

UNITED STATES

V.

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

)  
) STIPULATION OF EXPECTED  
) TESTIMONY: MAJ JOEL  
) HAMILTON  
)  
)  
)  
)  
)

) 20 January 2006

CW3 Lewis Welshofer, defense counsel, and trial counsel agree that if MAJ Joel Hamilton took the stand, he would testify as follows:

My name is MAJ Joel Hamilton. I am currently the executive officer for 3rd Battalion, 29th Field Artillery, 3d Brigade Combat Team, 4th Infantry Division, Fort Carson, CO. I am deployed to Iraq and will likely be deployed until about November 2006. I cannot testify in person because of the deployment and communications difficulties.

I know Chief Lewis Welshofer from my deployment to Operation Iraqi Freedom I with the 3d Armored Cavalry Regiment. During that deployment I worked on the Regimental staff as the Fire Support Officer. After major combat operations ceased in May 2003, I started working on a daily basis with human intelligence and interrogation teams in an attempt to gather intelligence for future offensive combat operations. Consequently, I began working with Chief Welshofer.

My interaction with Chief Welshofer occurred, if not daily depending on operations, then multiple times during any given week. I had the opportunity to observe and evaluate Chief Welshofer's duty performance. I do have an opinion about his military character. In my opinion, Chief Welshofer is a go-to guy who is an extremely hard worker and a quiet professional. I also have an opinion about Chief Welshofer's character for honesty and truthfulness. In my opinion, Chief Welshofer is an honest and truthful person.

I did see Chief Welshofer conduct an interrogation in which Chief Welshofer used what he termed the "slap technique." At first Chief Welshofer simply asked the man questions. The man did not cooperate during the interrogation. Chief Welshofer then, with an open back-hand, slapped the man in the upper stomach. It was a quick slap with the hand starting about eighteen or so inches away from the detainee's body. I saw the demeanor of the detainee, and he did not wince or otherwise express on his face that he experienced pain from the slap. He did not fall back like he had been hit with a great force. He did seem surprised, however, at the slap. I did not think anything of the slap. I did not report it to anyone, because I did not think it was in violation of any rule. I trusted Chief Welshofer implicitly and relied on him as the subject matter expert.

Regarding MG Mowhoush, we had several targeting meetings about who he was before 3d ACR detained him. I was there, and I remember Chief Welshofer being at those meetings where this information was discussed amongst the attendees. We learned in these meetings that MG Mowhoush had been a major general in the Iraqi Republican Guard air defense forces before the invasion in March. We also discussed that MG Mowhoush was suspected of massacring Shiite civilians. We also discussed our strong suspicion that MG Mowhoush was the insurgency ring-leader in the Al Qaim, Iraq, area. We discussed

*P. 102*

Defense Exhibit F  
for Identification

the fact that MG Mowhoush would make a very valuable intelligence source regarding the insurgency along the Iraqi-Syrian boarder. All these targeting meetings took place before Mowhoush died.

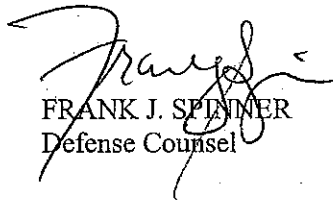


LEWIS E. WELSHOFER  
CW3, U.S.A.  
Accused

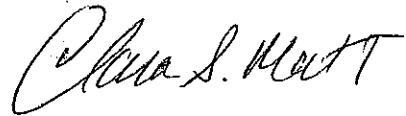


RYAN W. ROSAUER  
CPT, JA  
Defense Counsel

TIERNAN DOLAN  
MAJ, JA  
Trial Counsel



FRANK J. SPINNER  
Defense Counsel



ELANA S. MATT  
CPT, JA  
Trial Counsel

DEFENSE EXHIBIT F  
for ID

A. 2 of 2  
11270

UNITED STATES

V.

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

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) TESTIMONY: MAJ JOEL  
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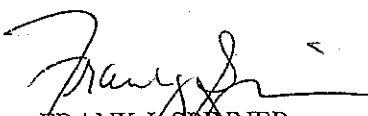
  
LEWIS E. WELSHOFER  
CW3, U.S.A.  
Accused

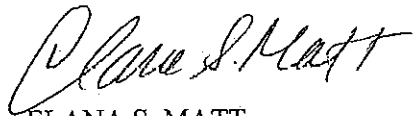
  
RYAN W. ROSAUER  
CPT, JA  
Defense Counsel

  
TIERNAN DOLAN  
MAJ, JA  
Trial Counsel

P. 1052  
11271

Defense Exhibit G  
for Identification

  
FRANK J. SPINNER  
Defense Counsel

  
ELANA S. MATT  
CPT, JA  
Trial Counsel

DEFENSE EXHIBIT 6  
for ID

P. 2 of 2  
11272

APPELLATE EXHIBITS

UNITED STATES )

v. )

WELSHOFER, Lewis E. )  
CW3, U.S. Army, )  
66<sup>TH</sup> Military Intelligence Company )  
3d Armored Cavalry Regiment )  
Fort Carson, Colorado, 80613 )

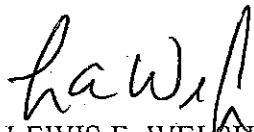
UNCONDITIONAL  
WAIVER OF ARTICLE 32

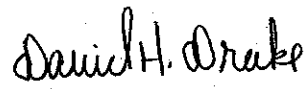
31 March 2005

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

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

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

  
LEWIS E. WELSHOFER JR.  
CW3, U.S. Army  
Accused

  
DAVID H. DRAKE  
CPT, JA  
Defense Counsel

Appellate Exhibit I

UNITED STATES

V.

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

) GOVERNMENT RESPONSE TO  
) DEFENSE REQUEST FOR  
) CONTINUANCE

)  
)  
)  
)  
)  
) 26 September 2005

The Government asks that the defense request for delay be denied. The request does not offer a good basis to delay the trial an additional 1-2 months past the currently scheduled trial date.

1. The defense complains that the SECRET classification level of much of the evidence prevents efficient processing. The evidence has largely been available for defense inspection since the date of referral, 1 Oct 04. The defense first sought and received access to the materials in August of 2005. Getting a late start in reviewing the evidence does not justify a delay.

2. The "new materials" found by the defense in August are not new. In fact, many of the OGA summaries read by the defense in September are also summarized in the CID report, only the author of the summaries is "new." The CID summaries have been available to the defense since last year, but the defense chose not review a single document associated with this case until August of this year. The defense has now reviewed these OGA materials, have received their notes back on these materials, and have also received the majority of the materials they asked for. While it is true the defense is still awaiting some materials, the notes they were allowed to take on these materials should provide them adequate work product with which to make witness requests and tactical decisions.

3. The defense makes several claims about witness problems that are summarized and answered below.

a. **We can't interview witnesses until 8 Oct.** This case has been preferred since 1 Oct 04, and referred since 26 May 05. The defense has had ample time to interview witnesses.

b. **We can't do a VTC until 11 Oct.** The Government will arrange a VTC interview with the unnamed victim of the Add'l charge. It is the government's belief that his name was disclosed to the defense in August, but that his location was not disclosed until mid-September. Interviewing the victim a week before the trial should allow the defense ample time to prepare for the 17 Oct trial date.

c. **We need more time to find "good soldier" witnesses.** See para. 3a, above.

*p. 1 of 2*  
11275

Appellate Exhibit II



4. **The Original CID File is at Fort Bragg, North Carolina.** See para. 3a, above. The CID file has been available for defense inspection since October of 2004. The government does not believe significant differences exist between the file maintained in Fort Carson and that maintained in Fort Bragg.

5. **Defense Counsels' and Expert Consultant's Schedule.** The defense argues that it "will not be ready for a 7 November trial because the schedules of the respective defense counsel will not allow us to do any preparation on the case between the hearing the week of 17 October and the week of 7 November." In other words, the defense argues that the "hearing" on the 17<sup>th</sup> of October is the only work in can put in on this case during 17 Oct, the week this trial is currently scheduled. The court should ask why the defense has not left that entire week, and likely some days beyond it, open. The civilian defense counsel told the court in a previous 802 session that he did not have any other cases docketed besides his current capital case. No adequate explanation is offered for the lack of availability between 17 Oct 05 (the currently scheduled trial date) and 7 Nov 05. It would seem apparent that a "nationwide TDS conference" is an event that the senior defense counsel detailed to this case could easily miss in favor of a murder trial. Similarly, a "deposition in Cyprus" is something that should be more easily rescheduled by the civilian defense counsel than a murder trial.

6. The defense concludes by noting that its expert consultant, provided to the defense on 4 August 2005, needs some discovery before he can render an opinion. That discovery was asked for on 26 Sep 05, the very day the defense asked for a continuance. The defense further notes that this consultant, not yet identified as a witness, and certainly not a government appointed expert witness, may not be available until 3 weeks before Christmas. The court should not delay this case for two months based on vague assertions about the availability of a person who has not been identified as a witness.

7. There is a co-accused in this case, CW2 Williams. His trial is currently scheduled for 7 Nov 05. The Government intends to try Mr. Williams after the trial of CW3 Welshofer. If the court is inclined to grant a continuance, the Government asks that the continuance not be granted beyond 7 Nov 05. This will allow the Government to move the Williams trial, and its associated witness and logistical issues, more easily and with less prejudice. The defense has not made a persuasive argument that it cannot go forward with this trial during the week of 7 Nov 05.

//original signed//  
TIERNAN DOLAN  
MAJ, JA  
Trial Counsel

Appellate Exhibit     II    

P- 2002  
11276



Toole, Mark W COL (PKI)

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From: Dolan, Tiernan P MAJ USA OSJA [Tiernan.Dolan@carson.army.mil]  
Sent: Tuesday, October 11, 2005 12:35 PM  
To: Toole, Mark W COL (PKI); Rosauer, Ryan W CPT SJA; Matt, Elana S CPT USA OSJA;  
Strawn, Joseph L CPT USA OSJA  
Cc: Schaeffer, Daniel W CIV USA 7ID/G2  
Subject: U.S. v. Welshofer; MRE 505 Notice

Sir,

We are unable to request an in camera proceeding, as the defense has not provided us adequate notice as to what classified material it intends to present.

Paragraph 1 does not reference classified information.

Paragraph 2 provides a biography of the decedent in the case, but does not provide notice of what "items of classified information" the defense will present. Rather, the paragraph provides general statements about the decedent without providing any indication of what evidence will be used to prove these general statements.

Paragraph 3 refers to documents that have been declassified.

Paragraph 4 refers to classified information, but does not provide adequate notice of what evidence the defense will use to present the classified information. In other words, the defense has disclosed general statements about classified materials, but has not indicated which "items of classified material" it will introduce as evidence, nor what the nature of the evidence will be, e.g. testimony of X, document #y, etc. The same deficiency lies with paragraph 5.

Paragraph 6 refers to over 300 pages of transcript, all of which have been declassified. The defense has not provided a basis for using the classified portions.

Absent a clearer indication of what classified information the defense intends to present, the Government cannot determine what documents and information need to be reviewed in camera by the court.

MAJ Dolan

Appellate Exhibit III

UNITED STATES

V.

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

) GOVERNMENT RESPONSE  
) DEFENSE NOTICE OF INTENT TO  
) DISCLOSE CLASSIFIED INFORMATION  
)  
)  
)  
)  
)  
) 03 OCTOBER 2005

The defense has not with any particularity notified the Government of any classified information it intends to produce at trial. Instead, the defense has listed 43 separate sets of documents without noting what, if any, classified material are in the documents, nor why such documents would need to be introduced at trial.

The defense complains of "getting new discovery," and that it needs time to investigate the new discovery before complying with the requirements of MRE 505h(3). It would be more accurate to say the defense has only recently decided to review the files that have been available for its inspection for over a year. The Government does not wish to debate the reasons for the lack of notice, and argues only that it cannot make meaningful declassification decisions with the notice provided by the defense. Neither can the Government make meaningful decisions about what evidence to produce to the military judge IAW MRE 505(i); particularly in the case of items 1-9, 39, 42 and 43. Consequently, the Government asks the court to deem the 505 notice provided by the defense as inadequate.

Submitted by email to the military judge and defense counsel on 3 Oct 05.



TIERNAN DOLAN  
MAJ, JA  
Trial Counsel

Appellate Exhibit IV

Appellate Exhibits V, VI, and VII are classified and are located in Volume 3 of 3 of the record of trial.

**Sec. 1.4. Classification Categories.** Information shall not be considered for classification unless it concerns:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;
- (d) foreign relations or foreign activities of the United States, including confidential sources;
- (e) scientific, technological, or economic matters relating to the national security, which includes defense against transnational terrorism;
- (f) United States Government programs for safeguarding nuclear materials or facilities;
- (g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism; or
- (h) weapons of mass destruction.

**Sec. 1.5. Duration of Classification.** (a) At the time of original classification, the original classification authority shall attempt to establish a specific date or event for declassification based upon the duration of the national security sensitivity of the information. Upon reaching the date or event, the information shall be automatically declassified. The date or event shall not exceed the time frame established in paragraph (b) of this section.

(b) If the original classification authority cannot determine an earlier specific date or event for declassification, information shall be marked for declassification 10 years from the date of the original decision, unless the original classification authority otherwise determines that the sensitivity of the information requires that it shall be marked for declassification for up to 25 years from the date of the original decision. All information classified under this section shall be subject to section 3.3 of this order if it is contained in records of permanent historical value under title 44, United States Code.

(c) An original classification authority may extend the duration of classification, change the level of classification, or reclassify specific information only when the standards and procedures for classifying information under this order are followed.

(d) Information marked for an indefinite duration of classification under predecessor orders, for example, marked as "Originating Agency's Determination Required," or information classified under predecessor orders that contains no declassification instructions shall be declassified in accordance with part 3 of this order.

**Sec. 1.6. Identification and Markings.** (a) At the time of original classification, the following shall appear on the face of each classified document, or shall be applied to other classified media in an appropriate manner:

- (1) one of the three classification levels defined in section 1.2 of this order;
- (2) the identity, by name or personal identifier and position, of the original classification authority;
- (3) the agency and office of origin, if not otherwise evident;
- (4) declassification instructions, which shall indicate one of the following:
  - (A) the date or event for declassification, as prescribed in section 1.5(a) or section 1.5(c);
  - (B) the date that is 10 years from the date of original classification, as prescribed in section 1.5(b); or
  - (C) the date that is up to 25 years from the date of original classification, as prescribed in section 1.5(b); and
- (5) a concise reason for classification that, at a minimum, cites the applicable classification categories in section 1.4 of this order.

Appellate Exhibit VIII

Appellate Exhibits IX, X, and XI are classified and are located in Volume 3 of 3 of the record of trial.

**UNITED STATES ARMY TRIAL JUDICIARY  
GENERAL COURT-MARTIAL**

UNITED STATES )

v. )

LEWIS E. WELSHOFER, JR.  
CW3, U.S. ARMY )

) **MOTION TO DISMISS:**  
) **UNLAWFUL COMMAND INFLUENCE**

) **DATED: 14 January 2006**

---

COMES NOW CW3 Lewis E. Welshofer, Jr., through counsel, and respectfully requests that this Honorable Court dismiss the Charges and Specifications with prejudice based upon Unlawful Command Influence (UCI).

**FACTS**

**Facts Underlying the Charges:**

1. CW3 Welshofer is charged, among other minor offenses, with murdering Major General Abid Mowhosh in Iraq on 26 November 2003, by suffocating him inside a sleeping bag during an interrogation.
2. This case has received extensive press coverage, the latest being a front page story on the Gazette Telegraph, on 12 January 2006, in which it was reported that CW2 Jefferson L. Williams, who also had been charged with murdering Major General Abid Mowhosh, struck a deal with the government in which he agreed to testify against CW3 Welshofer in exchange for withdrawing his court-martial charges and proceeding with nonjudicial punishment action.

**Facts Underlying Allegation of Unlawful Command Influence:**

3. While interviewing witnesses in preparation for trial on 12 January 2006, the undersigned defense counsel learned from Major Robert E. Short, a defense witness, that on 17 November 2005 he overheard a conversation between COL David G. Saffold, who has been detailed to serve as the senior ranking court member in this case, and COL Davis, Chief of Staff, 7<sup>th</sup> ID, in which COL Saffold made statements expressing his belief that court members would do the right thing and that MAJ GEN Robert W. Mixon, Jr., the convening authority in this case, would be pleased and not disappointed with the outcome and sentence in CW3 Welshofer's case. COL Saffold further indicated that he knew he was a member of the jury pool, that the convening authority had expressed unhappiness with the verdicts and lenient or soft sentences in other cases.

4. Undersigned defense counsel then embarked on an investigation to determine when and how COL Saffold was detailed to the case. At the same time, MAJ Short was asked to prepare a memorandum detailing the conversation he overheard to the best of his recollection. That memorandum is attached to this motion. In the memorandum, MAJ Short expresses his opinion that if COL Saffold sits on the panel, "any verdict, decision, or recommendation of that board would be tainted by undue command influence."

5. COL Saffold was detailed to the court panel by order of the convening authority on 11 January 2006 because he was an alternate panel member who effectively replaced COL Cho, a primary panel member on the original convening order, who was excused on 6 January 2006. On 12 July 2005, COL Saffold was selected to be the senior officer on convening orders No. 8 and 9, dated 12 July 2005. Under the guidance approved by the convening authority at that time, it was understood that he would be an alternate panel member for convening order No. 10, the original convening order in this case.

### BURDEN

6. In *U.S. v. Biagase*, 50 M.J. 143 (C.A.A.F. 1999), the Court sets forth an analytical framework for addressing unlawful command influence claims. As summarized in *U.S. v. Stoneman*, 57 M.J. 35, 41 (C.A.A.F. 2002), the test is as follows:

The initial burden is on the defense to "raise" the issue [of unlawful command influence]. The burden of proof is low, but more than mere allegation or speculation. The quantum of evidence required to raise unlawful command influence is "some evidence." The defense must show facts that, if true, constitute unlawful command influence, and it must show that the unlawful command influence has a logical connection to the court-martial in terms of potential to cause unfairness in the proceedings. If the defense shows such facts by "some evidence," the issue is raised. Once the issue is raised, the burden shifts to the Government. The Government may show either that there was no unlawful command influence or that any unlawful command influence did not taint the proceedings. If the Government elects to show that there was no unlawful command influence, it may do so either by disproving the predicate facts on which the allegation of unlawful command influence is based, or by persuading the military judge that the facts do not constitute unlawful command influence. The Government also may choose to not disprove the existence of unlawful command influence but to prove that it will not affect the proceedings. Whichever tactic the Government chooses, the quantum of evidence required is proof beyond a reasonable doubt. (citing *Biagase*, 50 M.J. at 150-51).

### LAW

7. Unlawful "command influence is the mortal enemy of military justice." *U.S. v. Rivers*, 49 M.J. 434, 443 (C.A.A.F. 1998) (quoting *U.S. v. Thomas*, 22 M.J. 388, 393 (C.M.A. 1986)). The U.C.M.J. specifically prohibits such conduct, stating:



No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercises of its or his functions in the conduct of the proceedings. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

*Art. 37(a), UCMJ.*

8. Generally, unlawful command influence takes place in one of two forms: actual or apparent. *U.S. v. Allen*, 31 M.J. 572, 589-90 (N.M.C.M.R. 1990); *U.S. v. Cruz*, 20 M.J. 873, 882-83 (A.C.M.R. 1985), *rev'd on other grounds*, 25 M.J. 326 (C.M.A. 1987); *cf. U.S. v. Johnson*, 14 U.S.C.M.A. 548, 551, 34 C.M.R. 328, 331 (1964). "The test for actual unlawful command influence is, figuratively speaking, 'whether the convening authority has been brought into the deliberation room.'" *Allen*, 31 M.J. at 589-90 (quoting *U.S. v. Grady*, 15 M.J. 275 (C.M.A. 1982)). The test for apparent unlawful command influence is: "whether a reasonable member of the public, if aware of all of the facts, would have a loss of confidence in the military justice system and believe it to be unfair." *Id.*

9. The question of whether there is an appearance of UCI must be judged objectively through the eyes of the community. *U.S. v. Stoneman*, 57 M.J. 35, 42 (C.A.A.F. 2002). The trial court must evaluate not only facts before the court but the demeanor of witnesses in determining whether apparent UCI taints the proceedings. *Id.* At 42-43. Proof of apparent UCI must be more than "mere speculation." *U.S. v. Baldwin*, 54 M.J. 308, 311 (C.A.A.F. 2001). The proof must be such that a reasonable person who was aware of all the facts would conclude that the system was unfair. *U.S. v. Rosser*, 6 M.J. 267, 271 (C.M.A. 1979).

10. Finally, as the Court of Appeals for the Armed Forces emphasized in *U.S. v. Simpson*, 58 M.J. 368, (C.A.A.F. 2003), one must take into consideration the "concern of Congress and this Court in eliminating even the appearance of unlawful command influence at courts-martial." [citing *U.S. v. Stoneman, supra*]. This concern was eloquently described in *Allen, supra*:

In a system of justice operating within a well-defined and fairly cohesive community, the mere threat of command influence may be as debilitating to the system as its actual presence. If respect for the justice system is a key factor in military morale and discipline, the fact that the system appears vulnerable to command pressures may be as damaging as the occasional exercise of such pressures. Individuals react to phenomena, after all, on the basis of their perceptions of those phenomena.

31 M.J. at 590.

11. Additional cases that address issues of unlawful command influence as it relates to court members include: *United States v. Dugan*, 58 M.J. 253 (C.A.A.F. 2003); *United States v. Hilow*, 32 M.J. 439, 441 (C.M.A. 1991); *United States v. Stephens*, 21 M.J. 784 (A.C.M.R. 1986); *United States v. Pierce*, 29 C.M.R. (A.B.R. 1960). *See generally, United States v.*

*Stombaugh*, 40 M.J. 208, 211 (C.M.A. 1994).

12. Once the court finds that actual or apparent unlawful command influence has occurred, the question turns to what is an appropriate sanction? In *United States v. Gore*, 60 M.J. 178 (C.A.A.F. 2005), the Court of Appeals for the Armed Forces overturned a decision by the Navy-Marine Corps Court of Criminal Appeals and upheld a trial judge's ruling that charges would be dismissed with prejudice, finding there was no abuse of discretion. Ultimately, once unlawful command influence is found to exist, the challenge is to "purge the taint of unlawful command influence." 60 M.J. at 185. Obviously, this can only be determined on a case by case basis.

### DISCUSSION

13. A reasonable person who is made aware of the conversation between COL Saffold and COL Davis, as overheard by MAJ Short on 17 November 2005, would easily conclude that the military justice environment at Fort Carson, Colorado, has been poisoned by MAJ GEN Mixon's willingness to express his dissatisfaction with the lenient outcomes of cases that he referred to trial. COL Saffold's corresponding willingness to consider MAJ GEN Mixon's dissatisfaction and express his desire to "do the right thing", i.e., seek to please the General by convicting soldiers and rendering harsher punishments, undermines public confidence in the impartiality and fairness of the military justice system. Not only did COL Saffold make these statements, but he also applied them specifically to this general court-martial.

14. COL Saffold's statements also create the appalling perception that the court-martial process can be easily controlled by the convening authority from the beginning, at referral, where court members are selected, to the end, where court members can be wrongfully influenced by rank and authority inside the deliberation room. These circumstances beg the question: Who else, besides COL Saffold, has been influenced by MAJ GEN Mixon's openly expressed desires? Who else has also been influenced by COL Saffold's openly expressed desires? COL Saffold is one of the assistant division commanders. He has been selected to promotion to brigadier general. Will other officers be willing to come forward, as MAJ Short has done and, at the risk of harm to their careers, say so?

15. The only way to effectively remove the taint of unlawful command influence in this case and restore balance to the military justice system at Fort Carson, would be to dismiss the charges and specifications with prejudice. The facts underlying this motion will be widely publicized in the Fort Carson community and across the nation. The danger is too great that any panel of court members will be unable to ignore what has been uncovered and adjudge this case impartially. Furthermore, any court member detailed by MAJ GEN Mixon and MAJ GEN Mixon, himself, must be disqualified from further participation in this case. He has clearly lost impartiality. Additionally, it cannot be fully known to what extent MAJ GEN Mixon's predisposed desires have been distributed. At this point, there is little, if any, confidence that soldiers under his command will be able to speak freely on this matter.

16. It took great courage for MAJ Short to report what he heard. Hopefully, that courage will not be exercised in vain, nor will it cost him his career. The integrity of the Army's military justice system at Fort Carson is at stake.

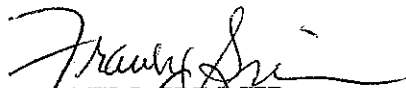
#### EVIDENCE

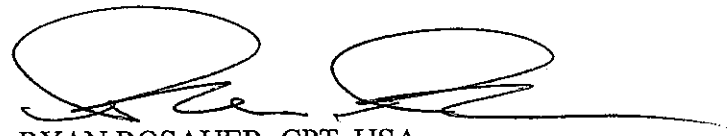
1. Memorandum by MAJ Short, dated 12 Jan 2006
2. Testimony of MAJ Short
3. Convening Order No. 9, dated 12 July 2005
4. Convening Order No. 10, dated 12 July 2005
5. Convening Order No. 1, dated 11 January 2006
6. Convening Order No. 2, dated 12 January 2006
7. Gazette Telegraph article, dated 12 January 2006

#### REQUESTED RELIEF

THEREFORE, because of the foregoing reasons and in light of the fact that, CW3 Welshofer prays that this Honorable Court dismiss the Charges and Specifications with prejudice.

Respectfully submitted this 14th day of January 2006.

  
FRANK J. SPINNER  
Defense Counsel

  
RYAN ROSAUER, CPT, USA  
Defense Counsel

#### CERTIFICATE OF SERVICE

I hereby certify that I served, by electronic mail, a copy of the foregoing Motion to Dismiss upon the Military Judge and Trial Counsel (sans Atchs) on 14 January 2006.

(original signed)  
FRANK J. SPINNER  
Defense Counsel



DEPARTMENT OF THE ARMY  
HEADQUARTERS AND HEADQUARTERS COMPANY  
7<sup>th</sup> INFANTRY DIVISION  
FORT CARSON, COLORADO 80913-5000



REPLY TO  
ATTENTION OF

AFZC-7ID-G2

January 12, 2006

MEMORANDUM FOR Record

SUBJECT: UCI comments by COL Saffold

1. On 17 November 2005 I participated in the CG scramble golf tournament held at the post golf course. The tournament ended early due to snow and cold temperatures so most of the golfers went into the main golf course building to get warm, turn in score cards, and wait for the winners to be declared. It was in the early afternoon, around 1300. While I was in the pro shop waiting in line with LTC Rothstein to get a partial refund of my entry fee (a ticket for a free round of golf), I was standing near COL Saffold (7ID DC(S)), and I overheard him talking casually to the 7ID Chief of Staff COL Davis. He said something to the effect that the jury pool for the Welshofer trial had been selected, and that he was in the pool, and that the CG (MG Meade, <sup>Mixon</sup> 7ID Commander) should be pleased that he and others that had not deployed to OIF/OEF were in among the jury pool and that for the Welshofer trial they would do the right thing and the CG would not be disappointed. He mentioned something to the effect that the Courts-Marshall boards were filled with "bleeding heart liberals" that did not understand good order and discipline. He also said something to the effect that the CG was not happy with recent trial verdicts and punishment recommendations from Courts-Martial boards consisting of recent combat veterans, and that they were too lenient and soft. I did not hear COL Davis' response, and the conversation moved on to discussing the bad weather.

2. My impression was that if COL(P) Saffold were to be a member of the Court-Martial Board for the trial of CW3 Lew Welshofer that any verdict, decision, or recommendation of that board would be tainted by undue command influence.

ROBERT E. SHORT  
MAJ, MI  
7<sup>TH</sup> ID Deputy G2

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

COURT-MARTIAL CONVENING ORDER  
NUMBER 8

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 DAVID G. SAFFOLD, OD, HHC, 7ID  
COL KIM R. WRIGHT, AV, 1st MOB, BDE  
LTC BARRETT W. LARWIN, EN, USAG  
LTC BRIAN F. WEST, HR, HHC, 7ID  
LTC ANTONIO AGUTO, JR, AR, HHC, 7ID  
MAJ WILLIAM K. PARKS, SF, C CO, 3/10th SFG  
MAJ BRADLEY L. ROBINSON, MS, USA MEDDAC  
MAJ CRYSTAL S. SMITH, AC, HHC, 43d ASG  
MAJ REBECA TRAYLOR, QM, 1/359th, 91st DIV  
CPT JOHN A. STRINGFIELD, QM, HHC, 7ID

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

COL KIM R. WRIGHT, AV, 1st MOB, BDE  
LTC BRIAN F. WEST, HR, HHC, 7ID  
LTC ANTONIO AGUTO, JR, AR, HHC, 7ID  
MAJ CRYSTAL S. SMITH, AC, HHC, 43d ASG  
CPT JOHN A. STRINGFIELD, QM, HHC, 7ID  
CSM CY B. AKANA, 10th CSH  
SGM GEORGE W. STAPLETON, JR, HHC, 7ID  
MSG SHERRIE E. ANDERSON, USAG  
SFC LEWIS C. GARRISON, USA MEDDAC  
SSG TONY CLAIBORNE, USAG

All cases referred to the general court-martial convened by order Number 2, 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:

DISTRIBUTION:  
Ea indiv indic (1)  
Cdr, 7th IN Div (SJA) (1)  
Record of Trial (1)  
Record Set (1)  
Reference Set (1)

  
TIERNAN DOLAN  
MAJ, JA  
Chief, Criminal Law Division

11288

AE XII  
P. 7813

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

COURT-MARTIAL CONVENING ORDER  
NUMBER 9

12 July 2005

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

COL DAVID G. SAFFOLD, OD, HHC, 7ID  
COL KIM R. WRIGHT, AV, 1st MOB, BDE  
LTC BRIAN F. WEST, HR, HHC, 7ID  
LTC ANTONIO AGUTO, JR, AR, HHC, 7ID  
MAJ WILLIAM K. PARKS, SF, C CO, 3/10 SFG  
MAJ BRADLEY L. ROBINSON, MS, USA MEDDAC  
MAJ REBECA TRAYLOR, QM, 1/359th, 91st DIV  
CPT JOHN A. STRINGFIELD, QM, HHC, 7ID

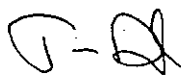
In the case where an enlisted panel is requested, the following members will be detailed:

COL KIM R. WRIGHT, AV, 1st MOB, BDE  
LTC BRIAN F. WEST, HR, HHC, 7ID  
LTC ANTONIO AGUTO, JR, AR, HHC, 7ID  
CPT JOHN A. STRINGFIELD, QM, HHC, 7ID  
CSM CY B. AKANA, 10th CSH  
MSG SHERRIE E. ANDERSON, USAG  
SFC LEWIS C. GARRISON, USA MEDDAC  
SSG TONY CLAIBORNE, USAG

All cases referred to the special court-martial convened by order Number 3, 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:

DISTRIBUTION:  
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Record Set (1)  
Reference Set (1)

  
TIERNAN DOLAN  
MAJ, JA  
Chief, Criminal Law Division

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:

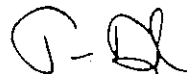
COL SCOTT A. LANG, QM, 43d ASG  
COL JOHN M. CHO, MC, USA MEDDAC  
LTC THERESA S. LEVER, AG, HHC, 7ID  
LTC THOMAS C. POWELL, 2/362d, 2/91st DIV  
LTC NORMAN E. BRUBAKER, TC, HHC, 7ID  
MAJ JOHN M. CREAN, HHC, 7ID  
MAJ MAURICE L. MCDUGALD, CM, HQ, 10th SFG  
MAJ ROSS C. POPPENBERGER, AC, USAG  
CPT 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. CREAN, 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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Record of Trial (1)  
Record Set (1)  
Reference Set (1)



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:

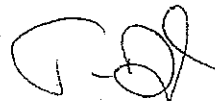
COL DAVID G. SAFFOLD, OD, HHC, 7th ID  
LTC JOHN R. BURGER, EN, HHC, USAG  
MAJ JOSEPH G. BYRUM, MI, HHC, USAG  
MAJ ZORN T. SLIMAN, TC, HHC, 2d BSB, 2d BCT  
CPT BONNY C. DYLEWSKI, QM, HHC, 2d BSB, 2d BCT  
CPT CHRIS J. MAESTAS, 3/361st TSBn, 2d BDE, 91st DIV

VICE:

COL JOHN M. CHO, MS, USA MEDDAC  
LTC NORMAN E. BRUBAKER, TC, HHC, 7th ID  
MAJ JOHN M. CREAM, 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

DISTRIBUTION  
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Cdr, 7th IN Div (SJA) (1)  
Record of Trial (1)  
Record Set (1)  
Reference Set (1)

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

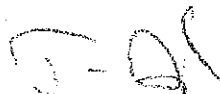
COURT-MARTIAL CONVENING ORDER  
NUMBER 2

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

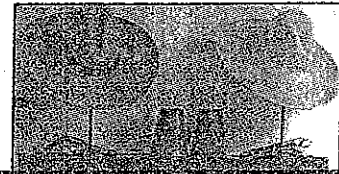
BY COMMAND OF MAJOR GENERAL MIXON:



DISTRIBUTION:  
Ea indiv indic (1)  
Cdr, 7th IN Div (SJA) (1)  
Record of Trial (1)  
Record Set (1)  
Reference Set (1)

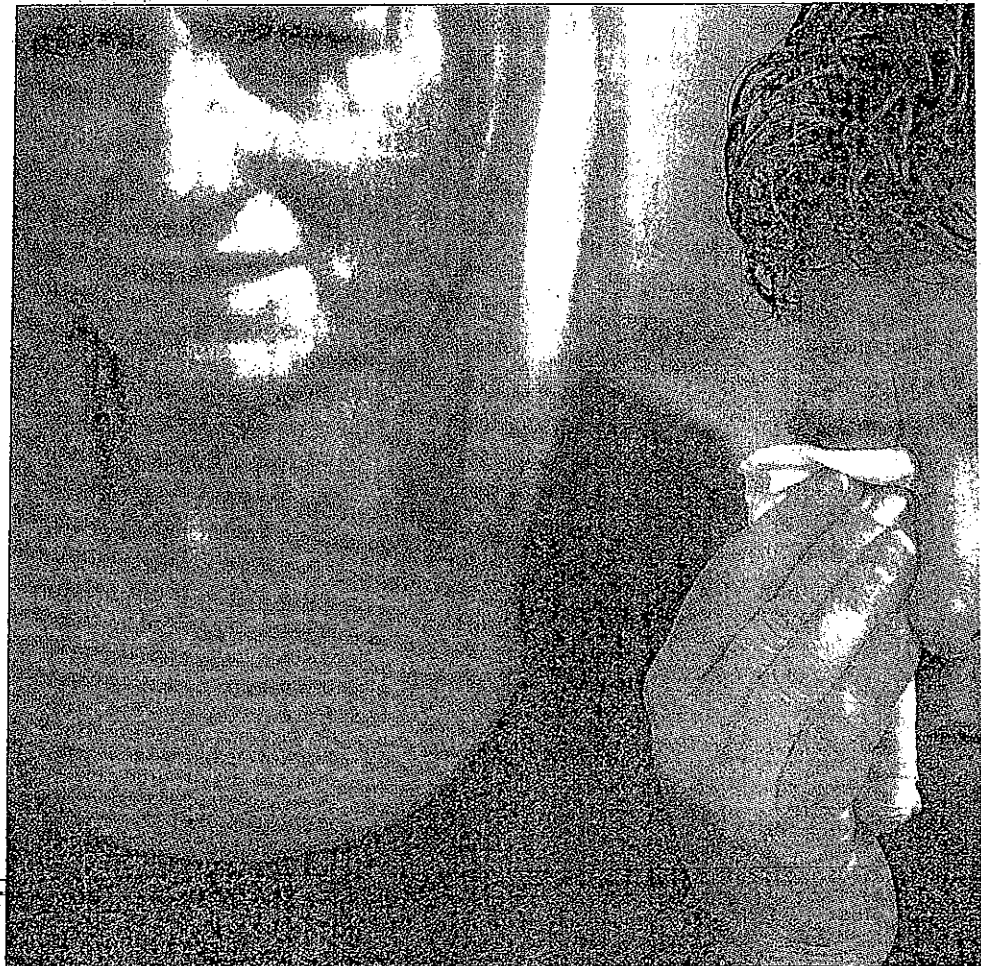
TIERNAN DOLAN  
MAJ, JA  
Chief, Criminal Law Division

**POISONED EAGLE'S  
FLIGHT TO FREEDOM**  
Metro



**A TA**  
Outfit your

## A tearful farewell



*P. 12813 AE X11*  
**N**iall Campbell became emotional while talking about her fiance, Sgt. 1st Class Eric Pearrow, after his memorial ceremony at Fort Carson's Soldiers' Memorial Chapel on Wednesday. Her friend Jill Hamner was at left. Pearrow died in a tank accident in November in Iraq. He was a member of Mad Dog Company, 3rd

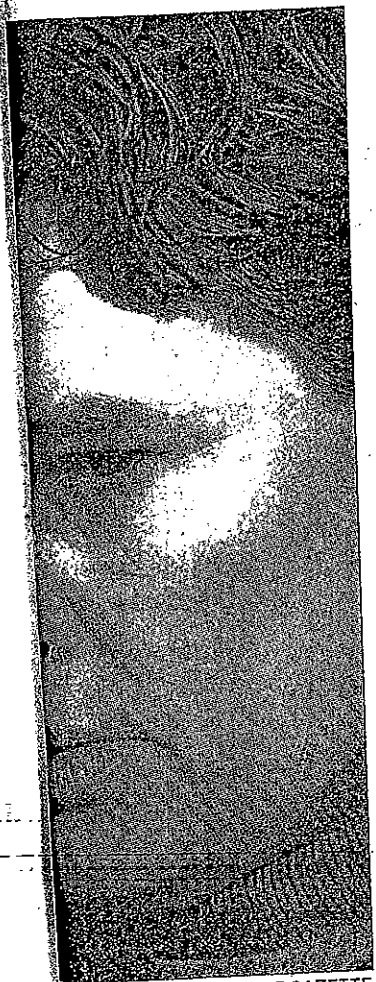
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**WINTER WEST**  
Home on the range • Life



**RED MILLER'S CALL:  
BRONCOS IN A WALK**  
Sports



BRYAN OLLER, THE GAZETTE

Sgt. 1st Class Eric Pearrow: Died Nov. 24 in Baghdad when his M-1 tank rolled

## Army drops murder charge against soldier

### Officer will testify at fellow Carson GI's court-martial

BY TOM ROEDER  
THE GAZETTE

One of three Fort Carson soldiers charged with murder in the interrogation death of an Iraqi general cut a plea deal with Army prosecutors in exchange for his testimony against another defendant.

The murder charge against Chief Warrant Officer Jefferson L. Williams was dropped late last week by Fort Carson prosecutors, his attorney, William Cassara, said Wednesday by telephone from Georgia.

Instead of facing the possibility of life in prison, Williams will get "nonjudicial punishment."

**MORE PROTECTION:** Army will send side armor plates to soldiers. **Page 4**

clude loss of pay or extra duty but isn't a criminal conviction, Cassara said.

"Any day you get a murder charge dismissed is a good day," Cassara said.

He said his client will testify at a court-martial next week against his fellow 3rd Armored Cavalry Regiment soldier, Chief Warrant Officer Lewis Welshofer. Both men had been charged in the November 2003 killing of Maj. Gen. Abed Hamed Mowhoush, who was a prisoner in a makeshift jail in western Iraq when he died.

It was unclear how Williams' testimony will change the government's case against Welshofer. A spokeswoman at Fort Carson said attorneys

0113 0113 AE X11

UNITED STATES )

v. )

Welshofer, Lewis E., Jr. )  
Chief Warrant Officer Three (CW3) )  
U.S. Army, )  
66th Military Intelligence Company, )  
3d Squadron, 3d Armored Cavalry Regiment )  
Fort Carson, Colorado 80913 )

GOVERNMENT RESPONSE  
TO DEFENSE MOTION TO  
DISMISS: UNLAWFUL  
COMMAND INFLUENCE

15 January 2006

---

### 1. RELIEF SOUGHT

Because the statements alleged in Defense's Motion to Dismiss were never made, the Government respectfully requests that the Court find that there was no unlawful command influence and deny the Defense's Motion to Dismiss.

### 2. BURDEN OF PROOF AND STANDARD OF PROOF

The Defense has the initial burden of raising unlawful command influence. United States v. Ayala, 43 M.J. 296, 299 (C.A.A.F. 1995). "The burden of proof is low, but more than mere allegation or speculation. The quantum of evidence required to raise unlawful command influence is 'some evidence.'" United States v. Stoneman, 57 M.J. 35, 41 (C.A.A.F. 2002), quoting United States v. Biagase, 50 M.J. 143, 150 (C.A.A.F. 1999)). Once the issue of unlawful command influence is successfully raised by the Defense, the burden shifts to the Government to prove beyond a reasonable doubt that there was no unlawful command influence or that if it exists, the unlawful command influence will not affect the proceedings. United States v. Biagase, 50 M.J. 143, 150 (C.A.A.F. 1999).

### 3. FACTS

a. The Government denies the facts as alleged by Defense with the exception of the following:

1. Major General Robert W. Mixon, Jr. is the convening authority who convened the General court-martial of United States v. Welshofer.
2. Colonel David G. Saffold has been detailed as the senior member of this court-martial.
3. Colonel Shannon Davis is the Chief of Staff of 7th Infantry Division.
4. Major Robert Short is a Defense witness.

b. The Government provides the following additional facts for the Court's consideration:

Appellate Exhibit XIII  
p. 1264

1. Colonel Saffold was detailed to this court-martial after MG Mixon granted COL John M. Cho's request for excusal on 6 January 2006. Colonel Cho is the Commander of Evans Army Community Hospital. On 4 January 2006, Colonel Cho requested excusal from court-martial duty because the hospital was undergoing a MEDCOM IG inspection from 18 January 2006 through 20 January 2006. See email from COL Cho, dated 4 January 2006, attached hereto as exhibit 1; see Evans Army Community Hospital IG itinerary for 18-20 January 2006, attached hereto as exhibit 2. See also Memorandum from MG Mixon, dated 6 January 2006, attached hereto as exhibit 3.

2. Sergeant Brian Cox, Fort Carson Office of the Staff Judge Advocate, will testify that he followed MG Mixon's guidance with respect to detailing court-martial panel members. See Memorandum for Commander, 7th Infantry Division and Fort Carson, dated 29 June 2005, approved by MG Robert Mixon, dated 8 July 2005, with alternate list, attached hereto as exhibit 4. Sergeant Cox will testify that Colonel Saffold was detailed to this court-martial only after the three alternates who fell before COL Saffold were excused.

3. Sergeant Cox will testify that IAW with MG Mixon's guidance, SGT Cox contacted COL Kim Wright as the first alternate. Sergeant Cox will testify that he was informed by COL Wright's office that COL Wright was away on convalescent leave and would be unavailable for the trial. See read-receipt of email to COL Kim Wright from SGT Cox, dated 5 Jan 06, attached hereto as exhibit 5.

4. Sergeant Cox will also testify that IAW with MG Mixon's guidance with respect to detailing court-martial panel members, SGT Cox contacted COL Jack Humphrey, Jr. as the next alternate. Sergeant Cox will testify that COL Humphrey submitted a request for excusal to MG Mixon on 5 January 2006 based on an upcoming TDY. See Memorandum from COL Humphrey, dated 5 January 2006, attached hereto as exhibit 6. IAW MG Mixon's guidance regarding detailing court-martial members, TDY serves as a basis for automatic excusal from court-martial duty. As such, COL Humphrey was excused.

5. Finally, Sergeant Cox will testify that IAW with MG Mixon's guidance with respect to detailing court-martial panel members, SGT Cox contacted COL Saffold as the next alternate. On 6 January 2006, COL Saffold submitted a request for excusal to MG Mixon. Colonel Saffold stated in his request that on 16 January 2006, he would be the only Division Command Group member in the area and that on 19 January 2006, he would be serving as the senior mentor in the CG's offsite. See email dated 6 January 2006 from COL Saffold, attached hereto as exhibit 7. Colonel (P) Terry Wolf, Acting Commander, denied COL Saffold's request for excusal on 10 January 2006. See Memorandum from COL Wolff dated 10 January 2006, attached hereto as exhibit 8.

#### 4. LAW

The Government adopts the Defense's recitation of the applicable law on unlawful command influence.

APPELLATE EXHIBIT

XIII

p. 2 of 4

**5. ARGUMENT**

In its Motion, Defense alleges that a conversation occurred, on or around 17 November 2005, between COL Saffold and COL Davis wherein COL Saffold told COL Davis that MG Mixon expressed dissatisfaction about the lenient sentences of courts-martial. Also, Defense alleges that in that discussion, COL Saffold stated that he "would do the right thing" and that "General Mixon would be pleased and not disappointed with the outcome and sentence in CW3 Welshofer's case." Based on those statements, Defense requests that the Court dismiss this court-martial the public's perception of the court-martial process involving CW3 Welshofer is irreparably tainted. Because COL Saffold made no such statements, this Court should find that the court-martial is not tainted and that public perception is not impacted. Accordingly, the Government respectfully requests that the Court deny Defense's Motion to Dismiss.

Colonel Davis will also testify that a conversation of the nature alleged in the Defense Motion never occurred.

According to the facts as alleged in Defense's Motion, COL Saffold specifically mentioned CW3 Welshofer's case in the course of a discussion with COL Davis. However, COL Saffold will testify that he does not know CW3 Welshofer and never even heard CW3 Welshofer's name until he was contacted by SGT Cox of the Office of the Staff Judge Advocate to serve as an alternate panel member in January of 2006. This testimony specifically belies Defense's version of the facts. In order for the conversation to have occurred as Defense states, COL Saffold must have known, in November of 2005, that he would be a panel member for this case. And, in order for COL Saffold to have known that he would be a panel member for this case in November of 2005, COL Cho, COL Wright, and COL Humphrey must have also already been excused from court-martial duty. See also email from CG Actions to CPT Matt, dated 21 November 2005, attached hereto as exhibit 9 and email to COL Toole from CPT Matt, dated 21 November 2005, with alternate members list, attached hereto as exhibit 10. However, as evidenced by the exhibits relating to the excusals of COL Cho, COL Wright, and COL Humphrey, none of these members were excused until January of 2006. Therefore, the discussion as alleged by Defense simply could not have occurred as alleged.

In addition to the fact that COL Saffold denies making the alleged statement or knowing that he was tasked with court-martial duty in this case in November of 2005, COL Saffold will testify that he never discussed punishment philosophies or courts-martial with MG Mixon at any time. In his role as Deputy Commander of 7th Infantry Division and Fort Carson, Colonel Saffold will testify that his duties focus on the logistics of the post, not on the comings and goings of individual soldiers. Stated simply, COL Saffold denies discussing this case or any other case with MG Mixon.

Once the Defense raises the issue of unlawful command influence, the Government bears the burden of proving, beyond a reasonable doubt, that either there was no unlawful command influence or that the unlawful command influence will not affect the proceedings. United States v. Biagase, 50 M.J. 143 (C.A.A.F. 1999). Stated differently, the Government satisfies its burden by establishing that the predicate facts underlying the claim of unlawful command influence do not exist. Id. In this case, the evidence establishes, beyond a reasonable doubt, that the conversation between COL Saffold and COL Davis never occurred. Accordingly, the



United States v. Welshofer

Government Response to Defense Motion to Dismiss

Government has met its burden and respectfully requests that the Court deny the Defense's Motion to Dismiss.

**6. RELIEF REQUESTED**

The Government respectfully requests that the Court deny the Defense's Motion to Dismiss.

**7. WITNESSES/EVIDENCE**

a. The evidence that the Government requests that the Court consider is attached to this Response.

b. The Government intends to call the following witnesses:

1. COL David Saffold, HHC, 7ID, Fort Carson, Colorado 80913, (719) 526-0130.
2. COL Shannon Davis, Chief of Staff, Fort Carson, Colorado 80913.
3. SGT Brian Cox, Office of the Staff Judge Advocate, Fort Carson, Colorado 80913, (719) 524-0564.

**8. SERVICE**

This motion was served on Defense, Mr. Frank Spinner and CPT Ryan Rosauer, and the military judge, on 15 January 2006, by electronic mail.



ELANA S. MATT  
CPT, JA  
Trial Counsel

**Cox, Brian D SGT USA OSJA**

**From:** Cho, John M COL EACH-Ft Carson [john.cho@us.army.mil]  
**Sent:** Wednesday, January 04, 2006 6:07 AM  
**To:** Cox, Brian D SGT USA OSJA  
**Subject:** RE: General Court Martial, 16 - 20 Jan 06  
**Attachments:** Copy of Fort Carson Inspection Schedule DEC 27.xls

SGT Cox: Evans will undergo a MEDCOM IG Inspection 18-20 January and I will not be readily available. My schedule is however is open 16 and 17 January. Thanks. JMC

**From:** Cox, Brian D SGT USA OSJA [mailto:Brian.Dempsey.Cox@us.army.mil]  
**Sent:** Tuesday, January 03, 2006 10:40 AM  
**To:** Cho, John M COL EACH-Ft Carson; Lang, Scott A COL USA 43ASG; Lever, Theresa S LTC USA 7ID; Powell, Thomas C LTC 91DIV, 2BDE, 2/362; Conrad, Neal O LTC USA 7ID; Crean, John M MAJ USA 2BCT/HHC; mcdougaldm@soc.mil; Poppenberger, Ross C MAJ USA USAG; Morehouse, Lynne A CPT USA 7ID/G4; chris.joseph.maestas@us.army.mil  
**Subject:** General Court Martial, 16 - 20 Jan 06

ALCON,

You have been selected to sit on a General Court-Martial Panel, **U.S. v. WELSHOFFER**, scheduled for **16 - 20 January 2006**. Please be at the **Peterson Air Force Base Courtroom, Building 350** (see attached directions), **Room #2068**, at **0815** on each day. The uniform is Class A's. If you are unable to serve on the Court-Martial, please see the attached memo and reply as soon as possible to this email with the reason you will not be able to attend. Thank you for your help and cooperation in this matter. If you have any questions, please contact us by replying to this e-mail or by calling 526-1390 or 524-0564.

**Please respond to this email as soon as possible with either a positive or negative response.**

V/R

SGT Cox  
CG Actions

APPELLATE EXHIBIT XIII

11299

Exhibit I

1/4/2006

EVANS ARMY COMMUNITY HOSPITAL (ACH)  
FORT CARSON, CO  
18-20 JANUARY 2006

| TIME   | EVENT   | LOCATION   | PARTICIPANTS & PHONE  | MO/SG/POC              |
|--|---|--|---|------------------------|
| 17 JANUARY 2006: TRAVEL DAY (TUESDAY) EVANS ACH, FORT CARSON, CO |   |  |   |                        |
| 0800-1700  | IG Team travels to Fort Carson, CO  | IMD Tng Rm # 3918                                | IG Inspection Team  | SGM Veneziano          |
| 18 JANUARY 2006: DAY 1 (WEDNESDAY) EVANS ACH, FORT CARSON, CO    |   |  |   |                        |
| TIME   | EVENT   | LOCATION   | PARTICIPANTS & PHONE  | MO/SG/POC              |
| 0830   | Team Arrives at MTF   | Information Desk/Front Entrance                  | MTF POC   | SGM Veneziano          |
| 0900-0945  | MEDCOM Inbrief to CDR   | Cdr's Conf. Rm # 2519                            | Command Group   | COL Mosley             |
| 1100 - 1200  | Office Interview - Commander  | Cdr's Office Rm # 2511                           | MTF Commander - COL Cho, 6-7500   | COL Mosley             |
| 1000-1030  | Office Interview - DCA  | DCA's Office Rm # 2507                           | DCA - LTC Chin, 6-7220  | COL Mosley             |
| 1030 - 1100  | Office Interview - DCCS   | DCCS' Office Rm # 2505                           | DCCS - COL Johnson, 6-7220  | COL Mosley             |
| 1100 - 1130  | Office Interview - DCN  | DCN's Office Rm # 2503                           | DCN - COL Modell, 6-7220  | COL Mosley             |
| 1045-1115  | Office Interview - CSM (TDV)  | CSM's Office Rm # 2517                           | CSM - 1SG Richardson, Acting, 6-7129  | SGM Veneziano          |
| 0900-1130  | Property Book Accountability  | Logistics Conference Rm # 0526<br>(In rm # 0507) | Mr. Reagan, 6-7209  | COL Jones              |
| 1100-1200  | Office Interview - Acting IG  | IMD Conf. Rm # 3928                              | MAJ Geolingo, 6-7473; Maj Ingles, 6-7684;<br>CPT Lindner, 6-7268  | SGM Veneziano          |
| 1200-1300  | Lunch   | Dining Facility                                  | LTC Craig, 6-7968   | MEDCOM Inspection Team |
| 1300-1400  | IGAR Session  | IMD Conf. Rm # 3928                              | Soldiers, DA Civilians, and Contract Employees  | SGM Veneziano          |
| 1300-1430  | MTF Readiness for Unannounced JCAHO Survey and use of JCAHO's Periodic Performance Review (PPR) | Managed Care Conf. Rm # 2050E                    | Ms. Hampton, 6-7923   | COL Jones              |
| 1430-1630  | JCAHO Tracer Activity   | Managed Care Conf. Rm # 2050E                    | LTC Mitchell, 4-4056; Ms Mulizan, 6-7125;<br>Ms. Perez, 6-7510; Mr. O'Hare, 6-7190; Mr. Ende, 6-7239/7780; Ms. Paskof, 6-7224 | COL Jones              |
| 1500-1600  | Pre- and Post-Deployment Health Interview and Medical Record Audit                              | BLDG 1042- Rm # 108                              | Mr. Prowell, 4-5568   | SGM Veneziano          |
| 1630-1700  | Inspection Team Interim Progress Report (IPR) Meeting   | IMD Tng Rm # 3918                                | IG Inspection Team  | SGM Veneziano          |

1/4/2006  
Schedule the Office Interviews for 30 minutes each with 30 minutes between each interview  
\*\*\*Delete suggested participants and list MTF names in column four

ENCLOSURE 2

11300 APPELLATE EXHIBIT ~~XIII~~ Exhibit 2 (1 of 3)

EVANS ARMY COMMUNITY HOSPITAL (ACH)  
 FORT CARSON, CO  
 18-20 JANUARY 2006

19 JANUARY 2006: DAY 2 (THURSDAY) EVANS ACH, FORT CARSON, CO

| TIME        | EVENT   | LOCATION              | PARTICIPANTS**   | REC. PHONE # | MC/IG/BOSS                  |
|-------------|---|-----------------------|--|--------------|-----------------------------|
| 0830 - 0900 | MEDCOM IG Inspection Team arrives at MTF  | IMD Tng Rm # 3918     | MEDCOM IG Team   |              | SGM Veneziano               |
| 0900-1030   | PCE, Sentinel Event Policy, and Peer Review   | IMD Conf. Rm # 3928   | COL Johnson, 6-7220; Mr. Neuman, 6-7727; Ms. Moltzan, 6-7125; and Mr. Don O'Hare, 6-7190   |              | COL Jones/Temp Physician IG |
| 0930-1200   | Enlisted Soldiers Issues: NCOES Policy; Automatic Promotion List Integration and Boards | Cdr's Conf. Rm # 2519 | CPT Andrews, 6-3077; 1SG Richardson, 6-7326; SSG Bernard; SSG Jacobs, 6-7242, Maj Gurr, 6-7259                                   |              | SGM Veneziano               |
| 1100-1200   | HIPAA Compliance  | IMD Conf. Rm # 3928   | HIPAA compliance HIPAA Compliance Officer, Mr. Bailey; Chief, PAD, CPT Gillette, 6-7930; Maj Ingles, 6-7684; Mr. Sanders, 6-7311 |              | COL Mosley                  |
| 1200-1300   | Lunch   | Dining Facility       |  |              |                             |
| 1300-1400   | Army Sexual Assault Prevention and Response Program                                     | S2/3 Conf. Rm # 2552  | CPT Andrews, 6-3077; SFC Grey, 6-7970  |              | Temp Physician IG           |
| 1400-1600   | GWOT Funding Accountability   | S2/3 Conf. Rm # 2552  | Mr. Wanersdorfer, 6-7323; Mr. Miller, 6-7328   |              | COL Mosley/COL Jones        |
| 1600-1630   | Follow-up/PIPR Meeting  | IMD Tng Rm, # 3918    | IG Inspection  |              | SGM Veneziano               |

APPELLATE EXHIBIT XIII

Exhibit 2 (2 of 3)

11301

1/4/2006  
 \*Schedule the Office Interviews for 30 minutes each with 30 minutes between each interview  
 \*\*Delete suggested participants and list MTF names in column four

ENCLOSURE 2





REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
HEADQUARTERS, 7<sup>TH</sup> INFANTRY DIVISION AND FORT CARSON  
OFFICE OF THE COMMANDING GENERAL  
FORT CARSON, COLORADO 80913


AFZC-CG

JAN 06 2006

MEMORANDUM FOR COL John M. Cho, United States Army Medical Department Activity,  
Fort Carson, Colorado 80913

SUBJECT: Request for Excusal from Court-Martial Duty

Your request for excusal from court-martial duty from 16 January 2006 through 20 January 2006  
is ~~approved~~ denied.

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

APPELLATE EXHIBIT XIII

11303

Exhibit 3



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
HEADQUARTERS, 7<sup>TH</sup> INFANTRY DIVISION AND FORT CARSON  
OFFICE OF THE STAFF JUDGE ADVOCATE  
7086 ALBANESE LOOP, BLDG. 6285  
FORT CARSON, COLORADO 80913

JUN 29 2005

AFZC-JA

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

SUBJECT: Selection of Officer and Enlisted Court-Martial Panel Members

1. The purpose of this memorandum is to assist you in the selection of new officer and enlisted members for two standing general and special court-martial panels.

2. BACKGROUND AND DISCUSSION.

a. The current court-martial panels have been in place since 8 July 2004. These panels should, therefore, be replaced.

b. Rule for Court-Martial (R.C.M.) 805 requires that a general court-martial be comprised of at least five court members and a special court-martial of at least three members. When requested by an enlisted accused, at least one-third of the members must be enlisted. Pursuant to R.C.M. 912, any member may be challenged and removed for cause. In addition, each party may challenge one member peremptorily.

c. In accordance with Article 25(d), Uniform Code of Military Justice (UCMJ), your selection of officer and enlisted members should result in a cross-section of the military community who are best qualified to serve as court members by reason of age, education, training, experience, length of service, and judicial temperament. You may select any officer or enlisted soldier in your command except those excluded by regulation. AR 27-10, Chapter 7, provides that chaplains and inspectors general are ineligible to serve as court members. Normally, except when regulation provides otherwise, Judge Advocates, Medical, Dental, and Veterinary Corps officers, Army Nurse Corps and Medical Specialist Corps officers, and military police will not be detailed as members of a court-martial.

d. Based on past caseload, selection of two standing general courts-martial and two standing special courts-martial panels should be sufficient to satisfy the requirement for court members during the next twelve months. While you are free to select any number of panel members regardless of grade, I recommend you select ten primary members for each of the general courts-martial panels and eight primary members for each of the special courts-martial panels.

e. Attached are the names of those officers and enlisted soldiers who have been nominated by their brigade commanders, or who have otherwise been determined to be available for service,

APPELLATE EXHIBIT XIII



AFZC-JA

SUBJECT: Selection of Officer and Enlisted Court-Martial Members

as well as their ORBs or ERBs, as applicable. I have highlighted the names of the soldiers who are primary or alternate members of the current panels. You are reminded that you are not limited to selecting from these lists. Therefore, I have provided a roster with the names of all military personnel assigned to Fort Carson, any of whom may be selected by you.

3. RECOMMENDATIONS.

a. That you select a total of twenty officers and ten enlisted members to be detailed to two standing general courts-martial panels. That you select two special courts-martial panels, detailing the same officer and enlisted members as the general courts-martial panels, less two members each.

(1) **General Court-Martial Panel 1 (GCMP 1).** Place the number "1" beside ten names of officers on the list of nominees at TAB A. Select five of the ten officers to be excused from the panel and re-detailed as alternates when enlisted members are requested by placing the letter "E" beside the number "1". Select five enlisted personnel to be detailed to the first panel when an accused requests enlisted members by placing the number "1" beside their names on the list of nominees at TAB B.

(2) **Special Court-Martial Panel 1 (Officers).** Circle the number "1" beside two officers' names on the list of nominees at TAB A. These two officers will be excused as primary members from the general court-martial panel and re-detailed as alternates for the special court-martial panel. Recommend you should select one officer who is identified with an "E" and one who is not. Those remaining officers identified with an uncircled "1" or an uncircled "1E" will constitute the first special court-martial panel consisting of officer members.

(3) **Special Court-Martial Panel 1 (1/3 Enlisted).** Circle the number "1" beside one enlisted soldier's name on the list of nominees at TAB B. This soldier will be excused as a primary member from the general court-martial panel and re-detailed as an alternate for the special courts-martial panel. The remaining officers from (2) above, identified with only an uncircled "1", and those remaining enlisted soldiers identified with only an uncircled "1" will constitute the first special courts-martial panel consisting of enlisted members.

(4) **General Court-Martial Panel 2 (GCMP 2).** Repeat process in (1), (2), and (3) above, substituting "2" everywhere those paragraphs require a "1".

(5) **Alternate Members (Officers).** Select approximately twenty-five additional officers to serve as alternate court members by placing the letter "A" in the spaces next to their name.

(6) **Alternate Members (Enlisted).** Select approximately twenty-five additional enlisted members to serve as alternate court members by placing the letter "A" in the spaces next to their name.

APPELLATE EXHIBIT XIII

AFZC-JA

SUBJECT: Selection of Officer and Enlisted Court-Martial Members

Selection of alternates in the same grade and number as primary members makes replacement a simpler process but you are not required to choose alternates of any particular rank.

b. **Alternate Court Members.** That alternate court members be automatically detailed to the panels in accordance with the following procedures:

(1) The Office of the Staff Judge Advocate will maintain a roster of alternate panel members in descending order of rank, and descending date of rank within each rank. In the event two or more alternates have the same date of rank, time in service will be the next determining factor used to determine which member is the next senior member. If panel members also have same time in service, they will be listed alphabetically and that will be assumed to be their order of seniority.

(2) When, before assembly, a primary member of any panel is excused, that primary member will be replaced, for that case only, by the available alternate member closest in rank and date of rank. If no alternate of the same rank is available, primary members from the remaining courts-martial panels will be re-detailed as alternates. If there is still no alternate of the same rank available, the replacement will be determined in the following order: the junior alternate of the next higher rank, if available; the senior alternate of the next lower rank, if available; the next junior alternate of the next higher rank, if available; the next senior alternate of the next lower rank, if available; and so on.

(3) When, after assembly, the membership of any panel falls below the minimum statutory membership requirement, all excused officers, except those excused per paragraph 3(d), will be replaced by the next available senior alternate officer and all excused enlisted members, except those excused per paragraph 3(d), will be replaced by the next available senior alternate enlisted member.

c. **Automatic Excusals.** That the following members and alternate members are automatically excused without any further action by the convening authority:

- (1) Individuals who are deployed outside of Colorado on the date of trial;
- (2) Individuals who are within fifteen days of their date of loss due to ETS, PCS, or retirement on the date of trial;
- (3) Individuals who are in the hospital or on quarters on the date of trial;
- (4) Individuals who on the date of trial are on leave (i.e., ordinary, convalescent, transitional, emergency), pass, or permissive temporary duty that was approved in writing prior to notification of trial;

APPELLATE EXHIBIT XIII

AFZC-JA

SUBJECT: Selection of Officer and Enlisted Court-Martial Members

- (5) Individuals who are junior in grade to the accused;
- (6) Individuals from the same company, battery, or troop-sized element as the accused;
- (7) Commanders who forwarded any of the charges in accordance with R.C.M. 401-405.

d. That you delegate authority to the Staff Judge Advocate to excuse, before assembly, no more than one-third of the primary members detailed for any one court-martial in accordance with R.C.M. 505(c)(1)(B)(i). Should any member be excused on the day of trial, the member will not be replaced by an alternate.

e. That you sign an appointment memorandum for those officers and enlisted personnel selected to serve as court members and alternate court members.

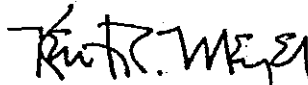
f. That court-martial convening orders be prepared, authenticated, and published reflecting your selection of the members with the following special guidance:

(1) All cases referred to the general courts-martial convened by Order Number 2, 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 convened by the general court-martial convening order prepared for Panel 1. Further, all cases referred to the special courts-martial convened by Order Number 3, this headquarters, dated 8 July 2004, in which the court has not been assembled in accordance with R.C.M. 911, except the case of U.S. v. Walton, will be brought to trial before the courts-martial convened by the special court-martial convening order prepared for Panel 1.

(2) All cases referred to the general courts-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, except the cases of U.S. v. Wilks and U.S. v. Pearson, will be brought to trial before the court-martial convened by the general court-martial convening order prepared for Panel 2. Further, all cases referred to the special court-martial convened by Order Number 5, 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 convened by the special court-martial convening order prepared for Panel 2.

Encls

1. Article 25, UCMJ
2. Nominee Binder
3. Alpha Roster

  
KENT R. MEYER  
COL, JA  
Staff Judge Advocate

APPELLATE EXHIBIT XIII

11307

Exhibit 4 (4 of 8)

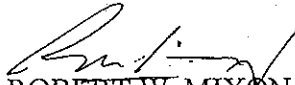
AFZC-JA

SUBJECT: Selection of Officer and Enlisted Court-Martial Members

ACTION BY THE CONVENING AUTHORITY

JUL 08 2005

The recommendations of the Staff Judge Advocate are (approved) (disapproved). My court member selections are indicated in the attached documents.

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

APPELLATE EXHIBIT XIII

11308

Exhibit 4 (5 of 8)

| RANK  | L-NAME           | F-NAME  | MI | DOR       | UNIT                  | DUTY                             | WORK         | CELL  | HOME     | FAX      |
|-------|------------------|---------|----|-----------|-----------------------|----------------------------------|--------------|-------|----------|----------|
| P/A   | COL SAFFOLD      | DAVID   | G. | 01-Sep-99 | HHC 7ID               | ADC (S)                          | 526-0130     |       |          | 526-5928 |
| A     | COL HUMPHREY JR. | JACK    | D. | 01-Jul-04 | 11TH ROTC BDE BDE CDR |                                  | 526-5062     |       |          | 526-0633 |
| P     | COL WRIGHT       | KIM     | R. | 19-Nov-02 | 1ST MOB BDE           | BDE CDR                          | 524-2177     |       |          | 524-4596 |
| P/A   | COL LANG         | SCOTT   | A. | 01-Feb-04 | 43d ASG               | BDE CDR                          | 526-9394     |       |          |          |
| P     | COL CHO          | JOHN    | M. | 13-Jun-05 | MEDDAC                | BDE CDR                          | 526-7500     |       |          | 524-4119 |
| (P/A) | LTC LARWIN       | BARRETT | W. | 01-Dec-00 | USAG                  | DPW                              | 526-3415     |       |          |          |
| P     | LTC LEVER        | THERESA | S. | 01-Dec-00 | HHC 7ID               | G1                               | 526-9888     |       |          | 526-2384 |
| A     | LTC HATCHER      | CLAY    | B. | 01-Jun-01 | HHC 7ID               | G4                               | 526-9055     |       |          | 524-0411 |
| P     | LTC WEST         | BRIAN   | F. | 01-Oct-01 | HHC 7ID               | DIV EO                           | 526-9469     |       |          | 526-03   |
| A     | LTC CONRAD       | JAMES   | O. | 07-Nov-01 | HHC 7ID               | DEPUTY CHIEF OF STAFF            | 526-2046     | PCS'd |          | 524-0366 |
| P/A   | LTC POWELL       | THOMAS  | C. | 01-Apr-02 | 2/362.2/91ST          | BN CDR                           | 524-1580     |       |          |          |
| P     | LTC BRUBAKER     | NORMAN  | E. | 01-Jul-02 | HHC 7ID               | G3 TRANSPORTATION                | 526-4484     |       | Deployed |          |
| A     | LTC ROTHSTEIN    | EDWARD  | C. | 01-Jun-03 | HHC 7ID               | ACOF S G2                        | 524-1959     |       |          | 524-2745 |
| A     | LTC BURGER       | JOHN    | R. | 01-Mar-04 | USAG                  | DOIM                             | 526-3410     |       |          |          |
| P     | LTC AGUTO JR.    | ANTONIO | A. | 01-Aug-04 | HHC 7ID               | DEPUTY G3                        | 526-1738     |       |          |          |
| P/A   | MAJ CREAM        | JOHN    | M. | 31-Aug-96 | HHC 7ID               | G5 Civil Military Operations Off | 526-2941     |       |          | 526-1021 |
| A     | MAJ BYRUM        | JOSEPH  | G. | 17-Aug-00 | USAG                  | Protocol                         | 526-4601     |       |          | 526-5333 |
| P/A   | MAJ PARKS        | WILLIAM | K. | 01-Nov-00 | C Co 3/10 SFG         | Co. Cdr                          | 524-1707     |       |          | 524-1751 |
| (P/A) | MAJ ROBINSON     | BRADLEY | L. | 01-Oct-01 | USA MEDDAC            | Chief, Resource Mgmt             | 526-7280     | 7316  |          |          |
| A     | MAJ GEOLINGO     | HAROLD  | J. | 01-Feb-02 | USA MEDDAC            | STF OFF HCA                      | 526-7473     |       |          |          |
| P/A   | MAJ MCDUGALD     | MAURICE | L. | 01-May-02 | HQ 10th SFG           | Chem Officer                     | 524-1837     |       |          | 524-3190 |
| A     | MAJ SLIMAN       | ZORN    | T. | 01-Oct-02 | HHC 7ID               | G4 Plans                         | 524-3658     |       |          |          |
| P/A   | MAJ SMITH        | CRYSTAL | S. | 01-Dec-02 | HHC 43D ASG           | Acquisition Officer              | 524-0686     |       |          |          |
| P/A   | MAJ TRAYLOR      | REBECA  | R. | 30-Sep-04 | 1/359 91ST            | Unit Trainer                     | OUT OF STATE |       | Deployed |          |
| P/A   | MAJ POPPENBERGER | ROSS    | C. | 01-Mar-05 | USAG                  | Contracting Mgmt                 | 526-3034     |       | Deployed |          |
| A     | CPT ORZCO        | JOSE    | R. | 01-Feb-99 | 2/361ST 91ST          | Ops Officer                      | OUT OF STATE |       |          | 524-2784 |
| A     | CPT WAKEFIELD    | DAVID   | L. | 01-Feb-00 | Co C 3/10 SFG         | Team Leader                      | 524-1749     |       |          |          |

APPELLATE EXHIBIT XIII  
 Exhibit 4 (6 of 8)

| A            | CPT            | CHAVEZ                 | SANDRA                 | L.            | 01-Dec-00            | USAG                   | DOL                                | No Security Clearance | 526-0014 |
|--------------|----------------|------------------------|------------------------|---------------|----------------------|------------------------|------------------------------------|-----------------------|----------|
| P/A          | CPT            | MOREHOUSE              | LYNNE                  | A.            | 01-Mar-01            | HHC 43D ASG            | CO CDR                             |                       |          |
| (A)          | CPT            | DYLEWSKI               | BONNY                  | C.            | 09-Jul-02            | HHC 64TH BSB           | Asst S3                            |                       |          |
| A            | CPT            | BLUM                   | JENNIFER               | M.            | 01-Oct-02            | RHHT 3d ACR            | Rear S2 Plans                      | REFRAD                |          |
| A            | CPT            | MAESTAS                | CHRIS                  | J.            | 01-Nov-02            | 3/360TH 91ST           | SR OC/T                            |                       |          |
| <del>A</del> | <del>CPT</del> | <del>MACHTEMES</del>   | <del>TRICIA</del>      | <del>L.</del> | <del>01-Apr-04</del> | <del>HHC 43d ASG</del> | <del>Group S2</del>                |                       |          |
| <del>A</del> | <del>CPT</del> | <del>MCCARTY</del>     | <del>CHRISTOPHER</del> | <del>N.</del> | <del>01-Mar-05</del> | <del>USAG</del>        | <del>Co Cdr</del>                  |                       |          |
| <del>A</del> | <del>CPT</del> | <del>STRINGFIELD</del> | <del>JOHN</del>        | <del>A.</del> | <del>01-Apr-05</del> | <del>HHC 7ID</del>     | <del>G4</del>                      |                       |          |
| <del>A</del> | <del>CPT</del> | <del>FELDER</del>      | <del>JAMES</del>       | <del>F.</del> | <del>01-May-05</del> | <del>HHC 7ID</del>     | <del>G1 Plans and Operations</del> | 524-1273              |          |
| <del>A</del> | <del>CPT</del> | <del>BRUNNER</del>     | <del>CARRIE</del>      | <del>A.</del> | <del>25-Apr-03</del> | <del>HHC 7ID</del>     | <del>ADC(S) AIDE</del>             | 526-0130              |          |
| A            | 1LT            | REESE                  | JAMES                  | D.            | 01-Dec-03            | RHHT 3d ACR            | Rear S4                            | 526-1943              |          |
| (A)          | 1LT            | WRIGHT                 | JASON                  | C.            | 26-Jul-04            | USA MEDDAC             | ENV SCI OFF                        | 526-7922              |          |
| A            | 2LT            | SLACK                  | AMANDA                 | L.            | 07-May-04            | 64TH BSB               | PLT LDR                            | 524-4386              |          |
| A            | CW5            | SAGER                  | MICHAEL                | R.            | 01-Dec-00            | Trp T 4/3d ACR         | Maint Test Pilot                   | 526-0327              |          |
| A            | CW5            | LAPP                   | TERRANCE               | L.            | 01-Aug-02            | USAG                   | G3 Aviation                        | 526-0144              |          |
| A            | CW3            | URIE JR.               | DONALD                 | G.            | 01-Jul-03            | HQ 3D BCT              | Bde Food SVC Tech                  | 526-1044              |          |
| A            | CW2            | STEINER                | KEITH                  | G.            | 29-Sep-01            | GSC 10 SFG             | TCAE Chief                         | 524-1856              |          |
| A            | CW2            | LINNE                  | ROBERT                 | M.            | 01-Dec-03            | USA MEDDAC             | CH, Equip Mgmt Branch              | 526-7252              |          |
| A            | CW1            | TAPPAN                 | JOSHUA                 | B.            | 12-Jul-05            | Co C 3/10 SFG          | Commo NCO                          | 524-1725              |          |
| (A)          | CSM            | DEAN                   | RONALD                 | M.            | 01-Jul-02            | USA MEDDAC             | MEDDAC CSM                         | 526-7241              |          |
| A            | CSM            | OUS                    | DANIEL                 | B.            | 01-Aug-03            | HHC 2-9 CAV            | BN CSM                             | 524-1916              |          |
| P            | CSM            | AKANA                  | CY                     | B.            | 01-Sep-03            | 10th CSH               | 43d ASG (R/P) CSM                  | 526-3800              |          |
| P/A          | SGM            | STAPLETON JR.          | GEORGE                 | W.            | 01-Mar-99            | HHC 7ID                | REUP SGM                           | 526-3044              |          |
| A            | SGM            | CILLO                  | MICHAEL                | J.            | 01-Oct-00            | HHC 7ID                | G1                                 | 526-9883              |          |
| A            | SGM            | RUSSELL                | ROLLIE                 | W.            | 01-Mar-01            | HHC 1-68 CAB           | S3 OPS SGM                         | 526-9559              |          |
| A            | SGM            | BOBONIS                | SIGFRIDO               | A.            | 01-Oct-02            | HQ 3D BCT              | S3 OPS SGM                         | 526-6778              |          |
| P            | SGM            | BASSATTORRES           | CARLOS                 | R.            | 01-Aug-03            | HHC 7ID                | G3 OPS                             | 524-4580              |          |
| P            | SGM            | MARKHAM                | MARCUS                 | E.            | 10-Dec-04            | USAG                   | G3 MOBILIZATION                    | 526-3165              |          |

APPELLATE EXHIBIT XIII

|              |                |                       |                     |               |                      |                       |                                     |                     |          |
|--------------|----------------|-----------------------|---------------------|---------------|----------------------|-----------------------|-------------------------------------|---------------------|----------|
| A            | MSG            | ADAIR                 | BRADLEY             | D.            | 01-Apr-97            | C CO 3/10SFG          | OPS SGT                             | 524-3189            | 524-3190 |
| A            | MSG            | VANPELT               | JACKSON             | B.            | 01-May-00            | HHC 7ID               | G3 ENG                              | 524-2423            |          |
| A            | MSG            | WALKER                | DAVID               | A.            | 01-Dec-01            | 4/3d ACR              | Rear Sqdn 1SG                       | 524-3329            |          |
| <del>P</del> | <del>MSG</del> | <del>ANDERSON</del>   | <del>SHERRIE</del>  | <del>E.</del> | <del>01-Mar-03</del> | <del>USAG</del>       | <del>DOL</del>                      | <del>Retired</del>  | 524-3334 |
| <del>A</del> | <del>MSG</del> | <del>MOORE</del>      | <del>JOE</del>      | <del>L.</del> | <del>01-Mar-03</del> | <del>USAG</del>       | <del>DOL</del>                      | <del>Retire</del>   |          |
| <del>A</del> | <del>MSG</del> | <del>RICHARDSON</del> | <del>BERNARD</del>  | <del>J.</del> | <del>01-Jun-03</del> | <del>USA MEDDAC</del> | <del>NCOIC, Patient Admin Div</del> | <del>526-7326</del> |          |
| <del>A</del> | <del>MSG</del> | <del>ODEN</del>       | <del>JOE</del>      | <del>M.</del> | <del>11-Jun-03</del> | <del>3d STB</del>     | <del>OPS NCOIC</del>                | <del>526-3329</del> | 524-3334 |
| A            | SFC            | CARTER                | KIMBERLY            | K.            | 01-Oct-98            | 10TH CSH              | WARD Master                         | 6-4553<br>-526-3800 |          |
| A            | SFC            | DIXON                 | GLORIA              | J.            | 01-Feb-99            | 4/3ACR                | Cmd FIN NCO                         | 524-3329            |          |
| P            | SFC            | GARRISON              | LEWIS               | C.            | 01-Apr-99            | MEDDAC                | NCOIC Ortho Services                | 524-4170            |          |
| A            | SFC            | LEBLANC III           | GEORGE              | E.            | 01-Jan-01            | USAG                  | G3 Ops                              | Retired             |          |
| A            | SFC            | DOUGLAS               | PAUL                | M.            | 01-Jun-01            | 32d TC                | Truck Master                        | Deployed            |          |
| A            | SFC            | ROSA                  | LUIS                | M.            | 01-Sep-02            | USA MEDDAC            | MED LAB NCO                         | 526-7900            |          |
| P            | SFC            | KENT                  | EMILY               | C.            | 01-Aug-03            | HHC 7ID               | EO                                  | 526-6780            |          |
| P/A          | SFC            | CALZADILLA            | MIGUEL              | A.            | 01-May-04            | HHD 3/10 SFG          | Intel Analyst                       | 524-1746            | MSM.COM  |
| <del>A</del> | <del>SSG</del> | <del>LYLES</del>      | <del>JAMES</del>    |               | 01-Jan-93            | GSC 10SFG             | Senior Food Ops                     |                     |          |
| <del>P</del> | <del>SSG</del> | <del>CLAIBORNE</del>  | <del>TONY</del>     |               | 01-Mar-96            | USAG                  | DPW                                 | 526-7088            |          |
| <del>A</del> | <del>SSG</del> | <del>TOWNSEND</del>   | <del>LAMONT</del>   | E.            | 01-Dec-01            | C 3/10SFG             | Weapons NCO                         | 524-1567            |          |
| <del>A</del> | <del>SSG</del> | <del>RICHARDSON</del> | <del>MICHELLE</del> | R.            | 01-Mar-03            | 32D TC                | Truck Master                        |                     |          |
| A            | SSG            | WIER                  | BRIAN               | R.            | 01-Feb-05            | REPL 2 BDE            | ASST S2                             | 526-1510            |          |
| <del>A</del> | <del>SGT</del> | <del>SUKERT</del>     | <del>EUGENE</del>   | L.            | 01-Jan-99            | USA MEDDAC            | DRUG AND ACHL Counsel               | 6-7155              |          |
| <del>A</del> | <del>SGT</del> | <del>EKISS</del>      | <del>DAVID</del>    | C.            | 08-Mar-01            | USA MEDDAC            | MED LAB SP                          |                     |          |
| A            | SGT            | PADDY                 | PERRY               | J.            | 01-Dec-03            | REPL 2 BDE            | S4 NCOIC                            |                     |          |
| P            | SGT            | BRODBECK              | JILL                | M.            | 01-Jul-04            | USAG                  | G1 ID Cards NCO                     | 526-4312            |          |
| A            | SGT            | ENRIQUEZ              | TRACY               | M.            | 01-Feb-05            | HHC 7ID               | G2 ACE                              | 524-1027            |          |

11311

APPELLATE EXHIBIT

Exhibit 4 (8 of 8)

XIII

**Cox, Brian D SGT USA OSJA**

---

**From:** Wright, Kim R COL USA 1MOB BDE  
**To:** Cox, Brian D SGT USA OSJA  
**Sent:** Thursday, January 05, 2006 9:11 AM  
**Subject:** Read: GCM Panel, 16 -20 Jan 06

Your message

**To:** Wright, Kim R COL USA 1MOB BDE  
**Subject:** GCM Panel, 16 -20 Jan 06  
**Sent:** 1/5/2006 9:08 AM

was read on 1/5/2006 9:11 AM.

called office about convalescent  
leave.

APPELLATE EXHIBIT XIII

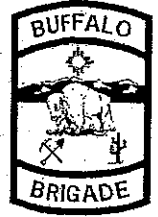
11312

Exhibit 5





DEPARTMENT OF THE ARMY  
HEADQUARTERS, ELEVENTH BRIGADE, WESTERN REGION  
UNITED STATES ARMY CADET COMMAND  
1661 O'CONNELL BOULEVARD, BUILDING 1012  
FORT CARSON, CO 80913-5112  
(719) 526-1743 FAX (719) 526-0633



ATOW-K

January 5, 2006

MEMORANDUM THRU Staff Judge Advocate, ATTN: Criminal Law Division (CG Actions),  
Fort Carson, Colorado 80913

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

SUBJECT: Request for Excusal from Court-Martial Panel Member Duty

1. Reference memorandum, Headquarters, Fort Carson, AFZC-CG, Subject: Selection as Court-Martial Panel Member.
2. Request that I be excused from Court-Martial panel member duty for the period 9 – 20 JAN 2006 and 26 – 31 JAN 2006. The reason for my request is that I am TDY at the following locations: 9 12 JAN – Ft. Lewis, WA; 17 – 20 JAN – University of Utah, University of Southern California, and University of California – Los Angles; 26 – 31 JAN – Ft. Monroe, VA.

(Original Signed)  
JACK D. HUMPHREY, JR.  
Colonel, Armor  
Commanding

APPELLATE EXHIBIT XIII

11313

Exhibit 6

Cox, Brian D SGT USA OSJA

From: Weigle, Jason A 1LT USA 7ID  
Sent: Friday, January 06, 2006 1:54 PM  
To: Cox, Brian D SGT USA OSJA  
Subject: GCM Panel



DEPARTMENT OF THE ARMY  
HEADQUARTERS, 7th INFANTRY DIVISION AND FORT CARSON  
OFFICE OF THE DEPUTY COMMANDER (SUPPORT)  
FORT CARSON, CO 80913-5000

AFZC-G4

6 January 2006

MEMORANDUM THRU Staff Judge Advocate, ATTN: Criminal Law Division (CG Actions), Fort Carson, Colorado 80913

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

SUBJECT: Request for Excusal from Court-Martial Panel Member Duty

1. Reference memorandum, Headquarters, Fort Carson, AFZC-CG, Subject: Selection as Court-Martial Panel Member.
2. Request that I be excused from Court-Martial panel member duty for the period 16 Jan 2006 to 20 Jan 2006. The reason for my request is that (I am scheduled for leave/TDY) (or list specific reasons)

16 Jan Only Division Command Group Member in the area  
19 Jan serving as the senior mentor in the CG's off site.

David G Saffold  
Col,  
Deputy Cdr, Spt  
7<sup>th</sup> Inf Div & Ft Carson

APPELLATE EXHIBIT XIII

11314

Exhibit 7



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
HEADQUARTERS, 7<sup>TH</sup> INFANTRY DIVISION AND FORT CARSON  
OFFICE OF THE COMMANDING GENERAL  
FORT CARSON, COLORADO 80913

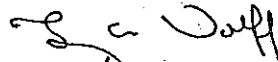
JAN 10 2006

AFZC-CG

MEMORANDUM FOR COL David G. Saffold, Headquarters and Headquarters Company,  
7th Infantry Division, Fort Carson, Colorado 80913

SUBJECT: Request for Excusal from Court-Martial Duty

Your request for excusal from court-martial duty from 16 January 2006 through 20 January 2006  
is approved ~~(denied)~~

  
TERRY A. WOLFF  
COL (P), AR  
Acting Commander

APPELLATE EXHIBIT XIII

11315

Exhibit 8

**Matt, Elana S CPT USA OSJA**

**From:** Hemphill, Anthony J SSG USA OSJA  
**Sent:** Monday, November 21, 2005 3:42 PM  
**To:** Matt, Elana S CPT USA OSJA  
**Subject:** Panel members for US v Welshofer (viced)  
**Attachments:** Alternate members for CMCO 8,9,10,11 dtd 12 Jul 05.doc

Mam,

CMCO 10 says it will be

COL SCOTT A. LANG  
COL JOHN M. CHO  
LTC THERESA S. LEVER  
LTC THOMAS C. POWELL  
LTC BRIAN F. WEST replacement for LTC NORMAN E. BRUBAKER,(deployed)  
MAJ JOHN M.CREAN  
MAJ MAURICE L. MCDUGALD  
MAJ ROSS C. POPPENBERGER  
CPT DAVID L. WAKEFIELD replacement for CPT LYNNE A. MOREHOUSE,(PCS)  
CPT CHRISTOPHER MCCARTY replacement for CPT CARRIE BRUNNER,(PCS)

V/R

SSG Hemphill  
CG Actions

APPELLATE EXHIBIT XIII

**Matt, Elana S CPT USA OSJA**

**From:** Matt, Elana S CPT USA OSJA  
**Sent:** Monday, November 21, 2005 3:47 PM  
**To:** Toole, Mark W COL (PKI)  
**Cc:** Dolan, Tiernan P MAJ USA OSJA; lawspin@aol.com; 'Rosauer, Ryan W CPT SJA'  
**Subject:** FW: Panel members for US v Welshofer (viced)  
**Attachments:** Alternate members for CMCO 8,9,10,11 dtd 12 Jul 05.doc

Sir,

The panel members for the Welshofer trial are as follows:

COL SCOTT A. LANG  
COL JOHN M. CHO  
LTC THERESA S. LEVER  
LTC THOMAS C. POWELL  
LTC BRIAN F. WEST replacement for LTC NORMAN E. BRUBAKER (deployed)  
MAJ JOHN M. CREAN  
MAJ MAURICE L. MCDUGALD  
MAJ ROSS C. POPPENBERGER  
CPT DAVID L. WAKEFIELD replacement for CPT LYNNE A. MOREHOUSE (PCS)  
CPT CHRISTOPHER MCCARTY replacement for CPT CARRIE BRUNNER (PCS)

I also attached the alternate list for inclusion of as many or as few as you desire in your pretrial order.

Please let me know if you require any additional information, sir.

V/r,

CPT E. Matt

APPELLATE EXHIBIT XIII

Alternate members for all courts-martial effective 12 July 2005. CMCO Numbers 8, 9, 10 and 11

| <u>NAME</u>                  | <u>DOR</u> | <u>UNIT</u>                                |              |
|------------------------------|------------|--|--------------|
| COL HUMPHREY, JACK JR.       | 1 JUL 01   | 11 <sup>TH</sup> ROTC BDE                  |              |
| LTC LARWIN, BARRETT W.       | 1 DEC 00   | USAG                                       |              |
| LTC HATCHER, CLAY B.         | 1 JUN 01   | HHC, 7ID                                   |              |
| LTC CONRAD, JAMES O.         | 7 NOV 01   | HHC, 7ID                                   |              |
| LTC ROTHSTEIN, EDWARD C.     | 1 JUN 03   | HHC, 7ID                                   |              |
| LTC BURGER, JOHN R.          | 1 MAR 04   | USAG                                       |              |
| MAJ CREAN, JOHN M.           | 31 AUG 96  | HHC, 7ID                                   |              |
| MAJ BYRUM, JOSEPH G.         | 17 AUG 00  | USAG                                       |              |
| MAJ GEOLINGO, HAROLD J.      | 1 FEB 02   | USA MEDDAC                                 |              |
| MAJ SLIMAN, ZORN T.          | 1 OCT 02   | HHC, 7ID                                   |              |
| MAJ SMITH, CRYSTAL S.        | 1 DEC 02   | HHC, 43D ASG                               |              |
| CPT ORZCO, JOSE R.           | 1 FEB 99   | 2/361 <sup>ST</sup> 2/91 <sup>ST</sup> DIV | OUT OF STATE |
| CPT WAKEFIELD, DAVID L.      | 1 FEB 00   | C CO, 3/10SFG                              |              |
| CPT CHAVEZ, SANDRA L.        | 1 DEC 00   | USAG                                       |              |
| CPT MOREHOUSE, LYNNE A.      | 1 MAR 01   | HHC, 43D ASG                               |              |
| CPT DYLEWSKI, BONNY C.       | 9 JUL 02   | HHC, 64 <sup>TH</sup> BSB                  |              |
| CPT BLUM, JENNIFER M.        | 1 OCT 02   | RHHT, 3ACR                                 | REFRAD       |
| CPT MAESTAS, CHRIS J.        | 1 NOV 02   | 3/360 <sup>TH</sup> 2/91 <sup>ST</sup> DIV |              |
| CPT MACHTEMES, TRICIA L.     | 1 APR 04   | HHC, 43D ASG                               |              |
| CPT MCCARTY, CHRISTOPHER N.  | 1 MAR 05   | USAG                                       |              |
| CPT FELDER, JAMES F.         | 1 MAY 05   | HHC, 7ID                                   |              |
| 1LT RESSE, JAMES D.          | 1 DEC 03   | RHHT, 3ACR                                 |              |
| 1LT WRIGHT, JASON C.         | 26 JUL 04  | USA MEDDAC                                 |              |
| 2LT SLACK, AMANDA L.         | 7 MAY 04   | 64 <sup>TH</sup> BSB, 3BCT                 |              |
| CW5 SAGER, MICHAEL R.        | 1 DEC 00   | TRP T, 4/3ACR                              |              |
| CW5 LAPP, TERRANCE L.        | 1 AUG 02   | USAG                                       |              |
| CW3 URIE, DONALD G., JR.     | 1 JUL 03   | HQ, 3BCT                                   |              |
| CW2 STEINER, KEITH G.        | 29 SEP 01  | GSC, 10SFG                                 |              |
| CW2 LINNE, ROBERT M.         | 1 DEC 03   | USA MEDDAC                                 |              |
| WO1 TAPPAN, JOSHUA B.        |            | C CO, 3/10SFG                              |              |
| CSM DEAN, RONALD M.          | 1 JUL 02   | USA MEDDAC                                 |              |
| CSM OUS, DANIEL B.           | 1 AUG 03   | HHC, 2-9 CAV                               |              |
| SGM STAPLETON, GEORGE W. JR. | 1 MAR 99   | HHC, 7ID                                   |              |
| SGM CILLO, MICHAEL J.        | 1 OCT 00   | HHC, 7ID                                   |              |
| SGM RUSSELL, ROLLIE W.       | 1 MAR 01   | HHC, 1-68 CAB                              |              |
| SGM BOBONIS, SIGFRIDO A.     | 1 OCT 02   | HQ, 3BCT                                   |              |
| MSG ADIAR, BRADLEY D.        | 1 APR 97   | C CO, 3/10SFG                              |              |
| MSG VANPELT, JACKSON B.      | 1 MAY 00   | HHC, 7ID                                   |              |
| MSG WALKER, DAVID A.         | 1 DEC 01   | 4/3ACR                                     |              |
| MSG MOORE, JOE L.            | 1 MAR 03   | USAG                                       |              |
| MSG RICHARDSON, BERNARD J.   | 1 JUN 03   | USA MEDDAC                                 |              |
| MSG ODEN, JOE M.             | 11 JUN 03  | 3STB, 3BCT                                 |              |
| SFC CARTER, KIMBERLY K.      | 1 OCT 98   | 10 <sup>TH</sup> CSH                       |              |
| SFC DIXON, GLORIA J.         | 1 FEB 99   | 4/3ACR                                     |              |
| SFC LEBLANC, GEORGE E. III   | 1 JAN 01   | USAG                                       |              |
| SFC DOUGLAS, PAUL M.         | 1 JUN 01   | 32D TRANS                                  | RETIRED      |
| SFC ROSA, LUIS M.            | 1 SEP 02   | USA MEDDAC                                 |              |
| SFC CALZADILLA, MIGUEL A.    | 1 MAY 04   | HHD, 3/10SFG                               |              |
| SSG LYLES, JAMES             | 1 JAN 93   | GSC, 10SFG                                 |              |
| SSG TOWNSEND, LAMONT         | 1 DEC 01   | C CO, 3/10SFG                              |              |
| SSG RICHARDSON, MICHELLE R.  | 1 MAR 03   | 32D TRANS                                  |              |
| SSG WIER, BRIAN R.           | 1 FEB 05   | REPL 2 BDE                                 |              |
| SGT SUKERT, EUGENE L.        | 1 JAN 99   | USA MEDDAC                                 |              |
| SGT EKISS, DAVID C.          | 8 MAR 01   | USA MEDDAC                                 |              |
| SGT PADDY, PERRY J.          | 1 DEC 03   | REPL 2 BDE                                 |              |
| SGT ENRIQUEZ, TRACY M.       | 1 FEB 05   | HHC, 7ID                                   |              |

UNITED STATES ARMY TRIAL JUDICIARY  
GENERAL COURT-MARTIAL

UNITED STATES )  
 )  
 v. ) DEFENSE MOTION TO COMPEL  
 ) PRODUCTION WITNESSES  
 LEWIS WELSHOFER, )  
 CW3 )  
 U.S. ARMY )  
 )

\*\*\*\*\*

1. Nature of the Motion. Pursuant to R.C.M. 905(b) (4), the Defense respectfully moves this Honorable Court to compel the production of witnesses in accordance with R.C.M. 703.

2. Summary of the Facts.

On behalf of CW3 Welshofer, defense counsel filed requests for witnesses as reflected in the attached memorandums. They possess relevant knowledge of the facts surrounding the death of MG Mowhoush, whom CW3 Welshofer allegedly murdered during an interrogation in November 2003 during Operation Iraqi Freedom I by using a claustrophobic technique with a sleeping bag.

Specifically, the Defense submitted requests for, among others, CPT Derik Timmerman, MAJ Paul Hussein, Mr. James Reese, CPT Brian Baldrate, MSG George Kurban, Ms. Marielena Marlow, CPT Burton Glover, Mr. Ray Gleaton, and SSG Paul

P. 1 of 25

Appellate Exhibit XIV

Olsen. The Government granted the requests in part, but denied the above-named witnesses.

3. Authority.

a. Constitutional Provisions:

- (1) 6<sup>th</sup> Amendment, U.S. Const.
- (2) 5<sup>th</sup> Amendment, U.S. Const.

b. Statutory Provisions.

- (1) Article 46, UCMJ, 10 U.S.C. § 846.

c. Regulatory Provisions.

- (1) M.R.E. 401, MCM (2005 ed.).
- (2) R.C.M. 703, MCM (2005 ed.).
- (3) R.C.M. 1001, MCM (2005 ed.).

d. Case law.

- (1) United States v. Fisher, 24 M.J. 358 (C.M.A. 1987).
- (2) United States v. Combs, 20 M.J. 441 (C.M.A. 1985).
- (3) United States v. Roberts, 10 M.J. 308 (C.M.A. 1981).
- (4) United States v. Tangpuz, 5 M.J. 426 (C.M.A. 1978).
- (5) United States v. Williams, 3 M.J. 239 (C.M.A. 1977).
- (6) United States v. Carpenter, 1 M.J. 384 (C.M.A. 1976).
- (7) United States v. Iturralde-Aponte, 1 M.J. 197 (C.M.A. 1975).

P 2025



- (8) United States v. Sweeney, 34 C.M.R. 379 (1964).
- (9) United States v. Thornton, 24 C.M.R. 256 (1957).
- (10) United States v. Allen, 31 M.J. 572 (N.M.C.M.R. 1990).
- (11) United States v. Jones, 20 M.J. 919 (N.M.C.M.R. 1985).
- (12) United States v. Boswell, 36 M.J. 807 (A.C.M.R. 1993).
- (13) United States v. Brown, 28 M.J. 644 (A.C.M.R. 1989).

4. Relief Requested. The Defense respectfully requests the Court to compel the government to produce CPT Derik Timmerman, MAJ Paul Hussein, Mr. James Reese, CPT Brian Baldrate, MSG George Kurban, Ms. Marielena Marlow, CPT Burton Glover, Mr. Ray Gleaton, and SSG Paul Olsen for trial in the above-captioned case.<sup>1</sup>

5. Discussion.

I. **ON THE MERITS, THE GOVERNMENT MUST PRODUCE ALL WITNESSES WHOSE TESTIMONY IS MATERIAL AND NOT CUMULATIVE.**

The right of an accused to compel the attendance of

---

<sup>1</sup> Should the court find some or all of the requested witnesses relevant, necessary and material, but decline to order their production on grounds their testimony is cumulative, the Defense respectfully requests the Court to indicate which witnesses are cumulative of which other witnesses, and to afford the Defense the opportunity to elect which witness, as among cumulative witnesses, should be produced. United States v. Allen, 31 M.J. at 611 (if military judge finds testimony of various witnesses cumulative and states how many he will permit to testify in person, only the Defense may properly decide which of these witnesses will be used).

P. 3 8-25

Appellate Exhibit XIV

witnesses in his behalf is well established in military law, United States v. Carpenter, 1 M.J. 384, 385-86 (C.M.A. 1976), and is based in the Fifth and Sixth Amendments to the United States Constitution. United States v. Allen, 31 M.J. 572 (N.M.C.M.R. 1990). That right is recognized and provided for in the Uniform Code of Military Justice, which provides:

The trial counsel, the defense counsel and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe . . .

Art. 46, UCMJ, 10 U.S.C. § 846. Pursuant to Article 46, UCMJ, the President has prescribed Rule for Court-Martial 703, MCM (2005 ed.). According to that rule, on the merits, each party is entitled to the production of any witness whose testimony on a matter in issue would be relevant and necessary. R.C.M. 703(b) (1), MCM (2005 ed.).

Evidence is "relevant" if it has the tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. M.R.E. 401, MCM (2005 ed.). See R.C.M. 703(b) (1), discussion. See also United States v. Boswell, 36 M.J. 807, 810 (A.C.M.R. 1993).

Relevant evidence is "necessary" when it is not cumulative and when it would contribute to a party's

P 4 2/25  
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XIV

presentation of the case in some positive way on a matter in issue. R.C.M. 703(b) (1) discussion.

In applying the relevant and necessary test, military courts have held that, where the testimony of a requested witness is material, the witness's live presence is required, unless, in the sound discretion of the trial judge, the testimony of the witness would be merely cumulative, or the witness is unavailable. United States v. Combs, 20 M.J. 441, 442 (C.M.A. 1985); United States v. Williams, 3 M.J. 239, 243 (C.M.A. 1977); United States v. Allen, 31 M.J. 572, 618 (N.M.C.M.R. 1990); United States v. Brown, 28 M.J. 644, 646 (A.C.M.R. 1989).

Testimony is material if it negates the government's evidence or supports the defense. United States v. Fisher, 24 M.J. 358, 361 (C.M.A. 1987); United States v. Roberts, 10 M.J. 308, 313 (C.M.A. 1981); United States v. Iturralde-Aponte, 1 M.J. 197, 198 (C.M.A. 1975); United States v. Brown, 28 M.J. 644, 646 (A.C.M.R. 1989).

**II. THE COURT MUST APPLY A MULTI-FACTOR BALANCING TEST TO DETERMINE WHETHER THE TESTIMONY OF REQUESTED DEFENSE MERITS WITNESSES IS MATERIAL AND NOT CUMULATIVE.**

In 1990, the Navy-Marine Corps Court of Military Review reviewed the law on the production of defense

A. 5 J25  
11323

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witnesses, and set out seven factors for a court to balance in determining whether a requested witness is material. Those factors are: (1) the issues involved and the importance of the requested witness to those issues, (2) whether the defense desires the witness to testify on the merits or on sentencing, (3) whether the testimony of the requested witness would be merely cumulative with that of other witnesses who will testify, (4) the availability of alternatives to personal appearance, such as deposition, interrogatories or previous testimony, (5) the unavailability of the requested witness such as that occasioned by non-amenability to the court's process, (6) whether the requested witness is in the armed forces and subject to military orders, and (7) the effect of the requested witness's absence on his or her unit, and whether that absence would affect the accomplishment of an important military mission or cause manifest injury to the service. United States v. Allen, 31 M.J. 572, 610 (N.M.C.M.R. 1990). See also United States v. Tangpuz, 5 M.J. 426, 429 (C.M.A. 1978); United States v. Jones, 20 M.J. 919, 926 (N.M.C.M.R. 1985). As will be shown below, applied to the witnesses whose production is the object of this motion, this test dictates production.

In evaluating the third Allen factor, i.e. whether the

requested witness's testimony would be cumulative, the court must consider three factors: (1) whether the requested witness's credibility is greater than that of the attending witnesses, (2) whether the testimony of the requested witness is relevant to character traits or other material evidence observed during periods of time different than that of the attending witnesses, and (3) whether there is any benefit to the accused from an additional witness saying the same thing that other witnesses have already said. United States v. Allen, 31 M.J. 572, 611 (N.M.C.M.R. 1990); United States v. Jones, 20 M.J. 919, 927 (N.M.C.M.R. 1985). The Allen court went on to say that military judges must be careful not to confuse cumulateness with corroboration, noting that the latter has the potential for an important impact on the fact-finder. Allen, 31 M.J. at 611.

**CPT Derik Timmerman** (requested on 7 Nov 05, denied on 9 Dec 05) (Attachment 1, Government Response (which repeats the defense request and justification)). As reflected in the attached witness request, he will testify that: he worked in the S-2 shop for the 3<sup>rd</sup> BCT, 4<sup>th</sup> ID, during Operation Iraqi Freedom (OIF) I; his brigade received no guidance about interrogation techniques; that there was a tremendous grey area regarding interrogation rules and that

they felt they had to figure it out on their own; and that the HUMINT community in Iraq was very small and well connected with each other.

The defense seeks this witness to rebut government witnesses who claim that interrogation techniques were clear and well understood and to corroborate CW3 Welshofer's position that little guidance was issued to the HUMINT community in Nov 03 on what techniques were permitted.

**MAJ Paul Hussein** (requested on 7 Nov 05, denied on 9 Nov 05) (Attachment 1). As reflected in the attached witness request, he will testify that: he was the S-2 for the 3<sup>rd</sup> BCT, 4<sup>th</sup> ID, in Iraq during OIF I; his brigade received no guidance about interrogation techniques; that there was a tremendous grey area regarding interrogation rules and that they felt they had to figure it out on their own; and that the HUMINT community in Iraq was very small and well connected with each other.

The defense requests MAJ Hussein for the same reasons as CPT Timmerman. If they are considered relevant but cumulative, then the defense request permission to elect which witness to call.

**Mr. James Reese** (requested on 7 Nov 05, denied on 9 Nov 05) (Attachment 1). As reflected in the attached

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witness request, he will testify that: CW3 Welshofer was Mr. Reese's team chief in Iraq from mid-Sep 03 to early 2004; that CW3 Welshofer was a hard and diligent worker who accomplished the mission regardless of the time required; they sought additional guidance on authorized interrogation techniques from their servicing JA, but that additional guidance was not provided; that JA told them additional guidance could be found on the web, but upon searching the web, Mr. Reese could find no additional guidance.

This witness is needed to demonstrate the lengths to which they went to obtain guidance on what specific interrogation techniques were authorized and what was specifically prohibited during the relevant time frame and that specific guidance was not to be found at the time. It will rebut the testimony of government witnesses who claim otherwise.

**CPT Brian Baldrate** (requested on 9 Dec 05, denied on 10 Dec 05) (Attachment 2). As reflected in the attached witness request, he will testify that: he was the 3<sup>rd</sup> ACR command judge advocate during OIF I (the charged time frame); he worked with CW3 Welshofer on a regular basis; he provided no specific guidance on interrogation techniques to CW3 Welshofer; he did not hear of or receive LTG Sanchez's Sep 03 guidance until after Dec 03 (after the charged time frame); he was present when MAJ Smith, a government witness, performed the autopsy of MG Mowhoush; at the time of the autopsy MAJ Smith made statements to the

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effect he could not definitively say what caused MG Mowhoush's death; and MAJ Smith acknowledged it could have been simply that MG Mowhoush's heart gave out.

This testimony is relevant and necessary to establish what knowledge existed with respect to approved interrogation techniques to rebut government witnesses and to rebut MAJ Smith's testimony, to impeach MAJ Smith with prior inconsistent statements and to corroborate the findings of the defense expert witness, Dr. Cyril Wecht, whose report (which was received after this request was made) concludes that heart failure was the cause of death, not asphyxiation as ultimately found by MAJ Smith.

**MSG George Kurban** (requested on 9 Dec 05, denied on 10 Dec 05) (Attachment 2). As reflected in the attached witness request, he will testify that: he worked with 66<sup>th</sup> MI Company during OIF I; CW3 Welshofer was his boss; he thinks very highly of CW3 Welshofer's leadership and would deploy with him again; and CW3 Welshofer put everyone in for a Bronze Star except SFC Pratt, a government witness who will be testifying against CW3 Welshofer.

This witness is relevant and necessary because he will show that SFC Pratt is biased against CW3 Welshofer because CW3 Welshofer put him in for a commendation medal versus a Bronze Star.

**Ms. Marielena Marlow** (requested on 9 Dec 05, denied on 10 Dec 05) (Attachment 2). As reflected in the attached witness request, she will testify that: she is a former

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Army captain who deployed during OIF I; she worked with Dr. Rossignol as a physician's assistant in the detention facility where MG Mowhoush died; just before his death he did not seek any medical treatment or complain of any physical or medical problems; if he had complained he would have received appropriate medical care and treatment; she was present when MG Mowhoush was examined immediately after his death; and she pulled up his clothing whereupon she saw linear bruises on his body and arms.

This is relevant to demonstrate that CW3 Welshofer had no reason to believe that MG Mowhoush was suffering from broken ribs or any other physical or medical problem that would have prohibited him from interrogating MG Mowhoush. Furthermore, she is an eyewitness of his condition immediately after MG Mowhoush died.

**CPT Burton Glover** (requested on 13 Dec 05, denied on 13 Dec 05) (Attachment 3). As reflected in the attached witness request, he will testify that: during OIF I he was a Special Forces team leader with the 5<sup>th</sup> Special Forces Group; he witnessed CW3 Welshofer's professionalism, integrity and good duty performance; OGA/ODA members had free reign in the detention facility where MG Mowhoush died; and both the 66<sup>th</sup> MI Company commander and the 3<sup>rd</sup> ACR commander knew about the sleeping bag/closed confinement techniques used by CW3 Welshofer before MG Mowhoush's death.

This testimony is required to establish that CW3

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Welshofer had no reason to believe that the interrogation techniques he used on MG Mowhoush were illegal or unauthorized as the relevant commanders took no action to prohibit or otherwise limit the use of these techniques.

**Mr. Ray Gleaton** (requested on 14 Dec 05, denied on 15 Dec 05) (Attachment 4). As reflected in the attached witness request, he will testify that: in November 2003 he was a captain assigned as the ACE chief for the 3<sup>rd</sup> ACR; he worked with CW3 Welshofer and observed his professionalism and good military character on a daily basis; although as the ACE chief he would have received all guidance on detainee interrogation techniques and treatment, he recalls receiving no guidance from CJTF-7 in that time frame; the use of the sleeping bag technique was known to command and no action was taken to curtail it's use.

This witness is required to rebut any government witnesses who claim that the sleeping bag technique was unknown and not authorized for use and to corroborate CW3 Welshofer's belief that such a technique was permitted at the time.

**SSG Paul Olsen** (requested on 14 Dec 05, denied on 15 Dec 05) (Attachment 5). As reflected in the attached witness request, he will testify that: he was the senior intelligence analyst for 1<sup>st</sup> Squadron, 3<sup>rd</sup> ACR, during OIF I leading up to Rifles Blitz; the focus of his work was Al Qaim, Iraq; it was believed at the time that MG Mowhoush was a leader in the insurgency in that region; MG Mowhoush

may have been the conduit between the insurgency and Saddam Hussein, who was still missing at the time; it was also believed that MG Mowhoush was responsible for setting up the paramilitary forces that were fighting coalition forces in Al Qaim; these matters were discussed with CW3 Welshofer before he interrogated MG Mowhoush; and CW3 Welshofer's professional bearing and duty performance was at the top of those he observed during his career.

This witnesses is required because he places in context the pressure experienced by CW3 Welshofer to obtain actionable intelligence at a time when the insurgency was growing, coalition forces were dying and Saddam Hussein's freedom still constituted a serious threat to coalition forces.

6. Burden of Proof. The Defense, as moving party, bears the burden of establishing, by a preponderance of the evidence, the necessity of producing the witnesses.

7. Evidence.

- a. Written requests for witnesses.
- b. Written denials of requests for witnesses.


8. Argument. The Defense does not request oral argument in support of this motion.


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For the Accused:

  
FRANK J. SPINNER,  
Civilian Defense Counsel

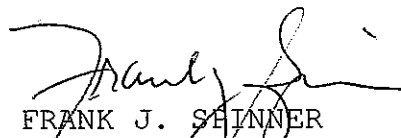
*for*   
RYAN W. ROSAUER  
CPT, JA  
Defense Counsel

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CERTIFICATE OF SERVICE

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I hereby certify that a copy of the foregoing motion was served on the Court, and on government counsel, this 17th day of December 2005, by sending a copy of the same via e-mail with copies of attachments to follow by facsimile transmission.

  
FRANK J. SPINNER  
Defense Counsel

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Subj: **Gov Response to Defense request for witnesses 7NOV05.doc**  
 Date: 11/9/05 8:14:31 PM Mountain Standard Time  
 From: [Elana.Matt@us.army.mil](mailto:Elana.Matt@us.army.mil)  
 To: [ryan.rosauer@us.army.mil](mailto:ryan.rosauer@us.army.mil), [lawspin@aol.com](mailto:lawspin@aol.com)  
 CC: [Tiernan.Dolan@carson.army.mil](mailto:Tiernan.Dolan@carson.army.mil), [Christa.Thompson@us.army.mil](mailto:Christa.Thompson@us.army.mil), [joanne.skyes@us.army.mil](mailto:joanne.skyes@us.army.mil),  
[Mike.Bye@us.army.mil](mailto:Mike.Bye@us.army.mil)  
 Sent from the Internet (Details)

CPT Rosauer and Mr. Spinner,

Attached please find the Government's Response to your Second Request for Witnesses.

CPT E. Matt

|                                     |   |                        |
|-------------------------------------|---|------------------------|
| UNITED STATES                       | ) | GOVERNMENT RESPONSE TO |
|                                     | ) | DEFENSE REQUEST FOR    |
| V.                                  | ) | WITNESSES, 2nd Request |
|                                     | ) |                        |
|                                     | ) |                        |
| WELSHOFER, Lewis CW3                | ) |                        |
| 66th MI Company,                    | ) |                        |
| 3d Squadron,                        | ) | 9 November 2005        |
| 3d Armored Cavalry Regiment (Rear), | ) |                        |
| Fort Carson, CO 80913               | ) |                        |

The Government responds to the Defense's Second Request for Witnesses as follows:

1. SPC Nathaniel W. Fruik, Maintenance Troop Support Squadron, 3rd Armored Cavalry Regiment, Fort Carson, CO. SPC Fruik will testify that in the two days leading to MG Mowhoush's death, MG Mowhoush told Fruik that he was "very, very sick." SPC Fruik asked MG Mowhoush if he wanted medical attention, but MG Mowhoush did not respond. The defense requests personal appearance during merits.

**Government Response:** The Government will produce this witness.

2. 1LT Kevin Evans, Headquarters and Headquarters Troop, 1st Squadron, 3rd Armored Cavalry Regiment, Fort Carson, CO. 1LT Evans will testify that CW3 Welshofer is one of the best warrant officers he's ever worked with. They worked together in Iraq, and upon their redeployment to the United States, 1LT Evans became CW3 Welshofer's platoon leader. He will testify that CW3 Welshofer is an outstanding person and officer. CW3 Welshofer genuinely believes in taking care of soldiers. CW3 Welshofer's duty performance is outstanding. He is very professional and competent. Personal appearance at merits and presentencing is requested.

**Government Response:** The Government will produce this witness.

3. CPT Derik Timmerman, Headquarters and Headquarters Company, 3rd Brigade Combat Team, 4th Infantry Division, Fort Carson, CO. CPT Timmerman will testify that he worked in the S-2 shop for the 3rd BCT, 4ID, in Iraq during Operation Iraqi Freedom I. He will testify that his brigade received no guidance during OIF I about interrogation techniques, or for that matter, anything else on the intelligence side. He will testify that there was a tremendous gray area regarding interrogation rules.

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Intelligence officials were pretty much on their own to figure it out during OIF I. In preparation for the current deployment, there is plenty of guidance. He will further testify that the HUMINT community in Iraq is a small community, and members of that community are well connected with each other. During OIF I the 3rd ACR detention facility had a reputation for being the best detention facility in Iraq, and CPT Timmerman will testify that much of the credit for that would go to CW3 Welshofer. Personal appearance at merits and presentencing is requested.

**Government Response:** Denied. Defense has failed to show how this witness' testimony is relevant. Defense has made no showing that interrogation guidance disseminated to the 3d Brigade Combat Team and the procedures for such dissemination were the same guidance or procedures implemented by the 3d Armored Cavalry Regiment or any of the personnel involved in this case. Similarly, the reputation of the 3d Armored Cavalry Regiment detention facility is irrelevant.

Legal Basis: IAW Rule for Court-Martial 703(b)(1), each party is entitled to the production of a witness whose testimony is relevant and necessary to an interlocutory question or to the merits. Relevant testimony contributes to resolution of a matter at issue. Military Rule of Evidence 401.

4. MAJ Paul Hussein, Headquarters and Headquarters Company, 3rd Brigade Combat Team, 4th Infantry Division, Fort Carson, CO. MAJ Hussein will testify that he was the S-2 for the 3rd BCT, 4th ID, in Iraq during OIF I. MAJ Hussein will corroborate the fact that there was no guidance on interrogation techniques during OIF I. Neither was there a lot of guidance on other matters concerning intelligence issues other than Ba'ath Party members were not allowed to have jobs in the new government. Units were pretty much on their own when it came to these matters. There was a large gray area regarding interrogation techniques, and again, individual HUMINT sections were on their own in terms of trying to figure out what within that gray area was acceptable and what was not. Personal appearance at merits and presentencing is requested.

**Government Response:** Denied. Defense has failed to show how this witness' testimony is relevant. Defense has made no showing that interrogation guidance disseminated to the 3d Brigade Combat Team and the procedures for such dissemination were the same guidance or procedures implemented by 3d Armored Cavalry Regiment or any of the personnel involved in this case.

Legal Basis: IAW Rule for Court-Martial 703(b)(1), each party is entitled to the production of a witness whose testimony is relevant and necessary to an interlocutory question or to the merits. Relevant testimony contributes to resolution of a matter at issue. Military Rule of Evidence 401.

5. CPT Jesse Falk, Headquarters and Headquarters Troop, 2nd Squadron, 3rd Armored Cavalry Regiment, Fort Carson, CO. CPT Falk will testify that CW3 Welshofer was devoted to his job and never gave less than one hundred percent. He prided himself in his work and took good care of his soldiers. During OIF III, 3ACR now has two warrant officers and two officers doing the work that CW3 Welshofer did on his own during OIF I. CPT Falk will testify that CW3's performance was outstanding, and CW3 Welshofer is the most devoted warrant officer he has ever met. During OIF I CPT Falk was the ACE Chief. He will testify that MG Mowhoush was one of 3ACR's main targets because he was a leader and financier of the insurgency in that part of Iraq. CPT Falk will testify there was little to no guidance on interrogation procedures. There was a large area where the leadership did not seem to know what rules applied or did not apply. There was a failure to define what could and could not be done to detainees during an interrogation. Personal appearance at merits and presentencing is requested.

**Government Response:** The Government will produce this witness.

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6. Mr. Dan Medal, 1150 Samuel Pt., Colorado Springs, CO 80906, (719) 271-2668. Mr. Medal knew CW3 Welshofer from their deployment to Iraq together during OIF I. At the time Mr. Medal was a first lieutenant. Mr. Medal will testify that CW3 Welshofer was very professional. People were under a lot of stress over in Iraq and did not have the resources required for the missions they received. Nevertheless, CW3 Welshofer did his job well and always maintained his professionalism and calm demeanor. CW3 Welshofer was very good at his job. Regarding guidance for interrogation of detainees, the guidance, such as it was, was very fuzzy. LT Medal never saw anything that he thought was out of order or violated any rules while in Iraq during OIF 1. The defense requests personal appearance for merits and pre-sentencing.

**Government Response:** The Government will produce this witness.

7. LTC Antonio Aguto, Headquarters and Headquarters Troop, 2nd Squadron, 14th Cavalry Regiment, 1-25th Infantry Brigade, Fort Lewis, WA, (719) 579-8710. LTC Arguto will testify that CW3 Welshofer's duty performance during OIF I was excellent. CW3 Welshofer was motivated and took care of the soldiers who worked for him. CW3 Welshofer is just a very good officer. During OIF I, LTC Aguto will testify he was a squadron XO and then moved to the position of 3ACR XO. While a squadron XO he worked every day with CW3 Welshofer. As the Regimental XO, he still worked closely with CW3 Welshofer regarding HUMINT. LTC Aguto will testify that insurgent activity was high leading to the November 2003 3ACR operation. They were getting attacked four to five times a day and taking fatalities. MG Mowhoush was number one on their "black list," and LTC Aguto will describe how important MG Mowhoush was to the insurgency in the Al Qaim area and to insurgent operations in Iraq in general. Basically MG Mowhoush was the conduit through which foreign fighters, weapons, and money came from Syria and to various locations in Iraq. One of the purposes of this November 2003 operation was to capture MG Mowhoush. LTC Aguto will testify he would have discussed all these matters with CW3 Welshofer. The defense requests personal appearance at both merits and presentencing.

**Government Response:** The Government will produce this witness.

8. MAJ Joel Hamilton, Headquarters and Headquarters Company, 3rd Battalion, 29th Field Artillery, 3rd Brigade Combat Team, 4th Infantry Division, Fort Carson, CO. MAJ Hamilton will testify that CW3 Welshofer was the go-to guy on the Regimental staff and was very respected within the Regiment, to include the Regimental Commander. CW3 Welshofer is a quiet professional in whom everyone in the 3ACR Headquarters had the utmost confidence. MAJ Hamilton saw CW3 Welshofer conduct interrogations, and CW3 Welshofer maintained a cool head and was always professional. MAJ Hamilton will testify he never saw anything during CW3 Welshofer's interrogations that went outside the bounds of the guidance they received. The only guidance MAJ Hamilton ever remembers seeing regarding interrogations was the LTG Sanchez memo, and there were significant gray areas in that memo. MG Mowhoush was discussed at length in targeting meetings before and during the November operation, meetings CW3 Welshofer would have attended. During OIF I, MAJ Hamilton will testify he was a targeting officer, which required he stay in continual contact with the HUMINT specialists, CW3 Welshofer foremost amongst them. The defense requests personal appearance at both merits and presentencing.

**Government Response:** The Government will produce this witness.

9. MAJ Robert Short, Headquarters and Headquarters Company, 7th Infantry Division, Fort Carson, CO. MAJ Short will testify that during OIF I he was the 3ACR S-2. He will state that interrogation guidance during OIF I was vague. It was not until after the incidents at Abu Graib became public that

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they started getting more guidance. When 3ACR first deployed in support of OIF I, they immediately asked their superior headquarters, at the time CJTF-7 or V Corps, for further guidance on interrogation techniques. They received none. They continued to ask for guidance an average of once per month. Each time they never received a meaningful response. They only answer 3ACR got was that the command was working on it. This pattern continued when 3ACR became OPCON to 82nd Airborne Division. Regarding MG Mowhoush, he was an extremely valuable detainee. He was Saddam Hussein's senior representative in the Al Qaim area. MG Mowhoush was very important to the insurgency. MG Mowhoush would have had a lot of information to provide about the insurgency. MAJ Short discussed all these matters with CW3 Welshofer. MAJ Short will add that he thought that CW3 Welshofer was an outstanding officer. The defense requests personal appearance during merits and presentencing.

**Government Response:** The Government will produce this witness.

10. Mr. James Reese, Mr. Reese deployed with CW3 Welshofer as a part of OIF I and they worked closely together in Iraq from mid-September 2003 to March 2004. CW3 Welshofer was Mr. Reese's team chief. Since 3ACR's redeployment to the United States in early 2004, Mr. Reese left the Army and is now a civilian working at Fort Huachuca, AZ. Regarding CW3 Welshofer, Mr. Reese will testify that CW3 Welshofer was a hard and diligent worker who would work himself into the ground to accomplish what needed to be accomplished. He would trust CW3 Welshofer with anything. Mr. Reese will testify that he has known CW3 Welshofer since they were stationed together in Germany during the 90's. Regarding interrogation guidance, Mr. Reese did approach their servicing Judge Advocates about better interrogation guidance. JAG told them they were working on the problem, but then told them that there was no need for additional guidance. JAG explained that all the guidance they needed was on the web. Mr. Reese was never able to find any such guidance on the web. The defense requests personal appearance during merits and presentencing.

**Government Response:** Denied. Defense has failed to make a showing as to the relevance of the majority of this testimony, and the portions that are, arguably, relevant are cumulative. The alleged conversation between Mr. Reese and JAG did not involve CW3 Welshofer and is therefore irrelevant. The proffered testimony regarding CW3 Welshofer's diligence and work ethic are cumulative with the testimony of SSG Davin Higgins, who was also a subordinate of CW3 Welshofer.

**Legal Basis:** IAW Rule for Court-Martial 703(b)(1), each party is entitled to the production of a witness whose testimony is relevant and necessary to an interlocutory question or to the merits. Relevant testimony contributes to resolution of a matter at issue. Military Rule of Evidence 401. Cumulative testimony is not relevant. Id.

11. SSG Davin Higgins, 66th Military Intelligence Company, 3rd Armored Cavalry Regiment, Fort Carson, CO. SSG Higgins will testify that CW3 Welshofer is the best officer he's ever had. He has the highest respect for CW3 Welshofer. CW3 Welshofer is a soldier's soldier. He is the first one to work and the last one to leave work. He is thorough in his job, and is the best at what he does. The defense requests personal appearance for merits and presentencing.

**Government Response:** The Government will produce this witness.

12. SSG Gregory Osborne, 7th Transportation Battalion, 1st Corps Support Command, Fort Bragg, NC. SSG Osborne will testify that CW3 Welshofer is very professional and trustworthy. CW3 Welshofer was the go-to guy in 66th MI Company if a soldier needed help or professional development. CW3 Welshofer was the best MI officer in the company. In terms of CW3 Welshofer's professionalism, SSG Osborne would put CW3 Welshofer over anyone else he knew in the company. Regarding MG

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Mowhoush, he had a huge part in the insurgency. Mowhoush provided leadership and money. SSG Osborne and CW3 Welshofer had regular discussions about MG Mowhoush, his involvement and leadership in the insurgency, and the extensive information MG Mowhoush knew about the insurgency. Mowhoush was a high-level priority target for 3ACR. The defense requests SSG Osborne's personal appearance at merits and pre-sentencing.

**Government Response:** Denied. The proffered testimony is cumulative with the proffered testimony of SSG Higgins.

Legal Basis: IAW Rule for Court-Martial 703(b)(1), each party is entitled to the production of a witness whose testimony is relevant and necessary to an interlocutory question or to the merits. Relevant testimony contributes to resolution of a matter at issue. Military Rule of Evidence 401. Cumulative testimony is not relevant. Id.

13. IAW Rule for Courts-Martial 703(c)(2)(B)(i), Defense requests for witnesses shall include telephone numbers, if known. Accordingly, the Government hereby requests that Defense supplement its request to provide this necessary information immediately.

Served by electronic mail upon the Defense Counsel this 9th day of November, 2005.

//original signed//  
ELANA S. MATT  
CPT, JA  
Trial Counsel

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UNITED STATES

V.

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

) GOVERNMENT RESPONSE  
) DEFENSE REQUEST FOR  
) WITNESSES, 4th Request  
)  
)  
)  
)  
)  
)  
) 9 December 2005

The government responds to the tardily filed request for witnesses by quoting the request in full, then indicating whether the witness will be produced or denied. The Government offers that it has no duty to produce any of the witnesses, as the request comes more than two months after the court-ordered deadline for the submission of such requests.<sup>1</sup> Nonetheless, the Government will produce some of the requested witnesses:

1. CPT Brian Baldrate, Torts Branch, Litigation Division, United States Army Legal Services Agency, 901 North Stuart Street, Suite 434, Arlington, VA 22203-1837, (703) 696-1637. CPT Baldrate will testify he was the 3d Armored Cavalry Regiment command judge advocate during OIF 1, to include the time leading up to and during the death of MG Mowhoush. CPT Baldrate will testify that he worked with CW3 Welshofer on a regular basis during OIF 1. He will testify that he considered CW3 Welshofer dedicated, professional, and hard working. CPT Baldrate will testify that he was present at the autopsy that MAJ Smith performed. He will testify that MAJ Smith stated at the autopsy that, at least after his inspection of MG Mowhoush's body, he could not definitively say what caused the general's death. CPT Baldrate will testify that MAJ Smith stated the cause of death could have simply been the general's enlarged heart giving out. CPT Baldrate will testify that in his role as the command judge advocate, he would have been informed about any guidance or changes to guidance regarding detainee treatment. CPT Baldrate will testify that there was no specific guidance regarding interrogation techniques before Abu Graib. CPT Baldrate will testify that he did not even hear or see LTG Sanchez's September 2003 memo until sometime after the New Year, 2004. That was the only guidance he remembered receiving through his JAG channels. He will testify that the guidance 3d ACR received regarding detainees was that they were to be treated as unlawful combatants, not prisoners of war. The defense requests personal appearance during merits.

Denied. This witness is a lawyer, not a doctor, and his opinions on the autopsy conducted by MAJ (Dr.) Smith are irrelevant. Any comments made by Dr. Smith are inadmissible hearsay, thus negating any need to produce CPT Baldrate. Comments made by Dr. Smith would be a subject for cross examination. CPT Baldrate's lack of information regarding detainee treatment, while interesting, is not relevant to whether CW3 Welshofer was similarly uninformed. The defense has already received evidence, to include statements by CW3 Welshofer, that CW3 Welshofer was in possession of SEP 03 Memo by LTG Sanchez prior to his fatal interrogation of BG Mowhoush.

<sup>1</sup> In its 14 Sep 05 order, the court set 3 Oct 05 as the last day upon which the defense could request the Government to produce any witnesses.

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2. LTC Paul Calvert, Standing Joint Force Headquarters North, U.S. Northern Command, Peterson Air Force Base, CO, (719) 556-2191. LTC Calvert will testify that he was the S-3 for 3d ACR during OIF 1. He will testify that he worked regularly with CW3 Welshofer during OIF 1. He will testify that CW3 Welshofer was focused, professional, and very competent. LTC Calvert was the chief planner for Operation Rifles Blitz and will testify about the purpose and goals behind Rifles Blitz. LTC Calvert will testify about MG Mowhoush and what information MG Mowhoush should have been able to provide. LTC Calvert will testify that these matters were all discussed with CW3 Welshofer during intelligence "fusion meetings" leading up to Operation Rifles Blitz. The defense requests personal appearance during merits.

Approved.

3. MAJ Ross O'Hara-Hulett, HHC, 7th Infantry Division, Fort Carson, CO, (719) 338-4529. MAJ O'Hara will testify that he is a part of the G-2 staff section at 7ID. He will testify that CW3 Welshofer has worked for him since being transferred from 66th MI Company a couple months before prefferal of charges. He will testify about CW3 Welshofer's good duty performance while on the rear-detachment. The defense requests personal appearance during merits and presentencing.

Approved for presentencing. Irrelevant on the merits, and will be denied for purposes of the merits.

4. MSG George Kurban.

MSG Kurban will testify that he worked with 66th MI Company during OIF one. He will testify about CW3 Welshofer's professionalism and integrity. CW3 Welshofer was MSG Kurban's boss, and MSG Kurban would want CW3 Welshofer's leadership if he deployed again. He will testify that he processed unit awards for 66th MI. CW3 Welshofer put every soldier in for a Bronze Star except for SFC Pratt. CW3 Welshofer only put SFC Pratt in for an Army Commendation Medal. The defense requests personal appearance on merits and presentencing.

Denied. No showing of relevance on the merits; CW3 Welshofer's animus towards SFC Pratt has not bearing on any issue in controversy. Denied for presentencing, the defense has failed to show why the witness needs to appear in court. Government is willing to stipulate that the witness would testify favorably about the "professionalism and integrity" of the accused during OIF I.

5. Ms. Marielena "Maria" Marlow, Ms. Marlow will testify that she is a former captain in the Army and deployed on OIF 1. She was also a physician's assistant, a job she currently has in a civilian capacity. She will testify that she worked with Dr. Rossignol, and was a PA at the detention facility were MG Mowhoush died. She will testify that MG Mowhoush appeared very obese. Ms. Marlow will testify that they only gave medical treatment to detainees who asked for it. MG Mowhoush never asked them for medical treatment, and as far as she knows, no one gave him medical treatment. She did respond

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APPELLATE EXHIBIT

XIV

U.S. v. Welshofer,

Government Response to 4<sup>th</sup> Defense Request for Witnesses

to the death of MG Mowhoush. She pulled his clothing up and remembered seeing linear bruises on his body and arms. The defense requests personal appearance.

Denied. No showing of relevance, e.g that BG Mowhoush did not ask for medical treatment does not prove or disprove any matter in controversy. Denied because this witness will be cumulative w/ Dr. Rossignol.

Very Respectfully,

//original signed//  
TIERNAN DOLAN  
MAJ, JA  
Trial Counsel

*Pr. 22-825*

APPELLATE EXHIBIT

XIV



UNITED STATES

V.

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

)  
) DEFENSE REQUEST FOR  
) WITNESSES, 6th Request  
)  
)  
)  
)  
)  
) 14 December 2005

The defense respectfully requests the government provide the following witnesses for General Court-Martial U.S. v. CW3 Lewis Welshofer:

Mr. Ray Gleaton,

me). Mr. Gleaton will testify that from March 2003 to early November 2003 he was a captain in the Army and the ACE chief for the 3d ACR. Mr. Gleaton will testify that he worked with CW3 Welshofer on a daily basis. He will testify that CW3 Welshofer is one of the most dedicated and professional warrant officers he has ever worked with. He will testify in general about CW3 Welshofer's good duty performance and character. Mr. Gleaton will testify that in his capacity as ACE Chief he would have received any and all information regarding interrogation approaches and treatment of detainees. Mr. Gleaton will testify that he remembers no guidance from CJTF-7, including LTG Sanchez, regarding interrogation approaches during the March 2003 through late October/early November 2003 timeframe. Mr. Gleaton will testify that based on his experiences in Iraq the command knew about the sleeping bag technique and approved of the use of that technique. Personal appearance during merits and pre-sentencing is requested.

Very Respectfully,

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

*p. 24 of 25*

APPELLATE EXHIBIT XIV

UNITED STATES

V.

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

)  
) DEFENSE REQUEST FOR  
) WITNESSES, 7th Request  
)  
)  
)  
)  
)  
)  
) 14 December 2005

The defense respectfully requests the government provide the following witnesses for General Court-Martial U.S. v. CW3 Lewis Welshofer:

SSG Paul Olsen, Defense Intelligence Agency, Bolling Air Force Base, Washington D.C. (202) 231-6780 (work), SSG Olsen will testify that during OIF 1, leading up to Operation Rifles Blitz, he was the senior intelligence analyst for 1st Squadron, 3d ACR. He will tell the court that the primary area of operation for his squadron, and hence, the focus of his work, was Al Qaim, Iraq. SSG Olsen will testify that MG Mowhoush was one of the leaders, perhaps the leader, of the insurgency in the Al Qaim area. SSG Olsen will testify that Mowhoush was the conduit between the insurgency and Saddam Hussein who, as of Rifles Blitz, was still missing. SSG Olsen will tell the court that MG Mowhoush was the Iraqi who basically set up the paramilitary forces that were fighting Coalition forces in the Al Qaim area. SSG Olsen will further testify that he discussed all these matters with CW3 Welshofer before MG Mowhoush's death. SSG Olsen will testify that CW3 Welshofer is one of the most intelligent and professional officers he has ever met in his career. He will testify regarding CW3 Welshofer's good duty performance and leadership. The defense requests personal appearance at merits and presentencing.

Very Respectfully,

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

*25/25*

APPELLATE EXHIBIT XIV





U.S. v. Welshofer

Government Response to Defense motion to Compel Witnesses

g. CPT Burton Glover; Requested by the defense on 13 Dec 05, denied by the government on the same day. (Provided a sworn statement on events in the summer of 2004, said statement available to the defense since preferral of charges.)

h. Mr. Ray Gleaton; Requested by the defense on 14 December 05, denied by the government the following day.

i. SSG Paul Olsen; Requested by the defense on 14 December 05, denied by the government the following day.

2. In the event the court finds the tardiness of the defense requests for witnesses an insufficient reason to deny their production, the government offers that the defense has failed to provide a synopsis from which the government can make a determination of relevance. Even with the submission of its motion to compel, the defense has failed to provide information showing that its requested witnesses are either relevant or necessary:

a. CPT Derik Timerman and MAJ Paul Hussein: these witnesses are sought by the defense so that they may testify about their experiences while deployed with the 3<sup>rd</sup> Brigade Combat Team (3<sup>rd</sup> BCT). The 3<sup>rd</sup> BCT deployed at different time than the accused's unit, to a different location, and with an entirely different set of personnel. The experiences of these witnesses with the 3<sup>rd</sup> BCT is wholly irrelevant to the experiences of the accused with the 3<sup>rd</sup> ACR.

b. Mr. James Reese: this witness is sought so that he may testify about his unsuccessful efforts to find guidance on the permissible treatment of detainees. Notably, no mention is made of whether this witness sought guidance from CW3 Welshofer. The phrase "they sought guidance," while presumably meant to infer that both CW3 Welshofer and Mr. Reese sought guidance, is more properly read as "he (Mr. Reese) sought guidance." As the defense is aware, CW3 Welshofer has provided a written statement that indicates he thought his treatment of MG Mowhoush complied with the 14 Sep 03 memo authored by LTG Sanchez. That statement has been offered by the government as a statement it intends to introduce in its Section III disclosure, and the defense has made no motion to prevent the government from introducing the statement. Additionally, the recent deposition provided evidence that CW3 Welshofer, through his own statements, possessed the guidance promulgated by LTG Sanchez no later than 25 Nov 03.

Offering witnesses who were uninformed on the subject of LTG Sanchez' guidance does nothing to prove a matter in controversy. Instead, it serves to create an inference that CW3 Welshofer did not possess guidance that he in fact possessed. If the defense is trying to prove that the accused did not possess the guidance put out by LTG Sanchez prior the death of MG Mowhoush, it should make that point clear. To date, however, the defense has not made that point clear, it has only indicated that it wishes to show other witnesses were uninformed on the subject.

c. CPT Brian Baldrate: the lack of information possessed by this JAG officer on the guidance put out by LTG Sanchez would serve only to create the false impression that CW3 Welshofer was similarly uninformed, and is thus irrelevant. The statements allegedly uttered by MAJ Smith are hearsay, and a proper subject for cross examination.

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APPELLATE EXHIBIT

XV

d. MSG George Kurban: the animus of the accused towards SFC Pratt is irrelevant, it does not show a bias of SFC Pratt against CW3 Welshofer, but rather a bias of CW3 Welshofer against the SFC Pratt. While the two men may think little of each other, the proffered testimony of MSG Kurban does not do anything to either make that issue more or less likely. Additionally, MSG Kurban's knowledge of who was put in for what award would of necessity have to rely on inadmissible hearsay, and is thus inadmissible.

e. Ms. Marlow: though known to the defense since preferral of charges, this witness is sought by the defense more than two months after the witness deadline. Ms. Marlow's knowledge, or lack of knowledge, on the health or lack of health of the victim in this case does absolutely nothing to show whether CW3 Welshofer had a similar knowledge, or lack of knowledge, on the health of the victim. The bruises visible on the body of the victim were photographed and witnessed by numerous other witnesses, and that the victim suffered from bruising will not be a matter in controversy.

f. CPT Glover: the witness will testify that "both the 66<sup>th</sup> MI Company commander and the 3<sup>rd</sup> ACR commander knew about the sleeping bag/closed confinement techniques" used by the accused. Such a showing by CPT Glover would by necessity involve the admission of inadmissible hearsay. Both the 66<sup>th</sup> MI commander and the 3<sup>rd</sup> ACR commander are individuals known to the defense since preferral of charges, if not before. The defense could have sought evidence of their knowledge directly from the commanders themselves, but has chosen this circuitous and hearsay laden course instead; the effort should be denied.

g. Mr. Gleaton: the lack of information possessed by this former officer on the guidance put out by LTG Sanchez would serve only to create the false impression that CW3 Welshofer was similarly uninformed, and is thus irrelevant. The government will not adduce any evidence that tends to infer that the command, in the person of MAJ Jessica Voss, was unaware that CW3 Welshofer used a sleeping bag as an interrogation aid. This witness left Iraq before MG Mowhoush was taken into custody; he has no knowledge of what was known in by the accused or anyone else in the ACR after approximately 10 Nov 03.

h. SSG Olsen: MG Mowhoush is not on trial; his acts prior to his custody are not relevant. That the accused sought to extract information from the victim, and that this information was thought to be vital, is not a matter in controversy.

3. Neither the Government nor the defense seeks oral argument on this motion. Served upon the military judge and defense counsel electronic mail Counsel this 18th day of December, 2005.

o/s  
TIERNAN DOLAN  
MAJ, JA  
Trial Counsel

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APPELLATE EXHIBIT XV

UNITED STATES ARMY TRIAL JUDICIARY  
GENERAL COURT-MARTIAL

|                  |   |                              |
|------------------|---|------------------------------|
| UNITED STATES    | ) |                              |
|                  | ) |                              |
| v.               | ) | DEFENSE REPLY TO GOVERNMENT  |
|                  | ) | RESPONSE TO MOTION TO COMPEL |
| LEWIS WELSHOFER, | ) |                              |
| CW3              | ) |                              |
| U.S. ARMY        | ) |                              |
|                  | ) |                              |

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1. The Defense hereby replies to the government response to defense motion to compel witnesses, specifically on the issue of good cause for delay in requesting additional witnesses. The Defense maintains that any delay in requesting additional witnesses beyond the original deadline is justified and does not prejudice the government in any way.

2. The Defense has acted in good faith by meeting the original deadline for submitting witness requests and in filing additional requests, including the motion to compel. Appellate courts have made clear that to avoid claims of ineffective assistance of counsel, defense counsel are under a duty to investigate facts and interview witnesses, particularly when requested to do so by the client. In this case, defense counsel had to locate and interview over seventy potential witnesses. Many of these have either retired from active duty, been deployed or been reassigned.

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Appellate Exhibit XVI

The process of locating witnesses, getting them to respond to interview requests and actually interviewing them has been time consuming. Furthermore, this had to be accomplished while both defense counsel were representing other clients in other cases. Therefore, the defense diligently pursued the potential witnesses and requested their production as soon as they were located, responded to interview requests, interviews were conducted and both counsel had the opportunity to consult before finalizing the requests.

Because the trial date was set for January 16<sup>th</sup>, 2006, this has placed no significant additional burden on the government, especially in light of the fact that for the most part the witnesses all live or are assigned in the United States, and requests were submitted more than one month prior to trial.

The defense decided that it would be best, as a matter of efficiency for the court, to file a motion to compel only after all witness requests had been submitted.

Additionally, the government has continued to investigate the case and identify new prosecution witnesses during this same period. Nothing under the law precludes the government from continuing to identify new government witnesses up to and including the time of trial. A

different standard should not be applied to the defense.

Finally, as a matter of good faith, the defense has not complained about the government's lack of diligence in providing discovery, particularly the failure to produce autopsy slides requested months ago for use by the defense expert.

3. As a final note, the Defense is willing to accept the production of SSG Olsen in lieu of another defense requested witness, Osborne.

4. No further argument is requested, nor is an RCM 802 conference requested before a ruling on the motion is issued.

For the Accused:

//original signed//  
FRANK J. SPINNER,  
Civilian Defense Counsel

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

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CERTIFICATE OF SERVICE

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I hereby certify that a copy of the foregoing motion was served on the Court, and on government counsel, this 29th day of December 2005, by sending a copy of the same via e-mail with copies of attachments to follow by facsimile transmission.

//original signed//  
FRANK J. SPINNER  
Defense Counsel