, based on the charge sheet, these charges have been--were
4 preferred a pretty long time ago. Do you go along with his decision
5 to ask for that lengthy delay in order to adequately prepare for this
6 case?

7 ACC: Yes, ma'am, I agree.

8 MJ: Okay.

9 CDC: And if I just may respond, Your Honor. I disagree with
10 the characterization of a "lengthy delay." This is a murder case.
11 Multiple expert witnesses are going to be required. We anticipate
12 there's going to be classified issues and discovery. So, just for
13 the record, I disagree with the characterization as "lengthy" and
14 telling my client that that's lengthy. It's rather typical, from
15 what I've experienced, litigating these cases in the military justice
16 system over 25 years.

17 MJ: Okay. But I still think it's important that Mr. Welshofer
18 agree to the delay--

19 CDC: That--

20 MJ: --because he's the one--you're not the one with the
21 charges hanging over your head. He is. And that's the only reason I
22 wanted to get that out on the record. I wanted to make sure that the

1 two of you had discussed it, and it appears to me that you have
2 discussed it and he's fine with the delay.

3 CDC: Right.

4 MJ: I just thought it was important to make sure that he
5 understood that if he didn't want to wait that long, then maybe we'd
6 go back, you'd have more of a discussion, and we would re-look the
7 delay. That's all I'm trying to do here, is make sure your client
8 understands that you're the one asking for the delay. So, the fact
9 that the charges are being held over his head is not because the
10 trial counsel wanted the delay; it's because you want the delay to
11 prepare for the case. That's all I'm trying to make clear for the
12 record.

13 CDC: Right. And to avoid ineffective assistance by not being
14 prepared adequately.

15 MJ: There's no point in getting argumentative about it. I am
16 trying to protect your client's rights, and I just wanted to make
17 sure he agreed with the fact that these charges are now going to be
18 hanging over his head for an additional 4½ months. He's indicated
19 that he understands that; he has no problem with it; and he agrees
20 with your decision to ask for a delay. Whether I characterize it--
21 it's a lengthy delay in my opinion. But reasonable minds can
22 certainly differ over that.

1 ACC: Well, ma'am, it took almost 12 months for the prosecution,
2 from the incident to referral of charges, so I have no problem with
3 the delay to develop a defense strategy.

4 MJ: Great. That's all I wanted to make sure.

5 CDC: Okay, ma'am. Thank you.

6 MJ: Mr. Welshofer, you have just been arraigned. That means
7 that at a later session of the trial if court is called to order and
8 you are voluntarily absent, then the case could go on without you.
9 Your defense counsel would have to defend you without your being
10 here. So, you need to make sure you keep in touch with Mr. Spinner
11 and whatever military counsel is assigned to your case and know the
12 next time you are due in court. Right now, it's set for the week of
13 15 August, but, as you know, these things are subject to change.

14 Do you have any questions about that?

15 ACC: No, ma'am.

16 MJ: Anything else to take up at this time?

17 ATC: No, ma'am.

18 CDC: Just one--well, one question. Were you going to state on
19 the record who the trial judge is going to be?

20 MJ: Oh, I'm sorry. I can certainly do that. I am not going
21 to be the trial judge in this case. The trial judge will be Colonel
22 Mark Toole, who--at this point, I believe it's going to be Mark
23 Toole. If that changes, I will let you know ASAP. But at this point

1 I'm pretty sure Colonel Toole is going to be detailed to the case. I
2 will send an e-mail out to all parties, and I'll provide you his
3 e-mail address, so any further contact about this case should be
4 directed to him because he's going to be handling the motions and the
5 trial.

6 CDC: Yes, ma'am.

7 MJ: Any questions about that?

8 CDC: No, ma'am.

9 ATC: No, ma'am.

10 MJ: And he's out of Fort Lewis.

11 Court's in recess.

12 [The court adjourned at 0933 hours, 8 June 2005.]

1 The court reconvened at 1110 hours, 17 October 2005, at Fort Carson,
2 Colorado, with the following parties present:

3
4 COL Mark W. Toole, military judge, replacing COL Donna M.
5 Wright, who was not present;
6 MAJ Tiernan P. Dolan, assistant trial counsel, added;
7 Frank J. Spinner, Esq., civilian defense counsel;
8 CPT Ryan W. Rosauer, military defense counsel, replacing
9 CPT David Drake, who was not present;
10 Diane S. Hart, court reporter; and
11 CW3 Lewis E. Welshofer, Jr., the accused.
12

13 The court members were absent.
14

15 MAJ Dolan, Chief, Criminal Law Division, Office of the Staff Judge
16 Advocate, Fort Carson, Colorado, stated that he had excused CPT Matt
17 and CPT Strawn from the proceedings. MAJ Dolan announced his legal
18 qualifications and status as to oath and stated that he had been
19 appointed to the case by COL Kent Meyer, Staff Judge Advocate, Fort
20 Carson, Colorado, and that he had not acted in any manner which might
21 tend to disqualify him in the case.
22

23 The military judge re-advised the accused of his rights to counsel
24 and determined that the accused had released CPT Drake from
25 representing him and wished to be represented by Mr. Spinner and
26 CPT Rosauer.
27

28 CPT Rosauer announced that he had been detailed to the case by
29 LTC John Carrell, the Regional Defense Counsel, Region III, U.S. Army
30 Trial Defense Service. He stated his qualifications and status as to
31 oath and that he had not acted in any manner which might tend to
32 disqualify him from the court-martial.
33

34 The military judge stated that he had been properly certified and
35 sworn and that he had detailed himself to the case.
36

37 There was no *voir dire* or challenge of the military judge by either
38 side.
39

40 The military judge re-advised the accused of his forum rights.
41

42 The accused elected to be tried by an officer panel.
43

44 The military judge noted that Appellate Exhibit V was an MRE 505
45 notice that had been provided by the defense to the government, which

1 was classified and sealed. A second MRE 505 notice to be provided to
2 the government by the defense would be marked Appellate Exhibit VI.
3 It would also be classified and sealed.

4

5 A 39(a) session was scheduled to address the MRE 505 matters on
6 16 November 2005 at Peterson Air Force Base, Colorado.

7

8 The entry of a plea was deferred.

9

10 The military judge noted that the trial had been originally scheduled
11 to begin 17 October and that a defense request for a continuance
12 until 12 December 2005 had been granted over government objection,
13 which was marked Appellate Exhibit II.

14

15 The military judge warned the accused that if he were not present for
16 the next session of court, the session could proceed without him.

17

18 The court adjourned at 1125 hours, 17 October 2005.

1 The court reconvened at 1013 hours, 16 November 2005, at Peterson Air
2 Force Base, Colorado, all parties again present, with the addition of
3 CPT Elana Matt, trial counsel, whose qualifications had previously
4 been put on the record.

5
6 The military judge noted that the preliminary hearing was being
7 conducted in accordance with *U.S. v. Grunden*, 2 MJ 116. The defense
8 RCM 505 notice had been marked as Appellate Exhibit V and the second
9 RCM 505 notice supplement as Appellate Exhibit VI. The government
10 response had been marked as Appellate Exhibit VII.

11
12 The military judge noted that the first task of the military judge
13 was to determine whether the perceived need urged as grounds for the
14 exclusion of the public was of sufficient magnitude to outweigh the
15 danger of a miscarriage of justice which might attend to proceedings
16 carried out in even partial secrecy. The military judge noted that
17 in *Grunden*, the court had directed that this could be best achieved
18 by conducting a preliminary hearing, which was closed to the public,
19 at which time the government must demonstrate that it had met the
20 heavy burden of justifying the imposition of restraints on this
21 constitutional right. The prosecution, to meet this heavy burden,
22 must demonstrate the classified nature, if any, of the evidence in
23 question. It must then delineate those portions of the case
24 involving that evidence.

25
26 The military judge stated that before he could order the exclusion of
27 the public, he must be satisfied that there was a reasonable chance
28 that presentation of the evidence before the public would expose
29 military matters which, in the interest of national security, should
30 not be divulged. Following that determination, the trial judge must
31 decide the scope of the exclusion of the public. The prosecution
32 must delineate which witnesses would testify on classified matters
33 and what portion of each witness's testimony would actually be
34 devoted to this area. A witness whose testimony was only partially
35 concerned with classified matters would testify in open court on all
36 other matters.

37
38 The court recessed at 1019 hours, 16 November 2005, for a closed
39 session, which is page 21 of the record of trial.

1 The court reconvened at 1225 hours, 16 November 2005, all parties
2 again present.

3
4 The accused pled:

5
6 To all Charges and Specifications: Not Guilty.

7
8 The court adjourned at 1227 hours, 16 November 2005.

1 The court reconvened at 1122 hours, 16 January 2006, at Peterson Air
2 Force Base, Colorado, all parties again present. The members were
3 not present.

4
5 The military judge stated that following the closed session of
6 16 November 2005, he had issued an order to close portions of the
7 trial, Appellate Exhibit XVIII.

8
9 On 14 January 2005, the defense had filed a motion to dismiss based
10 upon unlawful command influence, Appellate Exhibit XII. The defense
11 alleged to have become aware of the circumstances giving rise to the
12 motion on 12 January 2006. The government response to the motion,
13 Appellate Exhibit XIII, had been filed 15 January 2006.

14
15 The court recessed at 1125 hours, 16 January 2006, in order to allow
16 the civilian defense counsel an opportunity to review the
17 government's response to the motion. The court reconvened at 1136
18 hours, 16 January 2006, all parties again present.

19
20 MAJ Robert Short, U.S. Army, was called as a witness by the defense
21 in support of their motion, was sworn, and testified in substance as
22 follows:

23
24 DIRECT EXAMINATION

25
26 (under questioning by the civilian defense counsel)

27
28 I am currently assigned to Headquarters and Headquarters
29 Company, 7th ID, Fort Carson, Colorado.

30
31 I am the Deputy G-2 for the 7th Infantry Division. That's the
32 intel piece of the general officer staff for 7th Infantry
33 Division.

34
35 I recall being interviewed by you and CPT Rosauer on 12 January
36 2006. I had previously been identified as a defense witness in
37 this case. During the course of the interview, I disclosed to
38 you and CPT Rosauer a conversation that I overheard in November
39 of 2005. At that point, you asked me to make a record of the
40 conversation in a memorandum, describing and detailing the
41 conversation. I went back to my office after our conversation
42 and wrote that memorandum, which is contained in Appellate
43 Exhibit XII.

1 I was recently assigned as the Casualty Assistance Officer for
2 the LaBouff family upon the death of MAJ Doug LaBouff in Iraq on
3 7 January 2006. My duties now are to assist that family in
4 getting through their grief and ensuring that they receive all
5 the benefits to which they are entitled. Though these tasks are
6 time-consuming, I was willing to prepare the memorandum for the
7 defense. You did not tell me the words to use in the
8 memorandum. I did not receive any assistance from the defense
9 in writing it. You told me only to use the words "in effect" if
10 I could not recall exact words.
11

12 I recognize the first attachment to Appellate Exhibit XII as the
13 memo that I wrote. My signature is on the document.
14

15 The memo states that I participated in a CG golf tournament on
16 17 November 2005. A storm had blown in on the day of the
17 scramble, causing the tournament to be cancelled after about
18 nine holes. Participants had gone into the pro shop for refund
19 vouchers. As my memo stated, there were winners declared for
20 the number of holes that we had played.
21

22 Among those present were COL Saffold, COL Resty, COL Davis, and
23 LTC Rothstein. MG Mixon was not there. COL Saffold is the
24 Assistant Division Commander for Support, 7th Infantry Division.
25 COL Davis is the Chief of Staff for the 7th Infantry Division.
26

27 I overheard a conversation between COL Saffold and COL Davis
28 that referenced Chief Welshofer. I was aware at that time that
29 Chief Welshofer was facing murder charges in a court-martial.
30 We were standing in the pro shop. COL Saffold was probably
31 about 4 feet away from me; COL Davis was next to him. They were
32 talking. There were also others in the pro shop.
33

34 COL Saffold mentioned the Welshofer case, which caused me to
35 take notice and listen. He said that the jury pool for the
36 court-martial for Mr. Welshofer had been selected and that the
37 CG should be very happy because in that pool were members of the
38 Army that had not been deployed to OIF or OEF. Then he went on
39 to say that the CG had been unhappy with recent court-martial
40 results. He went on to say that "bleeding-heart liberals" had
41 been on these previous courts-martial and the results were not
42 as they should have been, and they were detrimental to good
43 order and discipline. I don't recall the exact words that were
44 used, but I remember it was something to the effect of panels
45 being too lenient and soft and that the CG was unhappy about

1 that. COL Saffold said people in the pool who were not combat
2 veterans would do the right thing and ensure a good verdict,
3 something that the CG would be happy with, something to that
4 effect.
5

6 I immediately recognized the comments as undue command influence
7 and was totally shocked that he'd said it in front of me. And I
8 felt that if COL Saffold participated in this court-martial,
9 that Mr. Welshofer would not get a fair trial.
10

11 I was unable to hear what COL Davis responded. Talk evolved
12 back into a discussion of the weather because it was a very
13 stormy day.
14

15 I understand the significance of the allegations I'm making
16 here. Making accusations against a senior officer is a serious
17 matter. I was nervous about bringing these allegations forward
18 because it could reflect upon my career.
19

20 I did not prepare a memorandum at the time that I overheard the
21 conversation. My memory is extremely clear as to what I heard
22 because I've been following the Welshofer case for some time, so
23 I immediately focused in, when COL Saffold mentioned it, and
24 paid attention. And when I heard him say what he was saying, I
25 was shocked that he'd said it in front of me. The court-martial
26 convening authority cannot influence a trial by saying, "Gee,
27 I'd really like to see this guy go free," or "Gee, I'd really
28 like to see this guy get hung."
29

30 My assumption is that COL Saffold talked to the commanding
31 general in order to know that he was unhappy with the results in
32 prior courts-martial, but COL Saffold did not say in his
33 conversation that he had talked to the commanding general. He
34 just said the general would be pleased with the people who were
35 in the court-martial pool, these non-deployed officers.
36

37 CROSS-EXAMINATION

38
39 (under questioning by the assistant trial counsel)
40

41 COL Saffold seemed to be quoting the CG. My memo just tries to
42 delineate what I'd heard COL Saffold say.
43

44 I'd just gotten back into country from Iraq when I was informed
45 that I was going to be part of this court-martial proceeding.

1 At that time I just discussed how I knew Mr. Welshofer. Then
2 following that, this happened, so I contacted Mr. Welshofer and
3 told him to contact his attorneys about this.
4

5 When I told you yesterday that I had reported this to the
6 defense, I told you I had told the Welshofer folks this in
7 November. I had spoken to Mr. Welshofer himself. But when I
8 spoke to him, I told him to tell his attorneys, so I was in
9 effect talking to the Welshofer folks. I spoke to Mr. Welshofer
10 back in November when LTC Rothstein was in town. Now he is in
11 Afghanistan. The CG is now also in Afghanistan.
12

13 This conversation took place in a public area.
14

15 COL Saffold did not specifically say he was going to sit on the
16 Welshofer panel. He said the names in the panel pool had been
17 released and that he thought he was on the panel and that he
18 would do the right thing. I'm not sure who heard the comment.
19 I would assume COL Davis heard it, since COL Saffold was talking
20 to him. There was a clothing rack that blocked my view of
21 COL Davis, so I really didn't see his face or his reaction.
22 COL Saffold seemed to know the identities of those who had
23 deployed or not deployed as well as the makeup of the panel.
24

25 I did not write a memo about this at the time of the incident.
26 I spoke to the Welshofer folks in November. I asked a couple of
27 times about it and never got a response back. I was effectively
28 told not to worry about it. That's the impression that I got,
29 since they never came back and asked me anything about it. So,
30 I just assumed that it was a moot point. Perhaps the panel
31 hadn't been selected. I don't know.
32

33 I was asked about this on 12 January. I did not bring it up.
34

35 I didn't know that I'd been identified as a defense witness
36 until last week, when I was actually told that I'd be contacted
37 at some point. Since I'd been told earlier that I'd be
38 contacted at some point and others had been contacted, but I had
39 not, I was sort of wondering if I was going to be a witness or
40 not.
41

42 I remember CPT Davison, a trial counsel, telling me he was
43 working on the Welshofer case before March. We deployed in
44 March. It would have been in the summer of 2004, I believe. He
45 talked to me several times about it. I recall that he asked me

1 for certain items, such as maps. I assumed he would use them in
2 the prosecution of Mr. Welshofer. He asked for maps that were
3 developed and produced in country. All those maps and products
4 were destroyed before we left country. He asked for a number of
5 items. I did not personally produce them. I had others produce
6 them for him. I did not produce a single item that CPT Davison
7 asked me for in the prosecution of Mr. Welshofer because it was
8 all destroyed. It was clear to me that he was investigating the
9 Welshofer case as a prosecutor and that he needed those for
10 developing his case.

11
12 **REDIRECT EXAMINATION**

13
14 (under questioning by the civilian defense counsel)

15
16 I reported the possibility of unlawful command influence to
17 Chief Welshofer, not to you or to the military defense counsel
18 directly. The first conversation I had with CPT Rosauer or you
19 regarding this issue was on 12 January 2006. I have no idea how
20 many witnesses the defense was interviewing in this case nor
21 what your schedules were and what other activities you had in
22 other cases. I have no idea what conversations Chief Welshofer
23 may have had with his defense counsel about this issue either.

24
25 I am not biased in favor of Chief Welshofer to the point that I
26 would make up this conversation I overheard and lie about it.

27
28 I was willing to assist CPT Davison, and I had people who worked
29 for me who could assist, also.

30
31 I was not aware that on 17 November 2005 the government provided
32 a list of court members to the judge and that COL Saffold's name
33 was not on the list. I had no knowledge about the fact that
34 COL Saffold had been identified as an alternate member earlier
35 in the year. There was no way, outside of overhearing this
36 conversation, that I would have known COL Saffold was a
37 potential member of the court-martial pool in this case as an
38 alternate unless I had tried to look into it. On 12 January,
39 when I came in and talked to you about this, I learned that
40 COL Saffold was identified as the senior-ranking member on the
41 court.

42
43 The witness was temporarily excused, was duly warned, and departed
44 the courtroom.

1 COL Brooks Shannon Davis, U.S. Army, was called as a witness by the
2 prosecution on the motion, was sworn, and testified in substance as
3 follows:

4
5 DIRECT EXAMINATION

6
7 (under questioning by the assistant trial counsel)

8
9 I am currently the Chief of Staff, 7th Infantry Division. I've
10 held the position for 6 months. I work directly for MG Mixon,
11 Commanding General. I orchestrate the G staff and the special
12 staff to accomplish the mission for the commanding general. I
13 have daily contact with him, discussing a variety of mission-
14 essential and community-type topics. On occasion, I guess, we
15 would talk about courts-martial or different legal things that
16 would come up. He has never expressed to me any specific
17 opinions concerning courts-martial but mainly just legal issues
18 that the SJA may be working on or something like that. He has
19 never indicated to me his satisfaction or dissatisfaction
20 concerning any results of courts-martial. I think I would
21 remember if he had said such a thing. He has not talked with me
22 about the Welshofer case or the makeup of the panel. He has not
23 expressed an opinion to me as to the judicial philosophy of
24 soldiers who have served in Iraq or Afghanistan or made a
25 distinction between soldiers who have served in Southwest Asia
26 and those who have not.

27
28 I did play in the CG scramble on 17 November with COL Saffold.
29 It was a blustery, wintry day. It started out pretty cold, and
30 it turned into snow and sleet. I think we only played 9 holes,
31 and the tournament was called. We went back to the clubhouse,
32 and they gave some awards for low scores and then released
33 everybody. COL Saffold and I were with each other for periods
34 of time in the clubhouse. We must have talked. I think we may
35 have even had some coffee.

36
37 COL Saffold is the Deputy Commander for Support. I do not
38 recall COL Saffold making a statement that the CG was not happy
39 with recent trial verdicts and punishment recommendations from
40 courts-martial consisting of recent combat veterans and that
41 they were too lenient and soft. I think I would recall such
42 words if they had been spoken. I don't know why I would recall
43 them, but I just don't recall his saying that during the time I
44 was with him there or any other time. That would be something

1 that would cue me in to what the CG's thought process is, and I
2 don't recall that being said.

3
4 I do not recall COL Saffold saying anything to the effect that
5 he had been selected for the Welshofer pool or panel and that
6 the CG should be pleased that he and others who had not deployed
7 to OIF/OEF were among the jury pool and that they would do the
8 right thing on the Welshofer trial. Had I heard such comments,
9 I think I would recall it, and I don't recall that statement at
10 all.

11
12 **CROSS-EXAMINATION**

13
14 (under questioning by the civilian defense counsel)

15
16 On 17 November 2005, I was in the golf club at Fort Carson,
17 talking to COL Saffold.

18
19 The witness was permanently excused, was duly warned, and departed
20 the courtroom.

21
22 COL David G. Saffold, U.S. Army, was called as a witness by the
23 prosecution on the motion, was sworn, and testified in substance as
24 follows:

25
26 **DIRECT EXAMINATION**

27
28 (under questioning by the assistant trial counsel)

29
30 I have been the Deputy Commander, Support, 7th Infantry Division,
31 Fort Carson, for 18 months. I'm the senior logistician at Fort
32 Carson, responsible for the regeneration of forces in
33 preparation for deployment, supporting their training exercises
34 and taking care of all the Reserve and National Guard
35 regeneration efforts.

36
37 I have no interest in legal affairs. I'm not involved in it
38 other than in contractual issues on Fort Carson that aid in the
39 support of our soldiers.

40
41 I have no interest in criminal military justice matters in this
42 position. I was a member of a court-martial panel in November.
43 That's the extent of my involvement during the entire 18 months.

1 I heard of a case involving the death of an Iraqi general on the
2 radio quite a long time ago as part of a news broadcast. At
3 that time I did not know the name of the accused. I still don't
4 know the accused. I know the name of the case because it came
5 up during a Command and Staff last Thursday. Our Public Affairs
6 Officer lists all the major events that are taking place, all
7 the distinguished visitors, all the things that have media
8 interest. That's when the name of that case came up as a bullet
9 on a chart. The name was Woh-something. Yes, it's Welshofer.

10
11 On or about 6 January 2006, I was asked to be a panel member via
12 e-mail. SGT Cox from OSJA sends out an e-mail with two
13 attachments, and if you want to be excused, you have to put in
14 your remarks, and you mail it back to him and wait and see what
15 happens. I recognize attachment 7 of Appellate Exhibit XIII.
16 On 6 January, I wrote the comments here, showing the dates that
17 I had conflicts.

18
19 I recognize Appellate Exhibit XX as the e-mail that I opened
20 that gave me my first notification that I was supposed to show
21 up here for this panel. There was also an attachment giving
22 directions to Peterson AFB. I received the e-mail at 1249 hours
23 on 6 January, and within an hour and 6 minutes, I had requested
24 excusal from this panel because the dates for this court-martial
25 extended past when the commanding general was going to host a
26 very significant off-site that involved all the leadership at
27 Fort Carson. I was running one of the three panels that had
28 about one-third of the leadership of our post there, and I
29 thought my duties ought to be at that place and location.

30
31 I recall participating in a CG scramble on 16 November 2005.
32 It's hard to forget; it was absolutely miserable. It was called
33 off after nine holes. It was extremely cold and not worth going
34 out. When it was called off, we hovered around in the café area
35 of the pro shop, waiting for awards presentations. COL Davis
36 and I were teammates, and we hung around because we thought that
37 I was closest to the pin on one hole.

38
39 We discussed a host of topics, mostly the game, but also
40 officers, good order and discipline. I had just come off a
41 court-martial panel about 10 days before, I think November 7th.
42 I was just relaying to him the differences between senior
43 officers with command experience and very young officers on how
44 they looked at the matter of good order and discipline in a
45 unit. My comments were I thought it was good that we had a good

1 mixture on that panel, where we had two colonels and one was in
2 brigade command. I'd been a previous brigade commander. There
3 was good command experience and field grades, as well, to
4 balance out the court-martial panel because the young officers
5 just didn't have the experience to understand the second- and
6 third-order effects and the turmoil within a unit. I did not
7 talk about panel members who had either deployed or not deployed
8 to Southwest Asia at all. The case involved a local discipline
9 matter within the unit. I do not view soldiers who have
10 deployed differently from those who have not. I think about 94
11 or 95 percent of our Army has deployed over there in one shape
12 or form. You can't distinguish. A soldier is a soldier. I
13 have not discussed a difference in the attitude towards good
14 order and discipline between soldiers who have deployed and
15 those who have not. At the golf shop, I was talking about my
16 experience, having sat on a panel the previous week. I made
17 comments about good order and discipline solely as it related to
18 that case and how young panel members perceived it. I had no
19 knowledge of Mr. Welshofer's case.

20
21 The CG has never talked to me about his impressions of court-
22 martial results or his satisfaction or dissatisfaction with any
23 court-martial results. We have had no discussions whatsoever on
24 any type of legal matter. I worked with MG Mixon before my
25 current assignment. I was assigned as a brigade commander at
26 Fort Hood. He was my intermediate rater. Back then, we did not
27 discuss military justice matters unless it was a 15-6
28 investigation, which is a commander's inquiry. The extent of
29 those discussions was pretty short. "Have you initiated?" was
30 the question. He has never indicated to me that he would like
31 certain results in certain cases. I have never announced or
32 said that I thought he desired certain results in certain cases
33 or said in public that I thought that in this case the CG
34 desired a certain result.

35 36 CROSS-EXAMINATION

37
38 (under questioning by the civilian defense counsel)

39
40 I have not been selected for promotion.

41
42 On 17 November 2005 during this golf event inside the pro shop,
43 I do not recall using the term "bleeding-heart liberal" in my
44 conversation with COL Davis, but I used the term "liberal."
45

1 I do not really understand the process for selection of court
2 members. All I know is I get an e-mail from a representative
3 from the legal office. I have an opportunity to respond by
4 e-mail if I am unavailable, and I wait for notification as to
5 whether I remain on the panel.

6
7 I sat on a panel in November 2005. At that time, there was a
8 folder with a convening order on which my name appeared. My
9 perception is that all the senior officers are on a standing
10 list to serve as court members. I don't know who's on the
11 standing list and who is not. I reviewed the convening order
12 when I was on the court to examine my name. I did not see every
13 colonel's name on post on that order. It was my name and one or
14 two other colonels' names. I did not interpret that as being a
15 list of the standing panel of individuals who attend courts-
16 martial. I understood that Fort Hood set up a standing panel
17 and referred courts to that panel. I was very cognizant that
18 there is a time window established and that the officers are
19 assigned. I guess because I've been in a joint assignment for
20 3 years, I really was not aware that that was the same process
21 and procedure here at Fort Carson. I really wasn't cognizant of
22 the date on the convening order for the panel to which I was
23 assigned in November 2005. I am aware that at another location,
24 the Army used standing panels.

25
26 I have not been aware that Chief Welshofer's case has received
27 extensive publicity in *The Denver Post* and *The Gazette Telegraph*
28 and in some national media over the last year, going back to
29 2004. I get the *U.S. News* as well as *The Gazette* at the office
30 every day. I generally have enough time to scan the *U.S. News*,
31 do e-mail, and then get engaged. I sometimes scan headlines in
32 *The Gazette*, but it is not my primary source of information for
33 my business. I agree that allegations that an Iraqi general was
34 murdered by Army soldiers during an interrogation in Iraq is a
35 significant event in connection to the Army at Fort Carson. I
36 do not recall Chief Welshofer's name in connection with articles
37 that may have appeared in the press.

38
39 **REDIRECT EXAMINATION**

40
41 (under questioning by the assistant trial counsel)

42
43 Appellate Exhibit XXI is Court-Martial Convening Order
44 Number 10, to which this case was referred to a general court-
45 martial in October 2004. My name is not on that convening

1 order. So, if I was appointed to a standing panel, it wasn't to
2 the standing panel that the Welshofer case was referred to.

3
4 I could not read any newspapers last week. I had lasik surgery
5 last Tuesday, and I didn't get these reading glasses until
6 yesterday.

7
8 **REXCROSS-EXAMINATION**

9
10 (under questioning by the civilian defense counsel)

11
12 I think it was November 2005 that I first saw Convening Order
13 Number 9, dated 12 July 2005, on which I am listed with a group
14 of colonels and other officers. I am not aware that members are
15 listed on the convening order by date of rank. I did sit as the
16 president of the panel on which I served. I understood that we
17 were seated in order of rank when I got in the courtroom. I had
18 not sat previously on a court-martial as the senior member. I
19 sat as a lieutenant colonel in Germany quite a while back. I
20 cannot construe Court-Martial Convening Order Number 9 to be a
21 standing panel.

22
23 The witness was excused and departed the courtroom.

24
25 **SGT Brian D. Cox**, U.S. Army, was called as a witness by the
26 prosecution on the motion, was sworn, and testified in substance as
27 follows:

28
29 **DIRECT EXAMINATION**

30
31 (under questioning by the assistant trial counsel)

32
33 I am the CG Actions NCOIC at the Fort Carson OSJA. I was asked
34 to appear as a witness at this court-martial on Saturday
35 afternoon. My class A uniform was at the cleaners so that it
36 would be fresh for a memorial service to be held Monday for a
37 JAG officer killed in Iraq. I was unable to retrieve my uniform
38 from the cleaners for my appearance today.

39
40 My duties are to prepare memos to the CG for disposition on
41 chapter actions, Articles 15, and courts-martial. I also
42 contact panel members for courts-martial. Once a forum
43 selection has been made by an accused, I refer to the convening
44 order to which the case was referred. Right now I believe we
45 have Court-Martial Convening Orders Number 8, 9, 10, and 11 as

1 orders. I send an e-mail to each member on the primary list
2 with information as to the date and time of the court-martial
3 and directions to the location of the court-martial as well as a
4 Microsoft Word format for Excusal Request. In this case, that
5 primary list to which this court-martial was referred was Court-
6 Martial Convening Order Number 10, Appellate Exhibit XXI. If a
7 member requests excusal, it is forwarded to the CG for approval
8 or disapproval. Some reasons, such as TDY or leave, are
9 automatic excusals, which are not sent to the CG.

10
11 COL Cho from Convening Order Number 10 was contacted. He had
12 some sort of medical IG inspection. I prepared a CG action for
13 a decision by the convening order in regard to COL Cho's
14 excusal. COL Cho was excused by the CG. I then contacted the
15 next person on the list, whom I believe was COL Wright. He was
16 going to be on convalescent leave following surgery. I believe
17 I learned that from talking to his aide. Convalescent leave is
18 also an automatic excusal. I skipped COL Lang because he was
19 already sitting as a primary. I contacted COL Humphrey, who
20 responded that he would be TDY, an automatic excusal. COL
21 Saffold was the only colonel left. He submitted his request for
22 excusal very quickly. I typed the excusal request memo to be
23 sent to the CG for his decision. The acting CG denied the
24 excusal request of COL Saffold.

25 26 CROSS-EXAMINATION

27
28 (under questioning by the civilian defense counsel)

29
30 In this case, the primary senior-ranking officer was COL Cho.
31 His date of rank is actually the lowest of all the colonels.
32 When the primary cannot sit, I have to go to the closest date of
33 rank of the same rank. I go to someone who's on a convening
34 order once the alternates are contacted. So, alternates are
35 contacted first, then people who are already on a convening
36 order. I went through all the colonels who were closest in rank
37 to COL Cho, and COL Saffold is the furthest in rank from
38 COL Cho. But these are all colonels who are on convening
39 orders. We work with four convening orders, only one [sic] of
40 which is for general courts-martial.

41
42 I recognize these, Convening Orders Number 8 and 9 for standing
43 panels. COL Saffold's name appears at the top of both of those
44 orders as the senior-ranking member for officer panels. The
45 senior person is at the top of the order, and the lowest ranking

1 senior person is at the top of the order, and the lowest ranking
2 person is at the bottom of the order, normally. I did not type
3 these or check them to ensure that is the case. As of July of
4 2005, COL Saffold's name was on two convening orders. If he
5 knows that he's on a convening order, he still may not know
6 which case is being referred to a particular order. I believe
7 Chief Welshofer's case was originally referred to Convening
8 Order Number 4. Convening Order Number 10 superseded Convening
9 Order Number 4. I didn't send anything out for this case until
10 3 January 2006. COL Saffold was an alternate for this case or
11 any case. He was not on a standing panel for this case. Until
12 January 2005, I never said anything to him one way or the other
13 about whether he would sit on this case. On 12 July 2005, I was
14 not working in the position I now hold. I don't know if
15 individuals on new standing panels are informed that they are on
16 the standing panel. If COL Saffold sat on a court in November
17 2005 and saw an order dated 12 July 2005 with his name on it, he
18 still may not have been on the standing panel, but on the vice
19 order.

20 21 REDIRECT EXAMINATION

22
23 (under questioning by the assistant trial counsel)

24
25 After COL Cho was excused by the CG for this case, I probably
26 spent 3 days working on who would replace him. When a primary
27 member, such as COL Cho, is excused, I then go to a list of all
28 individuals selected by the CG to serve as court members. I
29 must replace a colonel with another colonel. I go to a pool of
30 alternates first. If I exhaust the names on the list of
31 alternates, I go to the individuals marked as primaries, who are
32 usually on other court-martial convening orders. So, I had to
33 go through two separate lists to get to COL Saffold. On
34 21 November 2005, my section was asked to predict who would be
35 panel members in this case. I have seen the e-mail that was
36 sent out by SSG Hemphill in response, which is attachment 9 of
37 Appellate Exhibit XIII. I believe I was on leave at that time.
38 It was our office's best guess about who would sit on the panel.

39 40 RECROSS-EXAMINATION

41
42 (under questioning by the civilian defense counsel)

43
44 Those were potential court members on the date the e-mail was
45 sent. Because it cannot be predicted too far ahead of a court

1 date, it was possible that COL Saffold could end up being a
2 court member, since he was an alternate.
3

4 The witness was permanently excused and departed the courtroom.
5

6 MAJ Ross M. O'Hara-Hulett, U.S. Army, was called as a rebuttal
7 witness by the defense on the motion, was sworn, and testified in
8 substance as follows:
9

10 DIRECT EXAMINATION
11

12 (under questioning by the civilian defense counsel)
13

14 I'm the Operations Officer for G-2 at 7th ID.
15

16 I participated in a golf tournament on 17 November 2005, which
17 was called off after about nine holes due to bad weather. I
18 went into the clubhouse and positioned myself next to the
19 fireplace to get warm. There were a number of people around.
20 At that point in the foyer of the golf clubhouse, I remember
21 people on my team, MAJ Short and LTC Rothstein, as well as
22 COL Saffold being there. I think COL Davis was present, but I
23 don't have a specific recollection of him being there.
24

25 I was at the fireplace. There was a Christmas tree in the
26 middle, and near the Christmas tree, MAJ Short and LTC Rothstein
27 were talking. I think COL Saffold walked by. I just remember a
28 one-line comment, which was something about "bleeding hearts."
29 I told this to the defense this morning. My assumption at the
30 time was he was talking about something environmental. I didn't
31 hear what the comment was in reference to. The only words I
32 recall were "bleeding hearts."
33

34 The witness was temporarily excused, was duly warned, and departed
35 the courtroom.
36

37 The court recessed at 1311 hours and reconvened at 1337 hours,
38 16 January 2006, all parties again present.
39

40 In accordance with a request before the recess from the civilian
41 defense counsel, COL Saffold, who was a panel member for the case and
42 was waiting in the jury deliberation room, was informed by the
43 prosecution in the presence of a defense counsel during the recess
44 not to discuss anything involving the case with any other court
45 member.

1
2 The military judge announced that the burden of proof in regard to
3 the motion had shifted to the prosecution, who could therefore open
4 and close argument.

5
6 The assistant trial counsel made argument in regard to the motion to
7 dismiss, Appellate Exhibit XII.

8
9 The civilian defense counsel made argument in regard to the motion to
10 dismiss, Appellate Exhibit XII.

11
12 The assistant trial counsel made a rebuttal argument.

13
14 The court recessed at 1422 hours and reconvened at 1552 hours,
15 16 January 2005, all parties again present.

16
17 The military judge made the following findings of fact:

18
19 The original charges in the case were preferred on 1 October
20 2004, and an additional charge was preferred on 13 May 2005.

21
22 The charges were referred to Court-Martial Convening Order
23 Number 4 on 26 May 2005. Court-Martial Convening Order Number 4
24 was superseded by Court-Martial Convening Order Number 10.
25 COL Saffold was not a primary member on either Court-Martial
26 Convening Order Number 4 or Number 10.

27
28 On 17 November 2005, there was a CG scramble golf tournament.
29 Officers in the 7th ID participated, including COL Saffold, the
30 Assistant Division Commander for Support; COL Davis, the
31 Division Chief of Staff; MAJ Short; and MAJ O'Hara-Hulett.
32 Because of weather conditions, the tournament ended early.
33 Participants assembled in the clubhouse to receive awards, to
34 get refreshments, to warm up, and to get partial refunds on
35 their entry fees.

36
37 COL Davis and COL Saffold engaged in conversation while in the
38 clubhouse. There were also other people talking in the
39 clubhouse. MAJ Short overheard part of what COL Davis and
40 COL Saffold were discussing while in the club pro shop.
41 MAJ O'Hara-Hulett overheard COL Saffold use the phrase "bleeding
42 heart" in passing as COL Saffold walked by where MAJ O'Hara-
43 Hulett was standing by the clubhouse Christmas tree and
44 fireplace. MAJ O-Hara-Hulett does not remember seeing COL Davis
45 that day.

1
2 COL Saffold is the senior-ranking member of the panel for the
3 case of *United States versus Welshofer*. He was notified that he
4 would sit on this panel on 6 January 2006. He was the fourth
5 alternate contact to replace a primary member, who had been
6 excused. He was contacted by SGT Cox of the Fort Carson 7th ID
7 OSJA.
8

9 Just over an hour after being notified of this duty, COL Saffold
10 requested to be excused from further participation in this case
11 because of his other duties.
12

13 The current commanding general and convening authority,
14 MG Mixon, is presently deployed to Afghanistan and was so
15 deployed on 6 January 2006. An acting commander considered
16 COL Saffold's request for excusal and denied it.
17

18 In his conversation with COL Davis on 17 November 2005 at the
19 golf clubhouse, COL Saffold did make reference to the fact that
20 he had recently sat on a court-martial, the only court-martial
21 he had sat on in his time at Fort Carson. He did state that
22 based on his service on that court-martial, he thought there was
23 a difference between junior officers' and senior officers'
24 perceptions of good order and discipline. He stated that he
25 thought that, essentially, junior officers lacked a command
26 structural awareness, which impacted their perception of good
27 order and discipline.
28

29 On 12 January 2006, MAJ Short prepared an affidavit in which he
30 said that he had overheard the conversation that COL Saffold and
31 COL Davis had engaged in and that COL Saffold had said something
32 to the effect that the jury pool in the Welshofer case had been
33 selected; that he was in the pool; that MG Mixon should be
34 pleased that he and others who had not been deployed to OIF/OEF
35 were in the jury pool; that for the Welshofer trial they would
36 do the right thing and the CG would not be disappointed. He
37 also stated in that affidavit that COL Saffold mentioned
38 something to the effect that courts-martial were filled with
39 bleeding-heart liberals that did not understand good order and
40 discipline. He also said something to the effect that the
41 commanding general was not happy with recent trial verdicts and
42 punishment recommendations from courts-martial consisting of
43 recent combat veterans and that they were too lenient and soft.
44

1 The military judge stated that unlawful command influence in the
2 military is a very serious matter, correctly described as the mortal
3 enemy of the military justice system because it can and does erode
4 confidence in the military justice system of members of the military
5 and members of the public.

6
7 The military judge stated that the analysis for an unlawful command
8 influence issue had been laid out by the Court of Appeals for the
9 Armed Forces in *United States versus Biagase*, 50 MJ 143. As the
10 court there outlined, the burden was initially on the defense to
11 raise the issue. Once the issue had been adequately raised by the
12 production of sufficient evidence, the burden shifted to the
13 government to show either that there was no unlawful command
14 influence or that the unlawful command influence would not affect the
15 proceeding, by disproving the predicate facts on which the allegation
16 of unlawful command influenced had been based or persuading the
17 military judge that the facts did not constitute unlawful command
18 influence, or producing evidence that unlawful command influence
19 would not affect the proceeding. The burden of proof on the
20 government was proof beyond a reasonable doubt.

21
22 The military judge, recognizing the analysis that he had to employ
23 and the burden of proof, found as follows:

24
25 MAJ Short was not a disinterested party in the matter. He was a
26 defense witness in the case. It was evident from his testimony
27 and his demeanor while testifying that he felt very strongly
28 about the charges facing Chief Welshofer and had followed the
29 case for many months, having a continuing relationship with the
30 accused. MAJ Short had had contact with Chief Welshofer and had
31 spoken with him on several occasions, including, apparently,
32 instances concerning the allegation of unlawful command
33 influence.

34
35 The military judge gave weight to the testimony of COL Davis,
36 recognizing that as the Division Chief of Staff, he was perhaps
37 the CG's closest advisor. COL Davis presented the demeanor of a
38 credible witness. Because of his role, he had a great interest
39 in what the CG's thoughts were; consequently, if the CG
40 expressed to him his displeasure over a matter, COL Davis would
41 note and remember it.

42
43 On 17 November 2005, COL Saffold had sat on only one court-
44 martial in his time at Fort Carson. At that time, he did not
45 know that he was going to sit on the case of *United States*

1 versus *Welshofer*. On that day, he did not know Chief
2 *Welshofer's* name. Additionally, on 6 January 2006, the first
3 time COL Saffold was contacted about service on this court-
4 martial, he tried to avoid court-martial duty on this case when
5 he was notified as the fourth alternate to replace an excused
6 primary. Additionally, COL Saffold, as the Assistant Division
7 Commander for Support, is the division chief logistician, who
8 has no role in military justice. The CG did not express
9 pleasure or displeasure with court-martial outcomes to
10 COL Saffold. The military judge found COL Saffold a credible
11 witness.
12

13 In his discussion with COL Davis on 17 November 2005, he did not
14 discuss differences in perceptions of good order and discipline
15 between soldiers who had deployed and those who had not. On
16 17 November 2005 in a discussion with COL Davis, COL Saffold did
17 not say that the jury pool in *Welshofer* had been selected, that
18 he was in the pool, that MG Mixon should be pleased that he and
19 others who had not deployed to OIF/OEF were among the jury pool,
20 that for the *Welshofer* trial they would do the right thing, and
21 that the CG would not be disappointed. He did not say that the
22 CG was unhappy with courts-martial results. He did mention
23 something about bleeding-heart liberals. The military judge did
24 not find it significant as to whether he mentioned "liberal" or
25 "bleeding-heart liberal" because he was convinced beyond a
26 reasonable doubt that, at the time, he was not discussing
27 anything related to the case of *United States versus Welshofer*,
28 and he was not speaking for the convening authority. He did not
29 say that the CG was happy or unhappy with recent trial verdicts
30 and punishment recommendations in courts-martial consisting of
31 recent combat veterans and that they were too lenient and soft,
32 and he did not say words to that effect.
33
34

35 The military judge found that there had been no so-called court
36 packing in the case. Consequently, he found beyond a reasonable
37 doubt that the government had disproved the predicate facts on which
38 the allegation of unlawful command influence had been made.
39

40 Accordingly, the defense motion to dismiss due to unlawful command
41 influence was denied.
42

43 The military judge announced that based on the motion, particularly
44 the fact that COL Saffold did testify and the circumstances of his

1 testimony, he felt that a basis for challenge for cause could exist
2 against COL Saffold.

3
4 The civilian defense counsel made a challenge for cause against
5 COL Saffold.

6
7 The prosecution objected to the challenge for cause, noting that the
8 mere lodging of the motion did not automatically disqualify the
9 member who testified. Were that to be the case, the defense would be
10 allowed to target any member, file a motion, and, based on an
11 examination, say, "Now that we've done it, he can't sit." The
12 prosecution argued that the situation was no different from an
13 individual *voir dire* about what a member may or may not have heard
14 the CG say. In such a case, if the defense chose to vigorously
15 examine a member, that would not by itself be a basis for a challenge
16 for cause, which was effectively what would happen if COL Saffold
17 were excused based upon a challenge for cause at that point. The
18 prosecution argued that the defense, having taken its shot, having
19 missed beyond a reasonable doubt, should not then be rewarded by
20 removing the very member they had targeted to begin with.

21
22 The defense argued that the member had been pressed hard and had had
23 his integrity attacked in argument. The defense felt that in the
24 interest of fairness, justice, and impartiality, the member should
25 not further participate in the proceeding.

26
27 The civilian defense counsel also took offense at the
28 characterization of having targeted any member, stating that as an
29 officer of the court, he felt he had a duty to raise the issue when
30 it was brought to his attention.

31
32 The assistant trial counsel once again argued that COL Saffold's
33 examination could have appropriately taken place in individual *voir*
34 *dire*. The government's suggestion was that the panel be seated and
35 COL Saffold be questioned on individual *voir dire* to determine if he
36 could be rehabilitated, if necessary. The prosecution argued that to
37 allow the defense to lodge a motion, target a member, aggressively
38 cross him, and then say, "Well, now he's got to go," created a bad
39 precedent.

40
41 The military judge announced that, having considered arguments of
42 counsel, he had decided to permit COL Saffold to sit through group
43 *voir dire* and individual *voir dire*.

44

1 The court recessed at 1620 hours and reconvened at 1655 hours,
2 16 January 2005, all parties again present.

3
4 There was no objection to the flyer, Appellate Exhibit XXII.

5
6 The Article 39(a) session was concluded, and the court members
7 entered the courtroom at 1700 hours, 16 January 2006.

8
9 The court was convened by Court-Martial Convening Order Number 4,
10 Headquarters, 7th Infantry Division and Fort Carson, dated 8 July
11 2004, as superseded by Court-Martial Convening Order Number 10, same
12 headquarters, dated 12 July 2005, as amended by Court-Martial
13 Convening Order Number 1, same headquarters, dated 11 January 2006,
14 and Court-Martial Convening Order Number 2, same headquarters, dated
15 12 January 2006, copies of which have been placed in the record of
16 trial following page 1.

17
18 The accused and the following persons detailed to the court-martial
19 were present:

20
21 COL Mark Toole, military judge;
22 MAJ Tiernan Dolan, assistant trial counsel;
23 CPT Elana Matt, trial counsel;
24 CPT Ryan Rosauer, defense counsel;
25 Frank Spinner, Esq., civilian defense counsel;
26 COL David G. Saffold, member;
27 COL Scott A. Lang, member;
28 LTC Theresa S. Lever, member;
29 LTC Thomas C. Powell, member;
30 LTC John R. Burger, member;
31 MAJ Joseph G. Byrum, member;
32 MAJ Zorn T. Sliman, member;
33 CPT Bonny C. Dylewski, member;
34 CPT Lynne A. Morehouse, member; and
35 CPT Chris J. Maestas, member.

36
37 There were no persons absent.

38
39 The members of the court were sworn in accordance with RCM 807.

40
41 The military judge announced that the court was assembled.

42
43 The military judge instructed the members concerning the duties of
44 all parties to the trial and the conduct of the proceedings,
45 including the fact that portions of the trial would be classified.

1 He instructed the members that closed sessions were not an indication
2 of the accused's guilt and that they could not infer that Chief
3 Welshofer was guilty of anything merely because of special security
4 procedures or personnel, classification markings, or any closed
5 sessions. The military judge informed the panel of security
6 procedures that would take place. He further instructed the members
7 as to reasonable doubt and credibility of witnesses.

8
9 The court members examined the convening orders and the flyer.
10 CPT Morehouse noted that her unit had changed and was currently HHC,
11 7th ID.

12
13 The military judge conducted a preliminary *voir dire*, and the
14 prosecution and defense also conducted *voir dire* of the court
15 members.

16
17 The members departed the courtroom at 1758 hours, 16 January 2006, at
18 which time the military judge held an Article 39(a) session.

19
20 The defense challenged for cause COL Saffold, noting that in
21 preparation for his testimony at the Article 39(a) session in regard
22 to the motion to dismiss for unlawful command influence, the
23 government had spoken with COL Saffold and had informed him of
24 allegations made by MAJ Short, who would be a defense witness in the
25 case and whose credibility would have to be judged by COL Saffold,
26 were he to remain as a court member. The defense felt no need to
27 further question COL Saffold on individual *voir dire* and reaffirmed
28 the challenge for cause against him.

29
30 The government objected to the challenge for cause of COL Saffold and
31 argued that by defense logic, the military judge should also recuse
32 himself, in that he had also made a credibility assessment of
33 MAJ Short.

34
35 The government made a motion to prevent the defense from calling
36 MAJ Short as a witness, since he had made an allegation which the
37 military judge had found beyond a reasonable doubt to be false, and
38 that he was not credible, based on his testimony concerning the
39 motion to dismiss. The government argued that for MAJ Short to be
40 able to then testify as a witness in the case-in-chief with a clean
41 sheet and for the government not to be able to sully that clean sheet
42 would be unfair.

43
44 The military judge denied the motion to prevent the defense from
45 calling MAJ Short.

1
2 The prosecution declined to question COL Saffold on individual *voir*
3 *dire*.

4
5 The military judge informed the defense that their challenge for
6 cause of COL Saffold was pending and that he would give the defense
7 an opportunity to conduct individual *voir dire* of COL Saffold before
8 he made a ruling that the pending challenge for cause of COL Saffold
9 was denied.

10
11 Individual *voir dire* was conducted of COL Lang by the prosecution.
12 COL Lang stated that he had answered in the affirmative during group
13 *voir dire* that there was something that might prevent him from giving
14 his full attention to the court-martial. He had a non-refundable
15 ticket on 25 January to visit his father, who had had open-heart
16 surgery.

17
18 Individual *voir dire* was conducted of COL Lang by the military judge,
19 who informed COL Lang that while he did not expect the trial to go
20 until 25 January, he did expect it to go for several days. COL Lang
21 stated that he did not believe that his father's condition would
22 impact his ability to sit as a fair and impartial member in the case.

23
24 The defense conducted individual *voir dire* of COL Lang. COL Lang did
25 not believe that his father's condition could require him to have to
26 leave earlier than 25 January and stated that his father's condition
27 was stable. He stated that he would want to be with his father if
28 his condition worsened.

29
30 Individual *voir dire* was conducted by the prosecution and defense of
31 LTC Lever, LTC Powell, LTC Burger, MAJ Byrum, CPT Morehouse,
32 CPT Dylewski, and CPT Maestas.

33
34 The court recessed at 1854 hours and reconvened at 1907 hours,
35 16 January 2006, all parties again present except the members.

36
37 The prosecution challenged for cause LTC Lever, who knew several of
38 the defense witness and referred to them by their first names and had
39 stated that she had formed an opinion as to the credibility of
40 MAJ Short, a defense witness; had discussed the case with numerous
41 people; knew the status of the accused within the command; and had
42 prior knowledge of the case. LTC Lever could not give adequate
43 assurance, without a long pause, that she would be able to put aside
44 her prior knowledge of the witnesses.

1 to her impartiality as a positive indication of her understanding of
2 her role as a court member. She had ultimately stated she could give
3 a fair hearing to both sides.
4

5 The military judge noted that LTC Lever had appeared to be
6 forthright. She did know many of the witnesses and worked on the
7 same floor with them. She had dealt with the accused. The question
8 as to whether she could put her knowledge of the witnesses aside in
9 sitting as a panel member on the case literally gave her great pause,
10 too great a pause. Considering her knowledge of many of the
11 witnesses in the case, the military judge granted the challenge for
12 cause by the government of LTC Lever.
13

14 The defense challenged for cause COL Lang because of the potential
15 distraction of his father's medical condition. If his father's
16 condition worsened, COL Lang would want to leave. There was no
17 guarantee that the case would be completed by 25 January.
18

19 The government objected to the challenge for cause of COL Lang and
20 argued that COL Lang had said his father was stable. Any panel
21 member could potentially have a family medical emergency. The
22 prosecution, additionally, did not see that a challenge for cause was
23 the remedy on this date for the possibility of the case being tried
24 through 25 January. Nothing in COL Lang's demeanor or language had
25 suggested that he would not be able to devote his full attention to
26 the case. The member appeared ready, able, and willing to devote his
27 full attention to the case.
28

29 The military judge denied the challenge for cause of COL Lang. He
30 did not believe the trial would go until 25 January, and COL Lang had
31 said that his father was in stable condition. COL Lang had stated
32 that his father's condition would have no impact on his ability to
33 sit as a panel member.
34

35 The defense challenge for cause of COL Saffold was granted.
36

37 The prosecution peremptorily challenged LTC Burger.
38

39 The defense peremptorily challenged COL Lang.
40

41 The Article 39(a) session was concluded, and the court members
42 returned to the courtroom.
43

1 The Article 39(a) session was concluded, and the court members
2 returned to the courtroom.

3

4 The military judge informed COL Saffold, COL Lang, LTC Lever, and
5 LTC Burger that they were excused. Those members took no further
6 part in any proceedings in the case.

7

8 The court adjourned at 1923 hours, 16 January 2006.

1 The court reconvened at 0928 hours, 17 January 2006, at Fort Carson,
2 Colorado, all parties again present except the members.

3
4 Prosecution Exhibits 1 through 22 for ID were offered and received
5 into evidence without objection as Prosecution Exhibits 1 through 22.
6 The military judge authorized copies to be substituted in the record
7 of trial for the originals of Prosecution Exhibits 1 through 16 as
8 well as Prosecution Exhibits 18, 19, 21, and 22.

9
10 The military judge summarized an RCM 802 session, present at which
11 had been counsel for both sides as well as the military judge. A
12 defense issue related to whether evidence of circumstances
13 encompassed under the ambit of Charge I and its Specification was
14 uncharged misconduct which might be admissible to show plan, intent,
15 knowledge under MRE 404(b). The issue was not admissibility, as the
16 defense did not object to the admissibility of the evidence. The
17 prosecution had learned of the evidence within the past couple of
18 weeks upon interviewing an immunized witness. Initially, notice had
19 been given to the defense of an intent to offer evidence under
20 MRE 404(b); that is, to offer evidence of uncharged misconduct. The
21 defense had received that notice. The government later had come to
22 understand that the conduct was encompassed within the Specification
23 of Charge I. The issue was whether the conduct that had allegedly
24 occurred on 25 November 2003 was encompassed within the Specification
25 alleging acts or conduct that occurred on or about 26 November 2003.

26
27 The prosecution and defense concurred with the military judge's
28 summarization of what had taken place at the RCM 802 session.

29
30 The defense and prosecution made argument in regard to the issue.

31
32 The military judge stated that the issue was whether the evidence
33 concerned misconduct encompassed within Charge I and its
34 Specification or was uncharged misconduct. The evidence had come to
35 light when the government had interviewed an immunized witness, Chief
36 Williams. The government had initially provided notice of an intent
37 to admit the evidence as uncharged misconduct under MRE 404(b). The
38 defense had no objection to the admissibility of the evidence as
39 uncharged misconduct. The military judge found the evidence relevant
40 as to plan, knowledge, intent as to Charge I and its Specification.
41 The charge had been originally preferred on 1 October 2004, and the
42 parties had reasonably understood the misconduct alleged at that
43 time. The military judge did not find that the misconduct alleged to
44 have occurred on 25 November 2003, which had come to light just a
45 couple of weeks earlier, was fairly encompassed in the charge to the

1 extent that the defense had reasonable notice as to what they were
2 defending against. He found the evidence admissible under MRE 404(b)
3 but that the acts alleged to have occurred on 25 November 2003 were
4 not fairly encompassed within the charge as alleged. The military
5 judge stated that he would instruct the members accordingly.
6

7 The next issue concerned the language "or should have known" in the
8 Specification of Charge I, language which did appear in the flyer.
9 The military judge summarized the MRE 802 session in which counsel
10 had discussed the issue. The military judge stated that the
11 specification appeared to charge a willful dereliction of duty and
12 that in such case the element regarding knowledge was that the
13 accused knew of his duties. Depending upon the evidence in the case,
14 a lesser included offense of negligent dereliction of duty might be
15 raised. The military judge ruled that the language "or should have
16 known" should not be in the specification.
17

18 The defense had asked that the government be allowed to make the
19 election to remove from the specification either the "should have
20 known" language or the "willful" language, thereby making the
21 election as to whether the specification alleged a willful or a
22 negligent dereliction of duty.
23

24 Both the prosecution and defense concurred with the military judge's
25 summarization of the MRE 802 session.
26

27 The government quoted the Manual for Courts-Martial at IV-23 that the
28 elements of dereliction in the performance of duties listed "that the
29 accused knew or reasonably should have known of the duties." The
30 prosecution noted that often when there was an election to be made,
31 text appeared in parentheses and that in this instance in the manual,
32 the language did not appear in parentheses. The only election to be
33 made as noted in the manual was "willfully" or "through neglect or
34 culpable inefficiency." The prosecution had charged "willfully."
35 The government elected to go forward on the "willful" charge.
36

37 The military judge ruled that the language "or reasonably should have
38 known" should be removed from the Specification of Charge I. He
39 stated that he would instruct the panel members to strike that
40 language from their flyers. Additionally, the charge sheet would be
41 so amended to delete that language.
42

43 The court recessed at 1015 hours and reconvened at 1024 hours,
44 17 January 2006, all parties again present, including the members.
45

1 The military judge informed the court members that at an earlier
2 session, the accused had pled not guilty to all charges and
3 specifications.
4
5 The court security officer, Mr. Carmine Naccarelli, instructed the
6 panel members with regard to the procedures which would be followed
7 for classified portions of the case. Those instructions were marked
8 as Appellate Exhibit XIX. The military judge reiterated to the
9 members that security measures taken during the trial in no way
10 indicated any guilt on the part of the accused.
11
12 The military judge instructed the panel members to line through the
13 words "or should have known" in the Specification of Charge I in
14 their flyers.
15
16 The military judge instructed the members as to the purpose of
17 opening statements.
18
19 The trial counsel made an opening statement.
20
21 The civilian defense counsel made an opening statement, during which
22 the government asked the military judge to instruct the panel on the
23 law in regard to the Specification of Charge II, stating that the
24 civilian defense counsel had misstated the law. The military judge
25 declined to do so but told the court members that he would instruct
26 them on matters of law and that they should follow his instructions
27 in that regard.
28
29 The members departed the courtroom at 1108 hours, 17 January 2006, at
30 which time the military judge held an Article 39(a) session.
31
32 There was a discussion in regards to the government's theory under
33 which murder had been charged in the case. The prosecution asked the
34 military judge to instruct the members as to the elements of the
35 offense under Article 118(b)(3), *Act inherently dangerous to another*,
36 the government's sole theory of culpability. The defense asked the
37 military judge to instruct the members that the defense had
38 misunderstood the government's theory and had therefore misstated the
39 law in its opening statement or, in the alternative, that the
40 government had elected to proceed only under Article 118(b)(3).
41
42 The military judge stated that he would instruct the court members
43 that there are different theories of murder under Article 118 and
44 that he would instruct them as to the elements of the offense that
45 was before the court.

1
2 The military judge also alerted counsel that to the extent that
3 opening statements may have included comments regarding the victim in
4 the case, the victim was not on trial in the case and that necessity
5 was not a defense.

6
7 The court recessed at 1118 hours and reconvened at 1131 hours,
8 17 January 2006, all parties again present, including the members.

9
10 The military judge instructed the members that there were different
11 theories of murder under Article 118, UCMJ, and listed the elements
12 of the offense before the court in the Specification of Charge II as
13 well as the definitions pertaining thereto.

14
15 CW2 Jefferson Williams, U.S. Army, was called as a witness by the
16 prosecution on the merits, was sworn, and testified in substance as
17 follows:

18
19 **DIRECT EXAMINATION**

20
21 (under questioning by the assistant trial counsel)

22
23 I'm currently assigned to the 297th MI Battalion at Fort Gordon,
24 Georgia. I've been in the Army 17½ years. Currently, I work in
25 the S-3 shop, and I'm the Funds Management Officer for my
26 battalion. My military specialty is 350-Bravo, which has been
27 changed to 350-Foxtrot, which is an all-source intelligence
28 analyst. As an NCO, I went to BNCOC. I went to AIT, and then
29 as a warrant officer, I went to the Warrant Officer Basic
30 Course.

31
32 In the beginning of November 2003, I was the acting ACE chief.
33 By the end of November, I was the senior analyst for the
34 3d Armored Cavalry Regiment. "ACE" is the Analysis Control
35 Element, which combines intelligence information from different
36 INTs; i.e., HUMINT, SIGINT, IMINT, and we make it into a fused
37 intelligence product to assist the commander in making
38 decisions. In the beginning of November of 2003, I was in
39 charge of producing intelligence summaries for the area in which
40 I worked, the Al Anbar Province in the western part of Iraq. It
41 encompasses the cities of Fallujah, Ramadi, and Al Qaim, up to
42 the border with Syria and Jordan. In the beginning of 2003, I
43 was located in Ar Ramadi. In the August/September time frame,
44 we moved from Ar Ramadi to Al Asad Air Base, about 100

1 kilometers north. From there, I only left Al Asad for one
2 operation, Rifles Blitz, in Al Qaim on the Syrian border.

3
4 Al Asad is about in the center of the map where there is a red
5 airplane on Prosecution Exhibit 1. It is an airbase. I moved
6 to Al Qaim right here on the Syrian border, about 4 inches to
7 the left and slightly up from Al Asad on the map.

8
9 In the Al Qaim area, there was Tiger Base, which was Tiger
10 Squadron's main headquarters building; and then I also worked at
11 a detention facility that was created for Rifles Blitz, called
12 the Blacksmith Hotel.

13
14 I know the accused. He was the senior interrogator for the
15 3d ACR.

16
17 While at Tiger Base, I saw a detainee called MG Abid Mowhosh.
18 We were out there doing the recon in early November, around the
19 10th. I think that's the day he turned himself in. I saw him
20 that day, and then I saw him one other time before we deployed
21 from Tiger Base to the Blacksmith Hotel. On the 10th, I sat in
22 on part of an interview of MG Mowhosh by Chief Welshofer in the
23 dining facility on Tiger Base. The general at that time was
24 pretty clean. He had just turned himself in. He wasn't
25 necessarily happy. He was a little arrogant. He was
26 overweight. He was able to breathe and walk okay. I would
27 estimate he weighed about 300 pounds. I would not be able to
28 put my arms around him.

29
30 We believed MG Mowhosh to be a facilitator for the insurgent
31 activity that we were having in Al Qaim and western Iraq. I was
32 assigned to 3d ACR at the time. I think MG Mowhosh was in the
33 top five of interest for Tiger Squadron, and he was definitely
34 in the regiment's top 20.

35
36 Blacksmith Hotel was named, I believe, after the unit in Support
37 Squadron that actually built it. It was a detention facility
38 set up to allow the regiment to bring its detainees there
39 instead of actually bringing them onto Tiger Base because of the
40 expected volume of detainees we were going to have with Rifles
41 Blitz. At Blacksmith Hotel, the detainees would be screened and
42 interrogated. There were a number of people who conducted the
43 interrogations. For the Army 66th MI or 3d ACR, Chief Welshofer
44 was in charge of interrogations.

1 I wasn't familiar with any specific guidance on interrogations
2 at that time. That was not my lane. I considered Chief
3 Welshofer to be the subject-matter expert on interrogations. It
4 was pretty much understood by all the Army personnel there that
5 he was the subject-matter expert.
6

7 I watched Chief Welshofer conduct interrogations using a
8 sleeping bag about a dozen times. Chief would place the bag
9 over an individual. Some individuals were skinny enough that
10 the bag didn't need to be tied on; some individuals were obese,
11 and there would be a cord tied around the shoulders down to the
12 knees to keep the bag on the individual. The individual would
13 be laid on the ground and asked questions as he was rolled left
14 and right on the ground in the interrogation room. The sleeping
15 bag was used with the head going into the foot of the sleeping
16 bag. Chief Welshofer would straddle the individuals. He would
17 poke at their faces. On probably four to six occasions, I did
18 see him put his hand over the mouth of the detainee for probably
19 10 to 15 seconds while he was asking a question and then remove
20 it so the individual could answer the question. Chief would
21 straddle the individual's chest, effectively sitting on the
22 chest. Some detainees would have a response to having a hand
23 placed over their mouth and try to move their head back and
24 forth, and other detainees would not respond at all. I don't
25 know if they would hold their breath or if they could still
26 breathe, but there was no response.
27

28 I attended a meeting around the 19th or 20th of November with the
29 accused and interrogators. That's about the time Rifles Blitz
30 started. Detainees began to occupy the Blacksmith Hotel around
31 the 20th of November. At first, the meeting was an admin meeting
32 with pretty much everybody from all the sections. There was
33 some confusion during that meeting between interrogators. Some
34 of the interrogators weren't sure what methods they would be
35 able to use during interrogations, what was approved, what
36 wasn't approved. Chief Welshofer gave them basically the
37 guidance of what his interrogation methods were and told them if
38 they had any questions about what was or was not approved, they
39 should see him. He explained that no matter what anyone was
40 used to doing at their locations, he was running this facility
41 and everybody should come to him to eliminate any questions on
42 who was in charge of the interrogations at that facility. The
43 understanding at this meeting was that Chief Welshofer was the
44 subject-matter expert for all the people who fell under the 66th
45 MI.

1
2 MAJ Voss was the company commander for the 66th MI Company. I
3 saw Chief Welshofer discussing with MAJ Voss the interrogation
4 technique of the sleeping bag. I also heard him discuss a
5 technique he used of open-handed slaps and a wall-locker
6 technique, as well. From what I could tell, they were
7 discussing the technique and how the guidance that CJTF-7 had
8 put out applied to stress positions. Chief Welshofer
9 characterized the sleeping-bag technique as a stress position
10 used to confine movement, which was approved by CJTF-7 or fell
11 within its guidance. At first, MAJ Voss was a little
12 apprehensive. But after she talked to Chief Welshofer, she did
13 fall in line with his guidance that the sleeping bag was
14 approved. Chief Welshofer said if there were any questions or
15 if anything happened, that he would take responsibility.
16

17 On or about 24 November 2003, I witnessed the first 5 to
18 10 minutes of an interrogation of the general. The accused was
19 there, as well as others. There were probably a total of eight
20 to ten people there. There were some individuals there that did
21 not belong to the military that were leading the interrogation.
22 Non-military members were asking the questions.
23

24 I heard some of the yelling and screaming that was going on in
25 the room after I left. Then I didn't see anything else until
26 the individual was being taken back to the detention cages. I
27 think the interrogation lasted approximately 15 to 30 minutes.
28 After the interrogation, when I saw the general being taken back
29 to the cages, there were four or five individuals carrying him.
30 He may have made two or three steps, and then they would take
31 his weight and kind of drag him back. I would say that his
32 condition was obvious to anyone who saw him. It would not have
33 been possible for the accused to have missed his condition.
34

35 In a discussion later that evening, I asked Chief Welshofer what
36 had happened in that interrogation. I didn't get any specifics
37 from him. All he told me was that non-government individuals
38 had beat the crap out of the general.
39

40 The next time I saw the general was the morning or afternoon of
41 the 25th. When I saw him, he was on his way up the stairs onto
42 the roof of the interrogation rooms. This was the day after the
43 other interrogation. His walking was more stressful than it was
44 when I had seen him prior. He was having difficulty going up
45 the stairs. He'd make two or three steps and then stop and rest

1 his shoulder on the wall and take two or three more steps. It
2 was difficult to tell whether he was stalling or whether he
3 actually was having difficulty moving. His breathing was
4 labored. It would be obvious to anyone who saw him that he was
5 having difficulty both breathing and walking.

6
7 Once we got on the roof, we conducted an interrogation of the
8 general. When the interrogation started, he was made to do PT
9 for maybe 10 to 15 minutes, to roll around left and right, to do
10 some low crawling. It was very difficult for him to stand up.
11 There were a number of people on the roof. I was more involved
12 in the interrogation, so I didn't pay attention to people on the
13 roof. Chief Welshofer was leading the interrogation. Kind of
14 in the middle of the PT exercises, we basically held him down on
15 his back and poured water on his face around his mouth and nose
16 while asking him questions. His hands were zip-tied in front of
17 him. He was lying on his back. At one point, I had a stick,
18 similar to Prosecution Exhibit 19, shoved under his hands and
19 down between his legs so he couldn't move his arms up to his
20 face, and I had my foot on his upper chest and part of his neck
21 to keep his head from lifting off the ground.

22
23 The technique was demonstrated using a pole, Prosecution Exhibit 19,
24 with the assistance of a paralegal, lying on her back, holding her
25 hands on her chest as if zip-tied. The witness inserted the stick
26 between the hands and torso of the paralegal so that the end of the
27 stick was resting on the ground at the knees of the paralegal.

28
29 (further testimony under questioning on direct examination)

30
31 The interrogator would lift up on the stick, creating pressure
32 on the arms and shoulders and not allowing the detainee to bring
33 hands back towards the face. Then the interrogator's foot would
34 be across the upper part of the chest and neck area.

35
36 While the general was in that position, the accused had a small
37 bottle of water, and as he would ask questions, he would pour
38 water in the face of the detainee. With the exception of
39 general background information, the general didn't really
40 provide any targetable or actionable intelligence. When the
41 water was being poured over his face and he was immobilized in
42 the position, the general couldn't breathe. He would turn his
43 face to the side and spit the water out and take in a few
44 breaths while there wasn't water being poured on him. Then
45 water would resume again after that. It was difficult for him