

COURT-MARTIAL RECORD

NAME COMBS, JAMES E. III

PFC

SSN [REDACTED]

ACTIONS CODED:

ASSIGNED TO:

INITIAL _____

PANEL 2

ACCA _____

EXAM. DIV. _____

FINAL _____

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US ARMY JUDICIARY

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FILE III OF IV VOL(S)

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ARMY

20050388

VERBATIM¹
RECORD OF TRIAL²
(and accompanying papers)

OF

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

[Redacted]
(Social Security Number)

Private First Class
(Rank)

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

(unit/Command Name)

US Army
(Branch of Service)

Camp Cuervo, Iraq
(Station or Ship)

BY
GENERAL COURT-MARTIAL

CONVENED BY COMMANDING GENERAL
(Title of Convening Authority)

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

TRIED AT

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

ON

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

COMPANION CASES: None.

20050388
15 AUG 24 P 1 49
COMBAT DOCUMENTS

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

² See inside back cover for instructions as to preparation and arrangement.

OFFICE OF THE CLERK OF COURT
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Criminal Investigation Report

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

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

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Photographs

Department of the Army
Pamphlet 27-17

Legal Services

Procedural Guide for Article 32(b) Investigating Officer

Headquarters
Department of the Army
Washington, DC
16 September 1990

UNCLASSIFIED

SUMMARY of CHANGE

DA PAM 27-17

Procedural Guide for Article 32(b) Investigating Officer

This revision contains new guidance in the areas of Government and defense requested delays (para 2-1), ex parte discussions between the investigating officer and witnesses (para 2-2f), and rights warnings to witnesses who are suspected of committing an offense (para 3-3).

Legal Services

Procedural Guide for Article 32(b) Investigating Officer

By Order of the Secretary of the Army:

CARL E. VUONO
General, United States Army
Chief of Staff

Official:

THOMAS F. SIKORA
Brigadier General, United States Army
The Adjutant General

History. This UPDATE printing publishes a revision of this publication. Because the publication has been extensively revised, the changed portions have not been highlighted. This publication has been reorganized to make it compatible with the Army electronic

publishing database. No content has been changed.

Summary. This pamphlet is intended to provide information and reference material. While it may suggest workable solutions to legal problems, it does not purport to promulgate Department of the Army policy. Comments concerning laws, regulations, cases, or other matters represent the opinions of individual specialists in military justice. Laws, regulations, and decisions published prior to 1 January 1990 generally have been considered and included in this text.

Applicability. This pamphlet applies during peacetime and mobilization to the Active Army, the Army National Guard in Federal service under title 10, United States Code, and the U.S. Army Reserve.

Proponent and exception authority. Not applicable.

Interim changes. Interim changes to this

pamphlet are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. The proponent of this pamphlet is Office of The Judge Advocate General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to The Judge Advocate General's School, Army, ATTN:JAGS-ADC, Charlottesville, VA 22903-1781.

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*This pamphlet supersedes DA Pam 27-17, 15 March 1985.

RESERVED

Chapter 1 Introduction

1-1. Purpose

This guide is published for use by officers who have been appointed as investigating officers under article 32(b) of the Uniform Code of Military Justice (UCMJ). This guide should be used in conjunction with the DD Form 457 (Investigating Officer's Report) and the applicable Rules for Courts-Martial (R.C.M.) in the Manual for Courts-Martial, United States, 1984 (hereafter referred to as MCM, 1984). The investigating officer's functions are: To make *thorough and impartial* investigation into the truth of the allegations; to consider the correctness and the form of the charges; and to make recommendations as to the disposition of the charges in the interest of justice and discipline.

1-2. General instructions

a. Duties of investigating officer. Just as the assignment of an officer to be a court-martial member takes precedence over other military duties, your assignment as an article 32(b) investigating officer must take priority over other duties. As an officer detailed to conduct an important investigation, you will actually be performing a *judicial* function. In preparation for a complete examination of the case presented to you, your initial responsibility is to become thoroughly familiar with the contents of this guide, R.C.M. 405. and article 32, UCMJ. Your two most important and legally vital responsibilities are: To thoroughly investigate all charges and specifications alleged in the charge sheet(s); and, to complete this investigation impartially.

b. Legal advice for investigating officer. Upon your initial appointment and throughout the investigation, you will have occasion to seek legal advice from the office of the judge advocate serving the command of the officer directing the investigation. It is imperative that this advice come from a judge advocate who has no direct interest in the outcome of the proceedings. Normally, such a judge advocate officer will be designated, in writing or otherwise, to assist you in your role as investigating officer. Although you will receive *advice* from the designated judge advocate, the conclusions to be drawn from the evidence in the case and the recommendations concerning the disposition of the case are matters solely within your judgment and are your responsibility. The law requires that you determine these matters without reliance upon the opinions or recommendations of any other person. You must scrupulously avoid inquiries of or discussions with judge advocate officers who might be perceived as lacking impartiality in the case (for example, defense counsel or the Government representative). Such discussions often give the appearance of partiality toward either side regardless of the motivation or real interest of the investigating officer. Restricting your preliminary discussion of the case to the designated legal advisor will ensure the integrity of your judicial role and will maintain the impartiality demanded by law.

c. Legal representation for the accused. The accused may be represented during the investigation by a civilian lawyer of the accused's choice at no expense to the United States, by military counsel of the accused's selection (if reasonably available), or by military counsel certified under article 27(b) and detailed for that purpose by competent authority. Counsel representing the accused will be allowed to present evidence on behalf of the accused, cross-examine Government witnesses, argue for a disposition of the matter appropriate to the interests of the accused, and otherwise perform the normal functions of counsel. Whenever counsel is requested by the accused, the taking of evidence will be conducted in the presence of that counsel unless expressly excused by the accused. See paragraph 2-3 for a complete explanation of the accused's right to counsel.

d. Legal counsel for the Government. Although not required by law, counsel may also be detailed to represent the Government. Such counsel is *not* the legal advisor of the investigating officer, but instead, represents a party to the investigation. Accordingly, you

may *not* seek legal advice from counsel representing the Government. Counsel for the Government may present evidence, cross-examine witnesses, and argue for a disposition of the matter appropriate to the interest of the Government. You should recognize that arguments made by counsel for either side are not evidence and should carry no additional weight *merely* because of the side making the argument.

e. Advice concerning substantive matters. You should inform counsel for the accused and counsel for the Government, if detailed, of all matters discussed with your legal advisor in your initial briefing. If you later seek additional advice from your legal advisor, you must give prior notice to counsel for the accused and to counsel for the Government, if any, and you must provide these parties with an opportunity to respond to the advice you received. If practical, you may give counsel for both sides advance notice of your intent to seek legal advice and may allow them an opportunity to be present; however, this is not required. As a general rule, you should keep a record of the dates of consultation with your legal advisor, the matters discussed, when parties were notified of such discussions, whether counsel for the parties were present at such discussions, and any response by counsel to your legal advisor's advice.

Chapter 2 Preparing for the Investigation

2-1. General considerations

a. The case file will normally include five copies of the charge sheet; civilian or military police reports; statements of witnesses or summaries thereof; documentary evidence, such as extract copies of Standard Installation/Division Personnel System (SIDPERS) documents in cases involving unauthorized absence; and the record of previous convictions, if any. If these documents are not in the file, you should request them immediately from the appropriate agencies. The file may also include a letter of instruction from the officer who appointed you and directions to report to the office of the local judge advocate for a briefing by the judge advocate legal advisor designated to assist you.

b. The article 32 investigation is a judicial proceeding and plays a necessary role in military due process of law. The investigation is subject to subsequent review at the trial, if there is a trial, and on appeal. The ultimate outcome of the case may well depend upon whether you properly perform your duties in making certain that the accused is fully informed of and afforded all applicable rights in connection with the investigation.

c. It is important to conduct the investigation expeditiously. Usually, the officer appointing the investigating officer will set a date for completion of the report. If you cannot comply with that date, promptly report this fact in writing to the authority who directed the investigation and explain the cause of the delay in detail. Such delay on your part could result in a gross injustice to the accused and in dismissal of the charges. On the other hand, you must take the time necessary for a thorough investigation.

d. Requests for delay by the accused/defense must be in writing and must be attached to the report of investigation. The Government should be allowed an opportunity to respond to the defense requested delay. You should ensure that there are no ambiguities in the request. Additionally, you should ensure that the accused and defense counsel understand that their requested delay will not be attributable to the Government. Any reasonable request for delay by the accused should be granted.

e. The Government representative may ask you to approve a delay in the investigation. The Government representative will also normally ask that you exclude the period of delay from Government speedy-trial accountability. You should require the Government representative to put the request for delay *and* reasons for the request in writing. When these requests are made, you should review R.C.M. 707 and consult with your legal advisor. Before ruling on the Government's request, you should hold a hearing at which the defense counsel and the Government representative can present evidence

and argument on the request. The Government must always establish that its request is for a "reasonable" period of delay. If you grant the delay, the defense counsel may ask the military judge to review your decision. For this reason, you must be sure that you gather sufficient evidence to support your decision and that you clearly explain your reasons for granting the delay. You may deny the Government's request or approve a shorter period of delay than that requested. In short, you must hear evidence and arguments from both sides, approve only reasonable delays, have an evidentiary basis for granting the delay, explain your reason(s) for the decision, and include this information in your report.

f. You should complete a chronology sheet documenting the dates of all your actions in conducting the investigation and the reasons for any delays in the investigation. You should attach this chronology sheet to your report. See R.C.M. 405(j)(2)(F).

2-2. Sequence of preparation

After receipt of the case file, you should read article 32, UCMJ, R.C.M. 405, and this guide, then study the file and take action in the sequence indicated below.

a. *Consult with the judge advocate legal advisor.* You should report to the designated legal advisor for an initial briefing on your duties. You may consult with this judge advocate officer as often as necessary during the course of your investigation for advice and assistance. Keep in mind that although you may feel that the judge advocate designated as trial counsel to represent the Government is more familiar with the case than the legal advisor, your impartial role requires avoiding any discussions with legal personnel performing adversarial roles in the case. As explained in paragraph 1-2b, you should inform counsel for the accused and counsel for the Government of all substantive matters discussed with the legal advisor, give them advance notice of such discussions when practicable, and keep a record of all such discussions.

b. *Examine the file.*

(1) You should examine the charge sheet and all accompanying papers.

(2) Additionally, you should ascertain whether the charges were sworn before a commissioned officer who is authorized to administer oaths. See article 136, UCMJ; R.C.M. 307. If they were not, confer with the accuser to determine whether he or she desires to swear to the charges. You should not, however, administer the oath for this purpose. If the accuser does not want to swear to the charges, or if it is impracticable to do so without unnecessary delay, you should consult with the officer who appointed you for guidance in the matter and should proceed with the investigation only if directed.

c. *Determine whether there is any reason you cannot conduct a fair and impartial investigation.* If there is any reason you cannot conduct a fair and impartial investigation, you should promptly notify the officer who appointed you of this fact. Prior knowledge about the case should not disqualify you from acting as the investigating officer, provided you have not drawn conclusions about the guilt or innocence of the accused and have not assisted in perfecting a case against the accused.

d. *Determine the applicable law.*

(1) You should be familiar with the elements (essential facts) of the offense(s) charged. You should read the discussion of the offense or offenses in MCM, 1984, Part IV. If the offense is charged as a violation of article 134, UCMJ, and no discussion of the specific elements appears in the MCM, 1984, or DA Pam 27-9, consult your legal advisor regarding the elements.

(2) You should ensure that each specification actually alleges an offense (see R.C.M. 307(c)) and that each offense is charged as a violation of the proper article of the UCMJ. If you conclude that the wording of a specification departs so materially from an applicable form specification (see MCM, 1984, Part IV) that no offense is alleged or the specification is ambiguous, you should return the file to the officer who appointed you, stating your reasons for returning it.

(3) If the accused is charged with failure to obey a regulation or written order and a copy of the directive is not in the file, you

should obtain copies of the directive for the report and familiarize yourself with its provisions.

e. *Determine what evidence to examine.* You must determine what evidence, including documents or physical objects, should be examined and whether such evidence is reasonably available for production at the formal investigation. See R.C.M. 405(g). You may, in some circumstances, decide to consider alternatives to examining the actual physical evidence, for example, testimony describing it or photographs depicting it. See R.C.M. 405(g)(5). You should review R.C.M. 405(g), particularly subsections (1), (2), and (5), to determine when evidence is reasonably available and when alternatives to the original evidence may be considered. If there are copies of documents in the file which you decide to consider because the originals are not reasonably available, you should ensure that those copies are properly authenticated. See R.C.M. 405(g). You should assign identifying numbers to all documentary evidence and any physical objects so that they can be accurately referred to when you complete DD Form 457. (See chap 4.) If familiarity with the scene of the alleged offense would assist you in gaining a more accurate picture of the case, you may visit the scene. If you do visit the scene, you should inform all parties in advance when practicable and give them an opportunity to accompany you; otherwise, inform them afterward that you have visited the scene.

f. *Determine what witnesses to call.* Your review of the file should disclose the names of prospective witnesses. Once you decide which witnesses to call in your formal investigation, you must determine whether each witness is reasonably available. That determination requires you to balance the significance of the expected testimony and personal appearance of the witness against the difficulty, expense, delay, and effect on military operations of obtaining the witness's presence at the investigation. See R.C.M. 405(g)(1). You may communicate by telephone or otherwise with prospective witnesses to determine their availability. You should not discuss the facts of the case with prospective witnesses at this time. The law regards you as a judicial officer. You should hear the testimony of each witness *only during the formal proceeding* when the accused and counsel have an opportunity to hear the same testimony and cross-examine the witnesses. During your initial contact with witnesses, you may discuss *procedural* matters such as travel cost, lodging, and expected length of time the witness will be needed. Regarding military witnesses, if you determine that a witness is reasonably available, the witness's immediate commander may make a contrary determination and decline to make the witness available. See R.C.M. 405(g)(2). If this occurs, you should obtain the commander's reasons for the determination of nonavailability and include this information in your report. You should review R.C.M. 405(g), particularly subsections (1) through (4), before deciding what witnesses to call and when alternatives to live testimony by witnesses may be considered.

g. *Arranging for place for investigation.* You should contact the officer who appointed you to reserve a place for conducting the investigation and to request available clerical assistance.

2-3. Informing the accused of the investigation and the right to counsel

You should arrange (through the accused's commanding officer, if the accused is not in pretrial confinement, or the confinement officer, if the accused is in pretrial confinement) to meet with the accused for the purpose of providing preliminary advice and information concerning the investigation. See figure 2-1. The accused *may* also be notified of the investigation and the right to counsel in writing. If the accused is already represented by counsel, the written notice, if any, should be sent to the counsel. Otherwise, you should personally deliver the notice to the accused, read its contents, explain it, and answer any questions. If the accused can reach a decision concerning representation by counsel at that time, or if the accused desires to request specific witnesses for the investigation, his or her answer should be obtained in the form of an endorsement. Samples of notification and endorsement are contained in figures 2-2 and 2-3. At this first meeting with the accused, you should

introduce yourself, explain that you have been detailed as investigating officer, and explain the purposes of the investigation. (See figure 2-1.) *You must prohibit any attempt by the accused to discuss the facts of the case with you at this time.*

2-4. Consultation with counsel for the accused

a. General. If the accused requests representation by counsel, the request must be promptly reported to the officer who ordered the investigation. You should request that officer to notify you as soon as possible as to the identity and address or military organization of counsel who is to represent the accused. When you receive this information, contact the accused's counsel for the purpose of delivering a complete copy of the file. At this time, advise counsel of the proposed date, time, and place of the investigation and allow counsel reasonable time for preparation of the case. If counsel requests additional time for preparation, the request must be in writing and directed to you. You should grant reasonable requests for delay. See paragraph 2-1. Once the accused requests counsel, you should have no further contact with the accused outside the presence of defense counsel.

b. Availability of witnesses for the accused.

(1) You must carefully consider defense requests for production of essential witnesses to testify at the pretrial investigation. The typical issue for your decision is the "availability" or "unavailability" of a witness who is not located at the site of the hearing. Typically, the defense wishes to call the requested witness to support its own defense, but often the defense wants to cross-examine a potential prosecution witness who is not expected to appear for the hearing. Any witness whose testimony is relevant to the investigation and not cumulative should normally be produced if reasonably available. As explained in paragraph 2-2f, your determination of reasonable availability requires you to balance the significance of a witness's expected testimony against other factors, including the difficulty of obtaining the witness's presence and the effect on military operations. If the defense counsel has no objection, you may consider various alternatives to live testimony by available witnesses, such as sworn statements. See R.C.M.405(g)(4)(A). If a witness is not reasonably available, you may consider, over defense objection, various alternatives to testimony, such as sworn written statements, statements under oath taken by telephone (provided each party has an opportunity to question the witness), or depositions. See R.C.M.405(g)(4)(B). If the defense objects to a determination that a witness is not reasonably available, you must include the reasons for your determination in the report of investigation. See R.C.M. 405(g)(2)(D).

(2) You should secure from defense counsel a list of any witnesses the accused wants called sufficiently in advance of the formal investigation to allow time for securing their attendance. This will help ensure an orderly and expeditious procedure in the opening session. If the accused desires to have witnesses called or to have certain documents or records obtained, you should arrange, if possible, to have the witnesses present and the documents or records produced at this first session. If this is not possible, then arrangements should be made for their appearance and production at the time and place set for the next session of the investigation.

(3) In the event you are unable to arrange for the attendance of civilian witnesses or the production of certain documents requested by the accused by the date originally planned, you should set a date for a future hearing to permit the attendance of the witnesses and the production of the documents. You need *not* delay proceeding with the initial session of the investigation until you have arranged for the production of *all* the witnesses or evidence requested by the accused. Sound discretion on your part is essential. For example, if all witnesses requested by the accused are readily available but certain requested documentary evidence will not be available until several days later, you may proceed with the investigation. Keep in mind that the thoroughness of the investigation is not dependent upon having all of the evidence available at the same time, but only upon the ultimate examination of all of the witnesses and evidence in a manner that is as orderly as possible. If, however, you must

temporarily postpone the investigation in order to arrange for the attendance of witnesses, you should inform the accused and the potential witnesses of the date and place set for future proceedings and arrange for their attendance.

2-5. Securing the attendance of witnesses

a. Military witnesses and Government employee witnesses. Military witnesses may be ordered to appear at the investigation. If there is a question as to the availability of a witness, you make the initial decision whether the witness is reasonably available. If you decide that the witness is reasonably available, you should ask the witness's immediate commander to make the witness available. If that commander decides that the witness is not reasonably available and cannot be persuaded to reconsider the decision, you must abide by the decision and consider alternatives to live testimony by the witness. You should ask supervisors of Government civilian employees to arrange their attendance.

b. Civilian witnesses not employed by the Government. Generally, non-Government civilian witnesses may not be compelled by the investigating officer to attend the pretrial investigation and testify. With advance approval by the general court-martial convening authority, however, you may arrange for the issuance of invitational travel orders authorizing a mileage advance for transportation to the hearing of an essential non-Government civilian witness who is willing to appear voluntarily. See AR 37-106, chapter 13, section III. In the alternative, you may arrange transportation for yourself, the accused, and counsel, if any, to a place convenient to the civilian witness. If you determine that the testimony of a reluctant civilian witness is essential and necessary for a proper disposition of the case, you should request the appropriate staff judge advocate to assist in obtaining the witness's attendance.

c. Arranging for documentary evidence. You should make every effort to ensure that witnesses in possession of essential documentary and real evidence are present at the investigation. Examine but do not take possession of real evidence. Your receipting for evidence might create admissibility problems at a later court-martial.

The following procedure provides guidance for an introductory session with the accused.

I.O. (to accused): I am (*rank and name*). By order of (*rank and name of appointing authority*), I have been appointed investigating officer under article 32(b) of the Uniform Code of Military Justice to investigate (a) certain charge(s) against you. The charge(s) allege(s) in general, the offense(s) of (*name of offense(s) and description(s) of conduct*). The name of the accuser is (*rank and name of accuser*). The names of the witnesses thus far known to me are (*name all known witnesses*).

I am now going to advise you of your rights in this investigation. You have the right to be present throughout the taking of evidence so long as your conduct is not disruptive. You will have the right at the proper time: to cross-examine all available witnesses against you; to present anything you might desire in your own behalf, either in defense, extenuation, or mitigation; to have a lawyer represent you at the investigation; to have me examine available witnesses requested by you; to make a statement in any form at the proper time, to remain silent, or to refuse to make any statement regarding any offense that you are accused or suspected of, or concerning that which you are being investigated. In addition you are advised that any statement made by you might be used as evidence against you in a trial by court-martial. Do you understand?

As investigating officer, it is my duty to thoroughly and impartially investigate the charges against you. This investigation shall include inquiries as to the truth of the matter set forth in the charge(s), form of the charge(s), and the disposition which should be made of the case in the interest of justice and discipline. It is my duty to impartially evaluate and weigh all of the evidence. I will examine the available witnesses against you as well as any available witnesses requested by you. You and your counsel will be given full opportunity to cross-examine witnesses against you (if they are available) and to present anything you may desire in your own behalf, either in defense or extenuation or mitigation. I can recommend that the charge(s) against you be referred for trial to a general court-martial or to a different type of court-martial or that the charge(s) be dismissed or disposed of other than by trial by court-martial. It is not my purpose during this investigation to act as prosecutor, but only as an impartial fact finder. Do you understand?

Before I begin the formal investigation and examination of any of the witnesses in this case, I must inform you that you have the right to be represented at all times during this investigation by legally qualified counsel. This means that you have the right to be represented by a civilian lawyer of your choice, but at no expense to the United States; by military counsel of your own selection if that counsel is reasonably available; or by counsel detailed by the Trial Defense Service to represent you during the investigation. There is no cost to you for military counsel. Do you wish to be represented by counsel? If so, state the type of counsel you want to represent you.

Note. If the accused is hesitant about whether to ask for counsel, the investigating officer should encourage the accused to obtain legally qualified counsel. If the accused requests counsel other than a lawyer, you must advise the accused that such non-lawyer counsel cannot serve as defense counsel before a general court-martial or a special court-martial that can adjudge a bad-conduct discharge.

Figure 2-1. Preliminary advice to the accused

DEPARTMENT OF THE ARMY
(Organization name)
(Geographic location and zip code)

(office symbol) (27)

S: (suspense date)
(date)

MEMORANDUM FOR (name and address of accused)

SUBJECT: Article 32(b) Investigation

1. On (date), at (time) in (building number),(room number), I will conduct an investigation pursuant to Article 32(b), UCMJ, to investigate the facts and circumstances concerning (a) charge(s) preferred against you by (rank and name of person who preferred charge(s)). The charge(s) is/are(general nature of the charge(s)), in violation of (UCMJ article(s)).

2. You have the right to be present during the entire investigation. Additionally, you have the right to be represented at all times during the investigation by legally qualified counsel. Counsel may be a civilian lawyer of your choice, provided at no expense to the United States; a qualified military lawyer of your selection, if reasonably available; or a qualified military counsel detailed by the Trial Defense Service. There is no cost to you for military counsel. You also have the right to waive representation by counsel. Send your decision to me by (suspense date).

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

- a. (Name of witness).
- b. (Name of witness).
- c. (Name of witness).
- d. (Name of witness).
- e. (Name of witness).

Additionally, it is my intention to examine and consider the following evidence:

- a. (Describe evidence and its location).
- b. (Describe evidence and its location).
- c. (Describe evidence and its location).

4. As investigating officer, I will try to arrange for the appearance of any witnesses that you want to testify at the hearing. Send names and addresses of such witnesses to me by (suspense date for witness notification). If, at a later time, you identify additional witnesses, inform me of their names and addresses.

5. You may contact me by writing to: (investigating officer's rank, name, and military address).

(Name)
(Rank, Branch)
Investigating Officer

Figure 2-2. Notification to the accused

XXXX-XX (XXX-XX/Date) 1st End Accused/XX/AV XXX-XXXX

SUBJECT: Article 32(b), UCMJ Investigation

(Name and address of accused)

FOR (Name and military address of investigating officer)

1. Receipt of basic communication is acknowledged.
2. I want to be represented by (select one of the six options):
 - a. Civilian counsel, who is (name and address).
 - b. An individual military counsel, who is (rank, name, and military address), if he or she is reasonably available.
 - c. A legally qualified military counsel detailed by the Trial Defense Service.
 - d. A civilian counsel, who is (name and address), and individually requested military counsel, who is (rank, name, and military address).
 - e. Detailed military counsel and civilian counsel, who is (name and address).
 - f. I do not want to be represented by counsel.
3. I understand that the Government will not cover the cost of a civilian attorney, but military attorneys will be furnished at no cost to me.
4. I want the following witnesses and/or evidence present at the hearing.
 - a. (Name and address of witness or description and location of evidence).
 - b. (Name and address of witness or description and location of evidence).(Include information on where they can be contacted.)

(Accused)
(Rank), U.S. Army

Figure 2-3. Response of the accused

Chapter 3 The Formal Investigation

3-1. General

Whenever practicable, the hearing room should be arranged so that the witness chair faces both yourself and the accused. See figure 3-1. The formal taking of evidence in the investigation and the actual interrogation of witnesses and examination of real evidence will be held at a time and place designated by you. You should use a copy of DD Form 457 (fig 4-1) as a checklist in conjunction with the provisions of this guide when conducting the investigation.

3-2. Procedure for opening session

Figure 3-2 sets forth the suggested opening session procedure with the accused, the accused's counsel, and the Government representative. These procedures may be varied to meet special circumstances.

3-3. Procedures for taking testimony and examining evidence

a. Record of testimony.

(1) Generally, the testimony of the witnesses given at the investigation is recorded by having them sign and swear to the truth of the substance of their statements after the testimony has been reduced to writing by the investigating officer. If, however, obtaining witnesses' signatures on statements of summaries of testimony will cause undue delay, they need not be signed by the witness, but they must be authenticated by you. These statements should be recorded on DA Form 2823 (Sworn Statement), given exhibit numbers, and noted on DD Form 457, item 12a. In certain cases, the officer who appointed you may desire to have the entire proceedings reported verbatim by a sworn reporter. In such cases, the verbatim report of the testimony of witnesses given on oath or affirmation need not be signed by the witnesses. Verbatim statements should also be given exhibit numbers and entered on DD Form 457, item 12a.

(2) You are not required to tape record testimony taken during your investigation. It is not uncommon, however, for the person acting as reporter during the investigation to record testimony to aid in the preparation of the summary of testimony. If such recordings of testimony are made, or substantially verbatim notes of testimony are taken, you should ensure that they are preserved until final disposition of the case occurs, either by trial or conclusive withdrawal and dismissal of the charges.

(3) Ordinarily it is not necessary to give article 31 warnings to witnesses who are not accused or suspected of a crime; however, if during the taking of testimony it appears that a *military* witness might be suspected of committing any offense, stop and advise the witness of article 31 rights and the right to counsel.

(4) If during the taking of testimony it appears that a civilian witness might be suspected of committing any offense, stop and advise the witness of self-incrimination and counsel rights.

(5) You should use DA Form 3881 (Rights Warning Procedure/Waiver Certificate) when advising military and civilian witnesses of these rights. If the witness initially waives these rights, you may proceed with questioning. If the witness remains silent or requests to speak to an attorney, stop all questioning and note this fact on DA Form 3881. You should not initiate further questioning of this witness until the witness has consulted with counsel and has consented to further questioning after readvisement of all rights (again use DA Form 3881). You should see your judge advocate legal advisor for assistance in determining if it is again permissible to question the witness.

b. *Refusal to testify.* If a witness who is a member of the military refuses to make a sworn statement and it does not appear that the statement is incriminating or otherwise privileged, allow the witness to consult with a judge advocate concerning the witness's rights and duty to testify. If the witness persists in refusing to testify, you may give an order to do so. Failure to comply with this order could result in disciplinary action. If a witness has previously made a sworn written statement and now refuses to testify, you should show the witness the previous statement and inquire into the reasons for

which he or she now refuses to make a sworn statement regarding the same subject matter. If you determine (with the assistance of your legal advisor, if necessary) that the witness has a privilege not to testify, or if you have determined that there is no privilege and ordered the witness to testify but the witness persists in refusing to do so, you may consider the witness to be unavailable and consider the prior sworn statement. See R.C.M.405(g)(1)(A) and Mil. R. Evid. 804(a)(1) and (2). If it appears that any witness who is apparently essential to subsequent proceedings is subject to early discharge, transfer, temporary duty, or other personnel action that might prevent his or her availability at a later proceeding, you should note this fact on DD Form 457, items 16 and 21. If the change of status is within a period of 30 days, the staff judge advocate should be notified to determine if a deposition should be taken.

c. *Spectators.* Normally, the hearing is open to the public, but either you or the authority who directed the investigation may provide that the hearing be closed to the public. You may also decide to restrict spectators, including members of the news media, to only certain parts of the proceedings. You must also follow the guidelines established in AR 340-17, chapter 5, regarding the release of certain information to the public. In addition, prospective witnesses in the case should not be permitted to hear or examine the testimony or statements of other witnesses. Witnesses should remain available outside the hearing room and should be called one at a time to testify. Witnesses should be instructed not to discuss their testimony with other witnesses. See MCM, 1984, appendix 8, page A8-13, for a sample witness advisement.

d. *Oaths.* The procedure for administering the oath to a witness is set forth in figure 3-3.

e. *Examination of witnesses.* A procedure for examining witnesses is set forth in figure 3-4.

f. *Examination of evidence.* The procedure for examining evidence is set forth in figure 3-5.

g. *Inquiry into mental responsibility or capacity.* If in your opinion grounds exist for inquiring into the mental condition of the accused to determine whether the accused was mentally responsible at the time of the acts charged or has sufficient mental capacity to understand the nature of the article 32 investigation and to conduct or cooperate intelligently in his or her defense, you should promptly notify the officer who appointed you. The appointing authority will take appropriate action. See R.C.M. 706. In addition, you should complete DD Form 457, item 14, as appropriate.

h. *Defense objections.* If the defense objects to any of your decisions on procedures or otherwise objects to alleged defects in the investigation, you are not required to rule on objections. You may, however, take corrective action in response to an objection if you believe such action is appropriate. If an objection raises a substantial question about the propriety of your conducting the investigation (such as challenging your impartiality), you should consult with your legal advisor and inform the commander who directed the investigation before deciding whether any corrective action is needed. You may require a party to file any objection in writing. You must note a party's objection in your report (items 15 and 21) if requested to do so. See R.C.M. 405(h)(2).

i. Closing the investigation.

(1) After you receive all the evidence and the accused and counsel have indicated that they have no further evidence to offer, inform the accused that you do not contemplate calling any more witnesses or receiving other evidence unless the accused or counsel have other evidence to present or argument to make. If the accused or counsel has no further evidence to offer, you should declare the taking of evidence closed.

(2) The accused or counsel should be afforded the opportunity to make a statement of what they consider an appropriate recommendation concerning the disposition of the charges in the case. You should consider any comments made in that connection in deciding what disposition you will recommend to the officer who directed the investigation. You should explain to the accused and counsel that your recommendation in the case is advisory only and is in no way binding upon the officer who directed the investigation or upon any

superior authorities. You should also afford counsel for the Government, if any, the opportunity to make a statement regarding an appropriate recommendation for disposition of the charges.

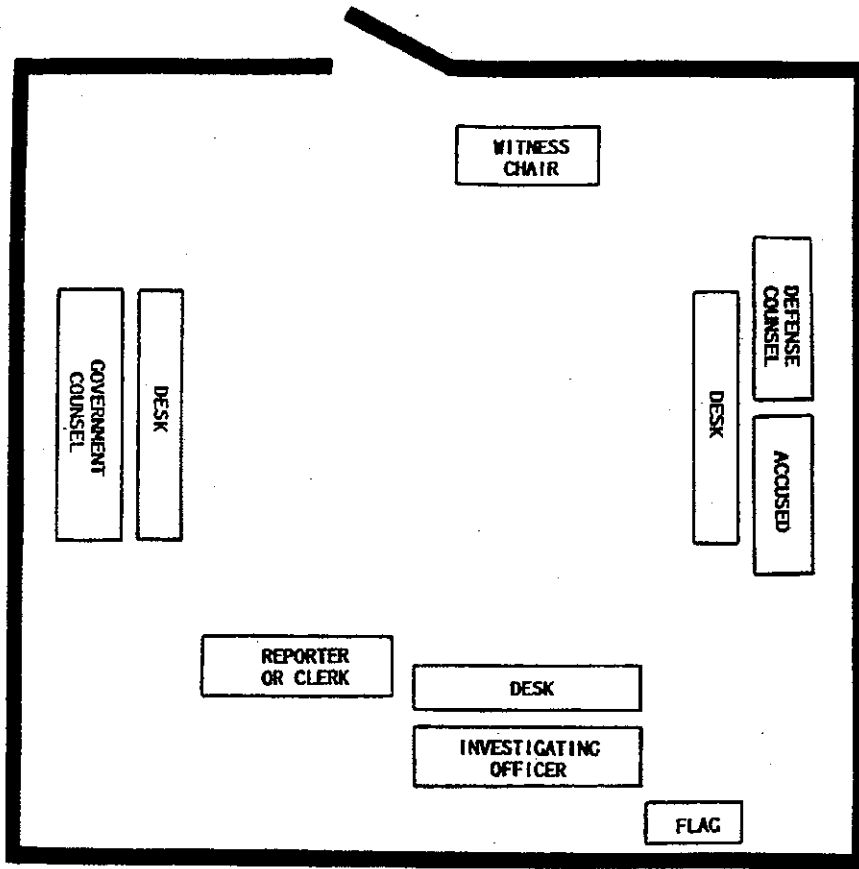


Figure 3-1. Arrangement of room for investigation

Note. The article 32 investigation should be conducted in a formal and dignified manner. While the investigation is not a trial and the strict rules of procedure and evidence applicable in trials by courts-martial do not apply to the investigation, you will find that the investigation will be far more successful if informality is kept to a minimum. For this reason, you should attempt to hold the investigation under conditions of relative quiet and without interruption. When the investigation is conducted in a place where people are walking about or holding general conversation, the accused and observers are likely to get the impression that the investigation is a casual affair, rather than the serious judicial function intended by Congress and the United States Court of Military Appeals. You should attempt to arrange the furniture in the room where the investigation is to be held as shown above.

Figure 3-1. Arrangement of room for investigation

I.O. (To accused-counsel): This is a formal investigation into (a)certain charge(s) against *(rank and name of accused)* ordered pursuant to article 32(b), UCMJ, by *(rank and name of appointing authority)*. On *(date of notification)*, I informed you of your right to be represented by civilian counsel at no expense to the United States, military counsel of your own selection if reasonably available, or military counsel detailed by the Trial Defense Service. You informed me that you *(did not desire to be represented by counsel/desired to be represented by (name of civilian counsel)/desired to be represented by (rank and name of individually requested counsel)/desired to be represented by (rank and name of detailed military counsel))*.

Let the record show that *(name of civilian counsel/rank and name of individually requested military counsel who was available/rank and name of detailed counsel)* is here present with you.

(Name of civilian counsel), I ask you to step forward and enter your appearance by filling out item 7a on the official Investigating Officer's Report, DD Form 457).

I.O. (To accused-counsel): I want to remind you that my sole function as the article 32 investigating officer in this case is to determine thoroughly and impartially all of the relevant facts of this case, to weigh and evaluate those facts and determine the truth of the matters stated in the charge(s). I shall also consider the form of the charge(s) and make a recommendation concerning the disposition of the charge(s) that has/have been preferred against you. I will now read to you the charge(s), which I have been directed to investigate. (At this point, the defense may waive reading of the charge(s).) It/They is/are as follows:

Charge (I): Violation of the Uniform Code of Military Justice, *(article number)*.

Specification (1): *(the specification)*.

Specification (2): *(the specification)*.

(Charge (II):(Additional Charge): Violation of the Uniform Code of Military Justice, *(article number)*).

Specification (1): *(the specification)*.

I will now show you the charge(s) and specification(s).

I advise you that you do not have to make any statement regarding the offense(s) of which you are accused and that any statement you do make may be used as evidence against you in a trial by court-martial. You have the right to remain silent concerning the offense(s) with which you are charged. You may, however, make a statement either sworn or unsworn and present anything you may desire, either in defense, extenuation, or mitigation. If you do make a statement, whatever you say will be considered and weighed as evidence by me just like the testimony of other witnesses.

You have previously been given a copy of the investigation file that has been compiled in your case. It contains *(list all documents contained in the case file that will be considered)*. It is my intention to call as witnesses in this investigation *(list all witnesses who will be called to testify at the investigation)*. After these witnesses have testified in response to my questions, you or your counsel will have the right to cross-examine them. You also have the right to call available witnesses for my examination and to produce other evidence in your behalf. I have arranged for the appearance of those witnesses previously requested by you. If you desire additional witnesses, I will help to arrange for their appearance or for the production of any available evidence relating to your case. I do not intend to call as a witness *(name of witness)* (because it has been determined that the witness is unavailable or because the witness's commander has determined this). I therefore intend to consider the sworn statement of the witness in my recommendations as it is contained in the file.)

I.O. (To accused-counsel): Before proceeding further I now ask you whether you have any questions concerning your right to remain silent, concerning the offense(s) of which you are accused, your right to make a statement either sworn or unsworn, the use that can be made of any statement you may make, your right to cross-examine witnesses against you, or your right to present anything you may desire in your own behalf and have me examine available witnesses requested by you either in defense, mitigation, or extenuation.

(Counsel-Accused): *(Yes/no)*.

Note. At this point, answer any questions that the accused may have with respect to rights or as to procedural or other matters concerning the investigation. You should not proceed further until convinced that the accused understands these rights. If the accused is represented by counsel, however, the latter will generally indicate that he or she has explained these matters to the accused and that they are understood.

I.O. (To accused-counsel): Do you want me to call any witnesses to testify in your defense or to testify in mitigation or extenuation on your behalf?

(Counsel-Accused): *(Yes/no)*.

I.O. (To accused-counsel): Do you want me to call any other witness(es) in this case for cross-examination? If so, provide name(s) and organization(s) or address(es). If you are aware of any military records that you want me to consider and that you have been unable to obtain, provide a list of these documents.

(Counsel-Accused): *(Yes/no)*.

Figure 3-2. Procedure for opening session of the formal investigation

Note. The word "oath" as used in this appendix includes the word "affirmation." All oaths and affirmations should be made in the presence of the accused. Generally, only witnesses need be sworn at an article 32 investigation. There is no requirement that you as the investigating officer or counsel be sworn. Interpreters must also be sworn before beginning their duties. The oath may be administered by you in the following manner: You should raise your right hand and have the person being sworn stand with right hand raised. You should then read or recite the appropriate oath and receive the appropriate response.

Oath for Witnesses

I.O. Do you swear that the evidence you shall give in the case now being investigated shall be the truth, the whole truth, and nothing but the truth, so help you God?

Affirmation

I.O. Do you affirm that the evidence you shall give in the case now being investigated shall be the truth, the whole truth, and nothing but the truth?

Note. The "affirmation" is used when administering the oath to persons who have conscientious scruples against taking an oath or to persons who do not believe in the existence of a supreme being. See R.C.M. 807. Persons who recognize special forms or rites as obligatory, and persons who do not believe in a supreme being may be sworn in their own manner or according to the ceremonies of the religion they profess and declare to be binding.

Oath for Interpreter

I.O. Do you (swear) (affirm) that in the case now being investigated you will interpret truly the testimony you are called upon to interpret (, so help you God).

Note. When testimony is given through an interpreter, the interpreter must first be sworn. See R.C.M. 807. *The interpreter must translate questions and answers in verbatim form.*

Figure 3-3. Oaths

Introductory questions to witnesses

(Swear witness) See figure 3-3.

I.O.: State your full name and (for military witnesses: grade, organization, and armed force) (for civilian witnesses: residence address and occupation).

WITNESS: *(Complete response).*

I.O.: Do you know the accused in this case?

WITNESS: *(Yes/no).*

Note. If the identification of the accused is not an essential part of the expected testimony of the witness, this question may be omitted. If the witness identifies the accused, the witness should normally be asked to state the accused's name and organization if known. If the identity of the accused is particularly relevant in a case, and the identity of the accused as the perpetrator of the offense depends upon the ability of the witness to identify the accused, the accused's counsel may request that the witness be required to identify the accused from a nonsuggestive lineup of persons similar in appearance to the accused. This request should be granted whenever possible. Otherwise the ability of the witness to identify the accused as the offender may be based on the fact that the accused is the only person whose conduct is being investigated. In any event in this situation, you should inquire into the basis for the witness's identification of the accused.

Government Witness

You determine the order of questioning of all witnesses and you may conduct the first questioning.

Note: If Government counsel is present, he or she may first examine Government witnesses, followed by cross-examination by the accused or defense counsel, then followed by questioning by you if further clarification is necessary.

I.O.: (to witness after introductory questions): *(Questions the witness about the facts of the case).*

I.O.: Where were you when you saw him?

WITNESS: I was in the dayroom of my company.

I.O.: About what time was this?

WITNESS: It was approximately 0930, sir.

I.O.: Was anyone present at the time?

WITNESS: Sergeant John Smith was there, sir.

I.O.: What was the accused doing at 0930?

WITNESS: When I came into the dayroom sir, I saw Sergeant Smith and the accused facing each other and (witness continues with details of the incident).

* * * * *

Cross-Examination of Government Witness

Note. When you or Government counsel have completed an examination of a witness, you should advise the accused and counsel (if the accused is represented by counsel) substantially as follows:

I.O. (To accused-counsel): You may now cross-examine this witness concerning any of his/her testimony, any knowledge possessed of the offense(s), or concerning the witness's worthiness of belief. (Since you are not represented by counsel, I will do this for you, if you wish, if you will inform me in a general way of the matters about which you want me to question the witness.) Do you wish to cross-examine this witness?

(Counsel) (Accused): *(Yes/no).*

Note. If the accused or counsel desires the witness to be cross-examined proceed substantially as follows:

(Counsel) (Accused) (I.O.) (to the witness): Did you hear the subject of the argument between the accused and Sergeant Smith?

WITNESS: No sir, they were arguing at the time I came into the dayroom, and I did not hear what was said before I got there.

(Counsel) (Accused) (I.O.): Did you see any gestures made during the argument by Sergeant Smith?

WITNESS: I am not exactly sure what you mean, but . . . (witness continues to describe details of the incident).

I.O. (to accused-counsel): Do you have any further questions you want this witness to answer?

(Counsel) (Accused): *(Yes/no).*

I.O.: The witness is excused.

Figure 3-4. Examination of witnesses

* * * * *

Calling Defense Witnesses

I.O. (to accused-counsel): I have now called all witnesses I contemplate calling and have revealed to you all evidence I intend to consider in the preliminary portions of this investigation. As I have previously advised you, you may now present any evidence you desire. Do you have any witnesses to testify in your defense or in extenuation and mitigation? If so, I will call them at this time.

(Counsel) (Accused): *(No/yes, with name(s) and address(es)).*

Note. If witnesses are to be called to testify on the accused's behalf, you should advise the accused substantially as follows:

I.O. (to accused-counsel): You may question each of the witnesses who are to testify for you (or, since you are not represented by counsel, I will question them, if you prefer, if you will tell me generally what you want to question them about).

Note. If the accused is represented by counsel, you should assume that counsel will conduct the examination of the witness and present evidence in a planned procedure. If the accused has elected not to have counsel at the investigation, you should permit the accused to examine or cross-examine witnesses personally if desired. The procedure for administering the oath (fig 3-3) and for introductory questioning of the witness set forth above should be followed for defense witnesses. After the accused or counsel has completed examination of the defense witness, or you have done so, you may cross-examine the witness.

Calling Additional Witnesses

Note. When all witnesses who were initially called have testified, you should determine whether other witnesses should be called in the interests of justice, fairness, and a complete investigation. In addition, inquire of the accused substantially as follows:

I.O. (to accused-counsel): (I do not intend to call any additional witnesses.) (I intend to call *(name(s))* as additional witnesses.) (I am going to recall *(name(s))* for further questioning.) Are there any witnesses you want me to recall or are there any new witnesses?

(Counsel) (Accused): *(No/yes, with name(s) and address(es)).*

Explanation of Accused's Rights as a Witness

Note. After all the witnesses have testified and the accused or his counsel indicate that they have no further evidence to present, you should inquire of accused and counsel, if the accused has not previously made a statement, substantially as follows:

I.O. (to accused): Earlier in this investigation, I advised you of your rights to make a statement or to remain silent. Do you want me to repeat this advice? Do you desire to make a statement in any form?

(Counsel) (Accused): *(Yes/no).*

Figure 3-4. Examination of witnesses - Continued

Real Evidence (Physical Objects)

I.O. (To witness): This is a knife which I have designated as *(exhibit number)*.

Note. The accused and counsel should be permitted to examine the exhibit at this point.

I.O. (To witness): Do you recognize this knife?

WITNESS: *(Yes/no)*.

I.O. How do you recognize it?

WITNESS: I recognize it by *(witness describes how he or she recognizes the knife)*.

I.O. When did you first see this knife?

WITNESS: I got my first look at the knife when I found it under the accused's bunk.

I.O. (To accused-counsel after questioning the witness further as to the circumstances under which the knife was found, and after cross-examination, if any, of the witness): Do you have any objection to my considering this exhibit as evidence?

(Counsel) (Accused): *(Yes, stating reason(s)/no)*.

Documentary Evidence

Authenticated Official Record

I.O. (to accused-counsel): I have SIDPERS document of *(unit designation)*, for *(inclusive dates)*, which I have designated *(exhibit number)*. It appears to be certified as a true copy by *(rank, name, organization, and duty position of authenticating official)*. I now hand you this exhibit for your examination.

I.O. (to accused-counsel after permitting him to examine the document): Do you have any objection to my considering this exhibit as evidence?

(Counsel) (Accused): *(Yes, stating reason(s)/no)*.

Figure 3-5. Examination of evidence

Chapter 4 Completion of the Investigating Officer's Report

4-1. Report preparation

During the investigation, you should use a copy of DD Form 457 (fig 4-1). Your notes from the investigation and the DD Form 457 may be used as working papers in preparing the report to the officer who directed the investigation. If the investigation is not to be completed verbatim, you must put the substance of each witness's testimony in writing and, unless it would unduly delay completion of your report, you should ask the witness to sign and swear to the statement.

4-2. Considering the evidence and making a recommendation

In many cases, you may be able to make your recommendation as soon as the investigation closes. If so, record it in items 20 or 21 of

the working copy of DD Form 457 and then have the report typed in final form. If you are unable to make a decision immediately, you may have the testimony transcribed and review it before coming to a conclusion.

4-3. Forwarding the report

a. You should attach all papers furnished to you, together with all evidence produced at the investigation, to the DD Form 457. If practicable, hand-carry the entire file to the headquarters of the officer who directed the investigation.

b. Each document in the file should be in five copies. Furnishing a copy of the investigation to the accused is not one of your responsibilities.

c. If the accused or counsel requests a copy of the report, you should explain that you will transmit that request to the officer who directed the investigation. You should make a notation of the request in the "remarks" section (item 21) of your report.

| INVESTIGATING OFFICER'S REPORT (Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial) | | | | | | |
|--|--------------------------------|--|--|--------------------------------|-----|----|
| 1a. FROM: (Name of Investigating Officer - Last, First, MI) Adamson, Adam A. | b. GRADE Major O-4 | c. ORGANIZATION 1st Bn, 61st Inf Bde | | d. DATE OF REPORT 14 Feb 9_ | | |
| 2a. TO: (Name of Officer who directed the investigation - Last, First, MI) Harrison, Harry H. | b. TITLE Commanding Officer | | c. ORGANIZATION 1st Bn, 61st Inf, Fort Cutts, Texas | | | |
| 3a. NAME OF ACCUSED (Last, First, MI) Benson, Ben B. | b. GRADE PVT E-1 | c. SSN | d. ORGANIZATION Co A, 2d Bn, 61st Inf | e. DATE OF CHARGES 1 Feb 9_ | | |
| (Check appropriate answer) | | | | | YES | NO |
| 4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1) | | | | | X | |
| 5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below) | | | | | X | |
| 6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d) | | | | | X | |
| 7a. NAME OF DEFENSE COUNSEL (Last, First, MI) Carlson, Carl C. | b. GRADE CPT O-3 | 8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) | | b. GRADE | | |
| c. ORGANIZATION (If appropriate) TDS w/duty Fort Cutts, Texas | | c. ORGANIZATION (If appropriate) | | | | |
| d. ADDRESS (If appropriate) | | d. ADDRESS (If appropriate) | | | | |
| 9. (To be signed by accused if accused values counsel. If accused does not sign, investigating officer will explain in detail in item 21.) | | | | | | |
| a. PLACE | | | b. DATE | | | |
| I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION. | | | | | | |
| c. SIGNATURE OF ACCUSED | | | | | | |
| 10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer) | | | | | YES | NO |
| a. THE CHARGE(S) UNDER INVESTIGATION | | | | | X | |
| b. THE IDENTITY OF THE ACCUSER | | | | | X | |
| c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31 | | | | | X | |
| d. THE PURPOSE OF THE INVESTIGATION | | | | | X | |
| e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE | | | | | X | |
| f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT | | | | | X | |
| g. THE RIGHT TO CROSS-EXAMINE WITNESSES | | | | | X | |
| h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED | | | | | X | |
| i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION | | | | | X | |
| j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING | | | | | X | |
| 11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.) | | | | | X | |
| b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL | | | | | | |
| NOTE: If additional space is required for any item, enter the additional material in item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c.") Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet." | | | | | | |

DD FORM 457
24 AUG

EDITION OF OCT 68 IS OBSOLETE.

Figure 4-1. Sample DD Form 457

| 13. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer?) | | | | |
|--|--|---|------------------|----|
| NAME (Last, First, MI) | GRADE (if any) | ORGANIZATION/ADDRESS (Whichever is appropriate) | YES | NO |
| Dodson, Dodd D. | CPT O-3 | Co A, 2d Bn, 61st Inf | X | |
| Evanson, Evan E. | SSG E-6 | Co A, 2d Bn, 61st Inf | X | |
| Fordson, Ford F. | SGT E-5 | 400th MP Co | X | |
| | | | | |
| | | | | |
| b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED. | | | | |
| 13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED: THE ACCUSED WAS PERMITTED TO EXAMINE EACH. | | | | |
| DESCRIPTION OF ITEM | LOCATION OF ORIGINAL (if not attached) | | YES | NO |
| Statement of Gregg Greggson (Fingerprint CID Lab Report analysis) | CID, Bldg 10, Fort Cutts, Texas | | X | |
| | CID, Bldg 10, Fort Cutts, Texas | | X | |
| | | | | |
| | | | | |
| d. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED | | | X | |
| 14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 509, 518(h).) | | | | X |
| 15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in item 21 below.) | | | X | |
| 16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL | | | X | |
| 17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM | | | X | |
| 18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED | | | X | |
| 19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 408(d)(1).) | | | X | |
| 20. I RECOMMEND: | | | | |
| a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL | | | | |
| b. <input type="checkbox"/> OTHER (Specify in item 21 below) | | | | |
| 21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.) Examples of other matters which may be discussed here: | | | | |
| <ol style="list-style-type: none"> 1. Discussion of evidence, credibility of witnesses, and sufficiency of proof. 2. Recommendations to dismiss or change any specification. 3. Statement of any anticipated offenses or of any anticipated difficulties in proving any specification on which trial is recommended. 4. Defense-requested objections (item 15). 5. Any other matter which should be known to the convening authority or subsequent reviewing authorities. | | | | |
| 22a. TYPED NAME OF INVESTIGATING OFFICER | | b. GRADE | c. ORGANIZATION | |
| Adam A. Adamson | | Major O-4 | 1st Bn, 61st Inf | |
| c. SIGNATURE OF INVESTIGATING OFFICER | | | d. DATE | |
| Adam A. Adamson | | | 14 Feb 91 | |

DU.S. G.P.O. 1984-421-646/17043

Figure 4-1. Sample DD Form 457--Continued



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PRETRIAL ALLIED PAPERS

FEB 15 2005

MEMORANDUM FOR Commander, Multi-National Corps - Iraq, Camp Victory,
Iraq APO AE 09342

SUBJECT: Advice on Disposition of Court-Martial Charges -
U.S. v. Combs

1. I have reviewed the attached original Charge and its specification, the additional Charge and its specifications, the Article 32 Investigation, and the allied papers in the case of Private First Class James E. Combs III, 272d Military Police Company, 759th Military Police Battalion, 89th Military Police Brigade, Camp Cuervo, Iraq, and render this advice in accordance with the provisions of Article 34, Uniform Code of Military Justice, and R.C.M. 406, Manual for Courts-Martial, 2002.

2. Legal Conclusions. After reviewing the charges, their specifications, the Article 32 Investigation and allied papers, I have reached the following legal conclusions:

a. The charges and their specifications allege offenses under the Uniform Code of Military Justice.

b. The allegations in the charges and their specifications are warranted by the evidence.

c. There is court-martial jurisdiction over the accused and charged offenses.

3. The Article 32 Investigating Officer recommends trial by Special Court-Martial. I disagree.

4. Chain of Command Recommendations. All subordinate commanders recommend a general court-martial.

5. Staff Judge Advocate Recommendation. I recommend that you refer the charges and their specifications to a general court-martial by the members listed in Court-Martial Convening Order Number 1, this headquarters, dated 17 January 2005.



MALINDA E. DUNN
COL, JA
Staff Judge Advocate

Encls
as

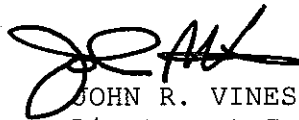
FEB 15 2005

FICI-JA

SUBJECT: Advice on Disposition of Court-Martial Charges -
U.S. v. Combs

DIRECTION OF THE CONVENING AUTHORITY:

The recommendation of the Staff Judge Advocate is approved.



JOHN R. VINES
Lieutenant General, USA
Commanding

DEPARTMENT OF THE ARMY
Headquarters, III Corps
Victory Base, Iraq
APO AE 09342-1400

AFZF-CG

JAN 17 2005

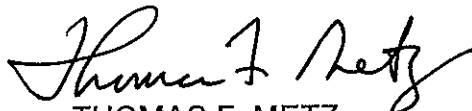
MEMORANDUM THRU

Commander, 89th Military Police Brigade, Camp Cuervo, Iraq. , APO AE 09390
Commander, 759th Military Police Battalion, 89th Military Police Brigade, Camp Cuervo,
Iraq. , APO AE 09390
Commander, 272d Military Police Company, 759th Military Police Battalion, 89th Military
Police Brigade, Camp Cuervo, Iraq. , APO AE 09390

FOR Private First Class James E. Combs II, 272d Military Police Company, 759th
Military Police Battalion, 89th Military Police Brigade, Camp Cuervo, Iraq. , APO AE
09390

SUBJECT: Administrative Separation Under the Provisions of AR 635-200, Chapter 10

Your request for discharge in lieu of court-martial under the provisions of AR 635-200,
Chapter 10, is disapproved.


THOMAS F. METZ
Lieutenant General, USA
Commanding



DEPARTMENT OF THE ARMY
HEADQUARTERS, 42ND MILITARY POLICE BRIGADE
CAMP VICTORY, IRAQ
APO AE 09342

REPLY TO
ATTENTION OF:

AFZH-MP

14 JANUARY 2005


MEMORANDUM FOR Commander, Multi-National Coalition-Iraq

FROM Commander, 42nd Military Police Brigade

SUBJECT: Chapter 10 (Discharge in lieu of Court-Martial) Separation Request Submitted by PFC James E. Combs III

1. At around 1350 on 22 September 2004, PFC James E. Combs III allegedly, by culpable negligence, discharged his assigned M-4 carbine and injured an Iraqi citizen, Babea'a Husaene. Mrs Husaene died from her wounds at 1900 that evening.
2. PFC Combs assigned defense attorney, CPT David Scott, has submitted a request for discharge in lieu of court-martial on his client's behalf. I strongly recommend that his request be denied.
3. I have reviewed the case file of US v. Combs and believe that this case must go to trial. A panel of PFC Combs' peers must have the opportunity to weigh all the facts in this case and make an informed decision on what type of punishment, if any, PFC Combs should receive. By taking this case to trial, MNC-I will get the opportunity to find out exactly what happened on 22 September 2004 and either preserve PFC Combs' career in the United States Army or punish him for wrongdoing.
4. As the victim in this case was an Iraqi citizen, it is imperative that we approach it with the same degree of diligence and respect for the victim as we would in any case involving a victim who was a U.S. citizen. By dismissing this case and allowing the accused to be discharged without punishment, we would be sending a message to the Iraqi community that their lives are not as valuable as those of U.S. citizens. In the environment in which we operate, such an impression could severely damage our relationship with the community. By trying the accused, we show that we truly believe in finding justice for the Iraqi people as well as our own soldiers. In light of these facts, this case must, therefore, go to trial.

*equal
justice*


RICHARD W. SWENGROS
COL, MP
Commanding



DEPARTMENT OF THE ARMY
TASK FORCE 759 MILITARY POLICE
CAMP CUERVO, IRAQ
APO AE 09390-2402

REPLY TO
ATTENTION OF:

AFZC-Y-P-CDR

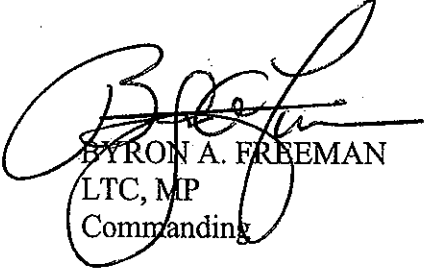
25 December 2004

MEMORANDUM THRU Commander, 42d Military Police Brigade

FOR Commander, III Corps, Camp Victory, Iraq

SUBJECT: Request for Discharge under AR 635-200, Chapter 10 – PFC James E. Combs III,
, 272d Military Police Company, 759th Military Police Battalion, 42d Military
Police Brigade, Camp Cuervo, Iraq

1. I strongly recommend and request approval for Chapter 10, Discharge in Lieu of Trial by Courts-Martial in accordance with AR 635-200 regarding PFC Combs, James E. III.
2. It is my opinion that a Chapter 10 is the appropriate course of action regarding this incident. PFC Combs is extremely remorseful of his negligent act and fully aware of the consequences that are inherent with his actions. I do not feel that a felony conviction and imprisonment is appropriate in his case. However, PFC Combs' actions and negligence bring discredit upon good order and discipline in the Armed Forces and therefore should be removed from continued service.
3. Point of contact is the undersigned at DNVT 550-1723.


BYRON A. FREEMAN
LTC, MP
Commanding



DEPARTMENT OF THE ARMY
272ND MILITARY POLICE COMPANY
APO AE 09390

AERTR-MP-272

24 December 2004

MEMORANDUM THRU

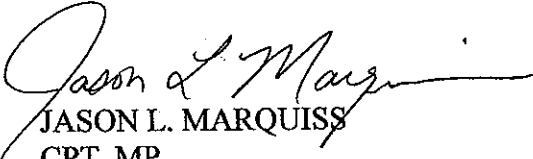
COMMANDER, 759TH Military Police Battalion

COMMANDER, 42ND Military Police Brigade

FOR COMMANDER, MULTI-NATIONAL CORPS IRAQ

SUBJECT: Request for Discharge under AR 635-200, Chapter 10

1. I fully endorse the request for discharge under AR 635-200, Chapter 10 in-lieu of trial by court-martial for PFC Combs.
2. Having preferred charges against this soldier in my command I fully understand the magnitude of both the act and subsequent punishment.
3. I believe that we are not setting a new lower standard by allowing this soldier to be discharged under chapter 10, but recognizing the mitigating or extenuating circumstances involved. PFC Combs' actions are contrary to good order and discipline and as such he should be removed from continued service as a result of his negligence. He will have to deal with this act, the stigmatism, and lack of benefits this discharge carries for the rest of his life.
4. A decision to allow this Soldier to be discharged is in keeping with the some of the best traditions the NCO corps rallies around – fairness and impartiality when recommending both rewards and punishment.
5. Point of contact is the undersigned at DNVT 559-1740 or IRAQNA 0790-192-7052.


JASON L. MARQUISS
CPT, MP
Commanding



DEPARTMENT OF THE ARMY
TASK FORCE 759 MILITARY POLICE
CAMP CUERVO, IRAQ
APO AE 09390-2402

REPLY TO
ATTENTION OF:

AFZC-Y-P-CSM

24 December 2004

MEMORANDUM THRU

Commander, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq

Commander, 42nd MP BDE, III Corps, Camp Victory, Iraq

FOR Commander, III Corps, Camp Victory, Iraq

SUBJECT: Discharge in Lieu of Trial by Court-Martial – PFC James Combs,
272nd MP Company, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq

1. On 22 September 2004, PFC Combs made a mistake that will haunt him personally and professionally for the rest of his life. In addition to this memory that will affect him daily, if tried by court martial and found guilty, every time PFC Combs seeks employment, he will be reminded of this mistake and, in my opinion, suffer unjustly. In combat, we ask a lot of our young Soldiers, particularly those who are gunners and responsible for the safety of the team. This Soldier made a mistake but you should consider the environment and the circumstances surrounding this incident when considering the method of punishment. For these reasons, I fully support allowing PFC Combs be discharged from the military under Chapter 10 requirements in lieu of trial by court-martial.
2. As the Battalion CSM, everyday I witnessed bravery, courage, anger, hostility, frustration and more from all Soldiers as they handled situations ranging from direct enemy contact to indirect fire to an unruly populace. Each incident required decisive action directed from every level of leadership; from the lowest ranking Soldier on the roof top conducting force protection duties to the Platoon Leader guiding their platoon through various MP missions. Soldiers and leaders make mistakes while making life and death decisions every day. They make these mistakes and then, based on the circumstances surrounding the entire situation, are held responsible and accountable. Our system for holding Soldiers responsible and accountable is designed to provide the commanders, who know best the circumstances that their Soldiers are in, the ability to adjudicate the issue. There are many examples of poor decisions by leaders and Soldiers that may not have been fatal, but were, in fact, detrimental to the good order and discipline of the military, and were allowed to be dealt with at the unit level. In this incident, I believe that PFC Combs made a mistake but I ask that you allow me to convey the message that PFC Combs should not have to pay for this mistake for the rest of his life with a BCD. I believe the unit should be allowed to also handle this situation and separate PFC Combs as recommended.

AFZC-Y-P-CSM

SUBJECT: Discharge in Lieu of Trial by Court-Martial -- PFC James Combs, ...
272nd MP Company, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq

3. If you have any questions or comments concerning this memorandum, please contact me at geraldine.rimply@us.army.mil.


GERALDINE M. RIMPLEY
Battalion Command Sergeant Major



DEPARTMENT OF THE ARMY
272ND MILITARY POLICE COMPANY
APO AE 09390

AERTR-MP-272

24 December 2004

MEMORANDUM THRU

Commander, 272nd MP Company, 759th MP Battalion, 42nd MP Brigade, Camp Ceurvo, Iraq
APO AE 09390

Commander, 759th MP Battalion, 42nd MP Brigade, Camp Ceurvo, Iraq APO AE 09390

Commander, 42nd MP Brigade, Camp Victory, Iraq APO AE 09342

FOR Commander, III Corps, Camp Victory, Iraq APO AE 09342


SUBJECT: Discharge in Lieu of Trial by Court-Martial – PFC James Combs, ...
272nd MP Company, 759th MP Battalion, 42nd MP Brigade, Camp Ceurvo, Iraq

1. I am writing this letter to communicate my support for the attached Discharge in Lieu of Trial by Court-Martial that is being submitted by PFC James Combs.
2. I support a discharge in Lieu of Trial by Court-Martial as the appropriate measure in this case. When this incident occurred, as a senior leader in this unit, I questioned everything. Where did I go wrong in enforcing the standards? Were the NCOs providing supervision? Did PFC Combs want to kill someone to see what it was like? In the end I feel the incident resulted from PFC Combs failing to follow proper procedures and the will of the Lord. How else can one explain a negligent discharge traveling over 200 meters and fatally wounding a civilian. I personally wrestled with the idea of supporting this request and found myself asking what price do you put on human life? The Army answered that question, \$3,500.00, but does it have to cost the rights and freedom of a Soldier? Not in this case. For centuries American Soldiers have been called upon to defend freedom and democracy around the world. They have been placed in life or death situations in dangerous environments and been asked to do the right thing. At this time of year, I am reminded of the 101st Airborne Division, surrounded at Bastogne, Belgium, low on supplies and freezing cold. Those Soldiers and many others after those have given everything for this nation and this Army. PFC Combs has followed in the footsteps of the soldiers before him. He deployed to a harsh and unforgiving environment, was placed under extreme hardship, and I believe, he did his best. I don't think PFC Combs' negligence should result in his Trial by Court-Martial or imprisonment. PFC Combs is remorseful and extremely sorry for his actions. Soldiers in this theater and everywhere are asked for so much, in the interest of this unit, the Army and this nation, I ask you look favorably upon this action.

AERTR-MP-272

SUBJECT: Discharge in Lieu of Trial by Court-Martial – PFC James Combs,
272nd MP Company, 759th MP Battalion, 42nd MP Brigade, Camp Ceurvo, Iraq

3. Point of contact is the undersigned at DNV 559-1740.


THOMAS E. MILLER, JR.
1SG, USA
First Sergeant



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

REPLY TO
ATTENTION OF:

FICI-JA-BFO

23 December 2004

MEMORANDUM THRU

Commander, 272nd MP Company, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq

Commander, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq

Commander, 42nd MP BDE, III Corps, Camp Victory, Iraq

FOR Commander, III Corps, Camp Victory, Iraq

SUBJECT: Chapter 10 Request Justification -- PFC James Combs, 272nd MP
Company, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq,

1. Sir, I represent PFC James Combs in the court-martial proceedings that have been initiated against him. I request that you separate this soldier under AR 635-200, Chapter 10, Discharge in Lieu of Trial by Court-Martial.

2. The tragedy here is the result of a serious error in judgment. However, it is an appropriate case for a Chapter 10 discharge. PFC Combs has taken responsibility for his misconduct and continues to work hard to rebuild the unit's trust in him as a person and a Soldier. PFC Combs acknowledges that he made a terrible error in judgment and is devastated by the outcome of those actions (See Enclosure 1). PFC Combs' conduct must be addressed, but the Defense submits that a court-martial with its accompanying federal felony conviction and prison time are not warranted in this case. We ask you consider all of the information in this memorandum, the attachments, and the letters from his fellow Soldiers, and approve PFC Combs' request for discharge.

3. This case is about an accident. An accident that occurred while a young Soldier was doing the best he could under dangerous and harrowing conditions. PFC Combs is a 20-year old private that was operating in a high-threat environment in downtown Baghdad that the Soldiers have nicknamed the "Wild West". Clearly, PFC Combs negligently discharged his firearm. The discharge occurred on the roof of IP Station #10, on a day of temperatures over 100 degrees, while PFC Combs was pulling security for his MP Team. He was 50 minutes into a one-hour guard shift and was scanning with his weapon, running scenarios in his head, doing his best to stay alert. He failed to put his weapon onto safe after placing it on burst, and then 15 minutes later, he placed his finger in the trigger well and discharged the firearm. The Government charged that his bullet struck a woman 200 meters away. At the Article 32 hearing, Government Counsel conceded that the victim's injury was possibly from a **ricochet**.

FICI-JA-BFO

SUBJECT: Chapter 10 Request Justification -- PFC James Combs, _____ 272nd MP
Company, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq

4. The tragedy in this case will be compounded by turning this mistake, and a freakish 200-meter possible "ricochet", into prison and a felony. Young men and women coming to Iraq must know that if they make a mistake while trying their best that their service here and the environment will be taken into account. This is a young Soldier that negligently discharged his firearm while operating in a high-stress combat environment. His conduct must be punished. But, we propose a General or Other than Honorable Discharge (OTH) is the appropriate disposition for this case. PFC Combs did not follow the rules for safely handling a weapon. His actions were negligent. But, under the circumstances in this case, negligently failing to follow the rules should not result in prison and a felony.

5. Commander Scott Waddle (See Enclosure 2) was a senior Naval Officer in command of the USS Greeneville, a US Navy attack submarine. His negligent actions resulted in the loss of nine Japanese fishermen (men and boys) when his submarine sank the fishing vessel "Ehime Maru" off the coast of Hawaii. The Pacific Fleet Commander was quoted as stating "this tragic accident could and should have been avoided by simply following existing Navy standards and procedures in bringing submarines to the surface." Commander Waddle was given **Article 15 punishment** for his acts.

6. Commander Waddle and PFC Combs both made mistakes with tragic results. PFC Combs made his mistake while conducting high stress combat operations in Baghdad. Commander Waddle made his while cruising on a PR mission off the coast of Hawaii. Had PFC Combs placed his weapon back on safe and kept his finger out of the trigger well I would not be writing to you today. Had Commander Waddle followed Naval safety regulations nine men and boys from one of our coalition countries would still be alive. In the interests of fairness and equity, we request you approve this Chapter 10.

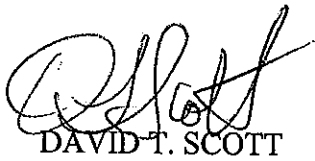
7. If this request is approved, PFC Combs will be punished for his misconduct as he returns to his civilian life. An OTH discharge will be a permanent part of his record and will make it difficult for him to gain meaningful employment. He will not be able to fulfill his dream of following in his father's footsteps and becoming a federal police officer in Washington D.C. Additionally, an OTH will shadow him in all his endeavors for the rest of his life. He will automatically lose most Veterans Affairs' (VA) and other benefits, to include his Montgomery GI Bill.

8. An approved Chapter 10 sends a message to other Soldiers in the unit that conduct like PFC Combs' will not be tolerated. It will be well known that weapon safety mistakes, and their tragic results, will end your military career, ruin your reputation, potentially sacrifice your future as a productive member of society, and leave you with a discharge less than Honorable. But, they will also know that they can have the same chance as senior officers who commit similar negligent conduct. Commander Waddle got to retire, all PFC Combs asks is to be discharged.

FICI-JA-BFO

SUBJECT: Chapter 10 Request Justification -- PFC James Combs, _____, 272nd MP
Company, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq

9. Respectfully, I ask that you consider PFC Combs, the words of his fellow soldiers and family (See Enclosures 3, 4, 5), and the evidence in the case currently pending trial, and approve this Chapter 10 request (See Enclosure 6). If you have any questions, I can be reached at 822-2866.



DAVID T. SCOTT
CPT, JA
Defense Counsel

Encls

1. Letter, PFC Combs
2. Picture
3. Soldier Letters
4. Letter, Mrs. Hunter
5. Powerpoint
6. Chapter 10 Request, PFC Combs

Sir, family members, my unit:

I want to say I am sorry to everyone affected by my negligent discharge and the injuries it caused, mentally and physically. I am truly sorry for everything. I know that as a U.S. Army Soldier and a member of the Military Police Corp I must never do what I did. You must always keep your weapon on safe unless you are going to engage the enemy. It must be on safe at all other times. I truly let down everyone in the unit and the people of Iraq that we are trying to save when I failed to handle my assign weapon safely.

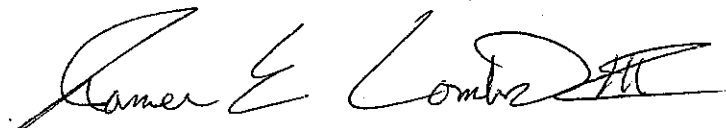
My poor judgment has hurt and harmed many people. There is no real way I can ever make it up to the victim, family members, or the U.S. Army. I will carry this mistake with me the rest of my life.

I was trying my best to do my job. But I failed. My failure has ruined my life, but that is nothing compared to the effect on the victim and family. I can never make up my mistake to them. But I will try.

It has also hurt the war effort. When soldiers accidentally harm civilians through a negligent discharge they bring shame on the army. They also make it hard to win the war.

I don't have words that can explain my sorrow over my mistake. I don't know what to say or how I can do penance. But I pray everyday for guidance.

But, I pledge that I will try to make up for this. I only ask forgiveness and mercy. I promise to spend the rest of my life making up for my action.



PFC James Combs

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

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

Photographs

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

For use of this form, see AR 15-6; the proponent agency is OTJAG.

IF MORE SPACE IS REQUIRED IN FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

SECTION I - APPOINTMENT

Appointed by LTC Byron A. Freeman, Commander, Task Force 759th Military Police, Camp Cuervo, Iraq, APO AE 09390-2402
(Appointing authority)

on 27 September 2004 (Date) (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)

SECTION II - SESSIONS

The (investigation) (board) commenced at Camp Cuervo, Iraq at 1000
(Place) (Time)

on 27 September 2004 (Date) (If a formal board met for more than one session, check here . Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absences, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)

The (investigating officer) (board) finished gathering/hearing evidence at 1430 on 4 October 2004
(Time) (Date)
and completed findings and recommendations at 1600 on 6 October 2004
(Time) (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

| A. COMPLETE IN ALL CASES | | YES | NO ¹⁾ | NA ²⁾ |
|--------------------------|--|-----|------------------|------------------|
| 1 | Inclosures (para 3-15, AR 15-6) | | | |
| | Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed) | | | |
| | a. The letter of appointment or a summary of oral appointment data? | X | | |
| | b. Copy of notice to respondent, if any? (See item 9, below) | | | X |
| | c. Other correspondence with respondent or counsel, if any? | | | X |
| | d. All other written communications to or from the appointing authority? | X | | |
| | e. Privacy Act Statements (Certificate, if statement provided orally)? | | | X |
| | f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)? | | | X |
| | g. Information as to sessions of a formal board not included on page 1 of this report? | | | X |
| | h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board? | | | X |

FOOTNOTES: ¹⁾ Explain all negative answers on an attached sheet.
²⁾ Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.



DEPARTMENT OF THE ARMY
272ND MILITARY POLICE COMPANY
CAMP CUERVO, IRAQ
APO AE 09342

REPLY TO
ATTENTION OF:

FICI-JA-BFO

13 December 2004

MEMORANDUM THRU

Commander, 272nd MP Company, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq


Commander, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq

Commander, 42nd MP BDE, III Corps, Camp Victory, Iraq

FOR Commander, III Corps, Camp Victory, Iraq

SUBJECT: Discharge in Lieu of Trial by Court-Martial -- PFC James Combs, 4
272nd MP Company, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq,

1. I am writing this memorandum to communicate my support for the attached Discharge in Lieu of Trial by Court-Martial that is being submitted by PFC James Combs.
2. I strongly support a Discharge in Lieu of Trial by Court Martial as the appropriate measure in this case. I have been PFC Combs platoon sergeant since Oct 03 and have at no time observed PFC Combs show aggression towards any person. PFC Combs is the kind of person who would rather venture away from a confrontation than get into one. I do not believe that PFC Combs deserves jail time for this incident and thus a discharge would adequately serve the same purpose and would save the Army and this unit the time and manpower that would be needed to set up court martial proceedings.
3. POC this action is the undersigned at DMVT 559-1740.


STEPHEN S. McQUERRY
SSG(P), USA
Platoon Sergeant



DEPARTMENT OF THE ARMY
272ND MILITARY POLICE COMPANY
CAMP CUERVO, IRAQ
APO AE 09342

REPLY TO
ATTENTION OF:

FICI-JA-BFO

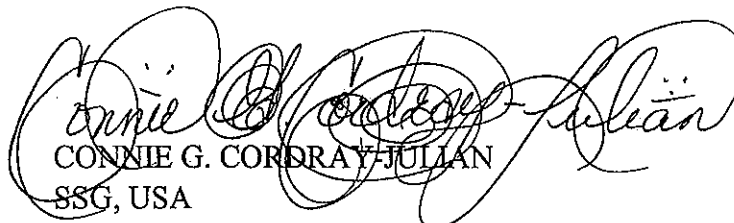
22 December 2004

MEMORANDUM THRU

FOR Commander, III Corps, Camp Victory, Iraq

SUBJECT: Discharge in Lieu of Trial by Court-Martial -- PFC James Combs,
272nd MP Company, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq,

1. I am writing this memorandum to communicate my support for the attached Discharge in Lieu of Trial by Court-Martial that is being submitted by PFC James Combs.
2. I have been PFC Combs squad leader since Jul 04, since that time I have not seen any signs of aggression. PFC Combs is a very passive person and passes that aura off to the soldiers around him. PFC Combs has demonstrated on numerous occasions his dedication to the U.S. Army. PFC Combs is a strong soldier that continues to work and improve himself as well as strive to complete missions above the standard. PFC Combs continually tries to better himself and the soldiers around him. PFC Combs is a soldier that completes tasks requiring little to no supervision. After the incident occurred PFC Combs continues to soldier and maintain a positive outlook within his squad putting extra personal time into completing details so as the soldiers getting off mission do not have to put in extra hours of work. PFC Combs is constantly concerned with the welfare of the soldiers around him. PFC Combs is a soldier that puts a lot of personal care into his job performance. PFC Combs demonstrated himself above the standard in earning a waiver for Specialist for 1 Oct 04 but was unable to be pinned due to the incident at hand.
3. POC this action is the undersigned at DNVT 559-1740.


CONNIE G. CORDRAY-JULIAN
SSG, USA
Squad Leader

DEPARTMENT OF THE ARMY
272ND MILITARY POLICE COMPANY
CAMP CUERVO, IRAQ
APO AE 09342

REPLY TO
ATTENTION OF:

FICI-JA-BFO

13 December 2004

MEMORANDUM FOR Commander, III Corps, Camp Victory, Iraq

SUBJECT: Discharge in Lieu of Trial by Court-Martial -- PFC James Combs,
272nd MP Company, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq,

1. I am writing this memorandum to communicate my support for the attached Discharge in Lieu of Trial by Court-Martial that is being submitted by PFC James Combs.
2. I strongly support a Discharge in Lieu of Trial by Court Martial as the appropriate measure in this case. I do not feel that PFC Combs deserves to go through the court martial proceedings. Yes PFC Combs has made a mistake that he will remember for the rest of his life. I feel that he has gone through what he deserves as punishment. I feel strongly about backing up PFC Combs decision about requesting a chapter 10 instead of going to prison and having a felony charge on his record for the rest of his life. I have known PFC Combs for about 2 years. I was his Squad Leader for about 18 months; I know his way of thinking and he is a hard worker. I do not see any reason PFC Combs would have picked up his weapon and aimed it at a non-threat and pulled the trigger to shoot someone. He is not that type of person to take someone's life just to see what would happen.
3. POC this action is the undersigned at DMVT 559-1740.



DARRELL W. HALL
SGT, USA
Squad Leader

F

To Whom It May Concern:

I have known PFC Combs for over a year now. I have been his team mate for this whole deployment and even in the garrison environment and I am still currently his team mate also his room mate I know this man inside and out I look at him as a brother I never had. PFC Combs is a very mellow and outgoing person, he is a very quiet guy if he doesn't know you but still he is the kind of guy no matter who you are or were your from he would bend over backwards to help you even if he didn't know you, he is a very sweet and kind hearted person. As a soldier if you ask him to do something anything he will go out and execute his mission or responsibility with out questioning it or complaining about it he is not like the average Joe in any way you could say if their was a perfect soldier it would be him, and if he makes a mistake he never looks back and complains about it or dwells on it he just fixes his mistakes.

My personal thoughts about all of this I know I am only a Private First Class in the army and I don't have much say in things I just do what I am told to but in this case I can't just sit on the sidelines and watch my team mate and close friend go down in flames. I joined the army because it was my dream to serve since I was a little kid. My whole family has been through the service and now it is my time. I remember hearing all about the great stories of the United States Army and how they took care of their own and how much fun it could be and at the same time meeting new people and going to see different cultures around the world. I would get a chance to say that I was proud to be in the greatest army in the world. I mostly still feel this way about the army but lately I have had a different attitude about our great army. Lately I have seen a lot of mistakes that have been made and how from hearing about all the old stories how the army has changed so much. I can't say that the army has changed for the better or the worse but in some cause I can see that it has changed for the worse sometimes. I feel like the army doesn't take care of its own like they should. I defiantly see that some people treat this place like a garrison environment. I just don't want you to forget what kind of environment we are in. Its like no other environment, we are in a war, theres no other way to put it. We have brother in arms that are dying everyday here, as well as innocent people with the guilty. There is nothing we can do about that, it is just a factor of war. Sometimes they are just at the wrong place at the wrong time and some die because of accidents. When innocent people die in war no one wants them to by any means, its just a factor. If you look back at every conflict or war that has happened there are 100's upon 100's of innocent people that have died for the cause. War is nothing pretty, people are going to die and people will be punished for the actions that they have done during war. Nothing good will ever come out during the war. It is when it is all said and done with that you will see the good that came out of this war.

The day the incident happened I was there at station 10 when this all took place I was down in the truck posting security from out of my turret. Before I go on I want to say one quick thing. Combs was only a week away from getting his specialist and I know how he was for the last two weeks. Combs wanted to go to the next rank more than anything in the world. He was trying so hard to do right he did not want anything bad to happened to

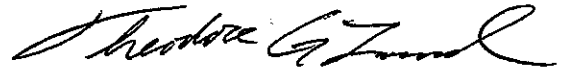
him. He was trying so hard to look so good for that next rank he was getting up earlier in the morning just to be ready for the mission. He was doing all of his soldier tasks and drills above and beyond so he could just show he was ready for his next big step in the army as a specialist. He was really looking good at everything he did and I know that the last thing in the whole world that he wanted is to have an accidental discharge. I remember hearing that gun shot go off and I remember right when it went off. At that time I didn't know if some one was going to start shooting at us because the neighborhood that we were in is a pretty bad place, or if someone seen something and took a shot at that exact point of time I wasn't sure what has happening. Next I knew I heard over our talk about that Combs had just had an accidental discharge and the sergeant did what they had to do they called it up. We were five minutes from getting ready to leave that station. There was suppose to be a two star general stopping by that station that day to see how things were going on our mission so security was increased and everybody was more focused. We were expecting him to show that day but he never did. I don't know the real reason why he didn't show he might have had more important things to do that day. After PFC Combs had his discharge he came down to the truck and we headed back to camp so the leaders could do what had to be done when something like this happens. I remember the highest ranking sergeant coming up to us right before we left telling us to keep are eyes open because that round might have hit somebody and there is a angry crowd out there, and they might want to retaliate. As soon as we rolled out past the wall of the IP station every gunner was focused and ready for anything to happen. I remember looking every where for this angry crowd and I saw nothing. Everybody was just like they always are at that place, just walking around carrying on with their everyday life. There was no angry crowd and I saw no signs of anybody that got hurt from any stray bullet. Before we left I talked to Combs because he is my driver. I asked him what happened, he was in complete shock and he couldn't understand why the weapon went off. I know by the look on his face and how hard he was trying just to get promoted to specialist that he did not mean to have in accidental discharge. I remember in exact words what he said that day after it happened, he said "man I was doing so good to, man I really wanted that specialist, I don't know what happened" and the look on his face I could never forget. He looked like he wanted to cry because he knew and I knew that if you have an accidental discharge you will not be getting promoted. You will be getting demoted. I felt so bad for him because he was doing so good and he was trying so hard to be a great soldier. No matter what has happened or what is said about all of this I know and everybody else who knows Combs personally knows that he is the best soldier and he is just an outstanding kind of guy.

What I am asking I know is a lot, and you may believe he should be punished for his actions. I am not saying he should not be punished for his actions, but please I am begging you as one soldier to another soldier to show mercy on him. Don't forget he is a brother in arms and that is what the army truly is one big family defending our siblings back at home. I cant beg you enough to show mercy on him. He is not a man who should go to jail for his actions or for this incident it was truly an accident in war. He is just a young man who joined for the right to protect his freedom and to serve his country. He did that knowing he might give the ultimate sacrifice and I know he would if he had to. Please don't forget he came here to do good on his own. No one forced him to come here but he did it for his country. The last thing he would of wanted is to let his country

down. So please show mercy and do not let this great man and outstanding soldier go to jail. I do not think that is a fair punishment for this man and I know if you truly knew him you would think the same way I do.

Thank you for giving me the time to let my thoughts be heard.

Sincerely,

A handwritten signature in cursive script, appearing to read "Theodore G. Larnard".

Theodore G. Larnard
PFC, USA

December 5, 2004

Dear Lt. General Metz:

I'm writing to ask you to be lenient and consider the motion for Chapter 10 for my son James E. Combs III.

I'm aware of the accident and I'm sorry. I'm also aware of the hostile environment that he has been placed as a young kid with little knowledge of what to expect and hope that you take that into consideration when making your decision. James has been a good son. He has overcome the heartbreak of a divorce home. He endured the heartache of not having his mother with him during his early years and he did not fall victim to the problems most kids of divorce families encounter. James did well in school and did not engage in many abuses kids from his situation sometimes do.

James joined the military because he thought it would help him become a police officer when his duties were completed with the military. When he told me of his decision to join, I tried to convince him to reconsider. But he told me "Mom I think joining the military will be a great opportunity for me and will help in the future." I now see his future fading and I ask that you consider this request.

James did not have it easy. At seven years old I sent him to live with his father when we separated (his father was abusive to me), because I could not provide for him and myself. At the time it was to be temporary, but his father chose to keep custody and I've spent the last 10 plus years hating myself for not doing all I could to keep him with me. At the time I did my best, but it just wasn't good enough. I've lived with the fact that I fail him as a mother and was not there for him when he needed me in his early years. That is why I ask if my words could help him now, I will not feel like a complete failure. Our separation over the years has caused many years of heartache and depression and just him being in Iraq has deepened the pain of not being able to help him then and now. Again I feel helpless to help my son and be there for him. If I could trade places with him right now that would be my wish, so that he could have a meaningful and successful life.

James is a good and loving son and brother. He's very supportive of his little sister (Danielle) 11 years old who is going through preteens and James advises her on how to handle mom (because they both think I'm too strict). She thinks the world of her brother. She has put together a slideshow that she will be sending to Capt Scott.

Please give my son another chance.

Thank you.
Janice R. Hunter

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

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

Photographs

His name is Danielle and I am James' little sister. My brother has been very nice for a big brother. He has always been there for me to talk to. When my brother and I are together these are the things we like to do together. I like to talk to him, play games with him, and just joke around with him and his friends. And that he will always protect me from harm. If he comes home we can do these things together. He makes me feel good when he is around by sometimes telling his friends about me that makes me feel very happy. And these are the many reasons why I love my big brother.



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

REPLY TO
ATTENTION OF:

FICI-JA-BFO

24 December 2004

MEMORANDUM THRU

Commander, 272nd MP Company, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq

Commander, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq

Commander, 42nd MP BDE, III Corps, Camp Victory, Iraq

FOR Commander, III Corps, Camp Victory, Iraq

SUBJECT: Request for Discharge in Lieu of Trial by Court-Martial -- PFC James Combs,
272nd MP Company, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq,

1. I, PFC James Combs, hereby voluntarily request discharge in lieu of trial by court-martial under AR 635-200, chapter 10. I understand that I may request discharge in lieu of trial by court-martial because of the following charge which has been preferred against me under the Uniform Code of Military Justice, which authorizes the imposition of a bad conduct or dishonorable discharge: Article 119, Involuntary Manslaughter.

2. I am making this request of my own free will and have not been subjected to any coercion whatsoever by any person. I have been advised of the implications that are attached to it. By submitting this request for discharge, I acknowledge that I understand the elements of the offense charged and am guilty of the charge against me or of a lesser included offense therein contained which also authorize the imposition of a bad conduct or dishonorable discharge. Moreover, I hereby state that under no circumstances do I desire further rehabilitation, for I have no desire to perform further military service.

3. Prior to completing this form, I have been afforded the opportunity to consult with appointed counsel for consultation. I have consulted with counsel for consultation who has fully advised me of the nature of my rights under the Uniform Code of Military Justice, the elements of the offenses with which I am charged, any relevant lesser included offenses thereto, and the facts which must be established by competent evidence beyond a reasonable doubt to sustain a finding of guilty; the possible defenses which appear to be available at this time; and the maximum permissible punishment if found guilty. Although he has furnished me legal advice, this decision is my own.

4. I understand that, if my request for discharge is accepted, I may be discharged under conditions other than honorable. I have been advised and understand the possible effects of an Under Other Than Honorable Discharge (including but not limited to reduction to the lowest

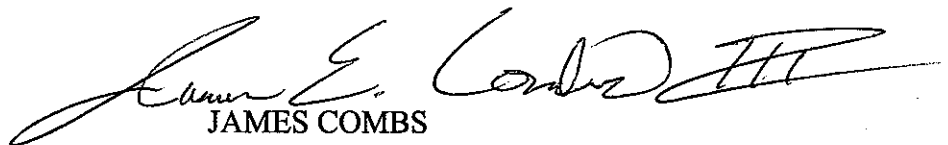
SUBJECT: Request for Discharge in Lieu of Trial by Court-Martial PFC James Combs,
272nd MP Company, 759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq

enlisted grade (Private E-1) by operation of law) and that, as a result of the issuance of such a discharge, I will be deprived of many or all Army benefits, that I may be ineligible for many or all benefits administered by the Veterans Administration, and that I may be deprived of my rights and benefits as a veteran under both Federal and State law, as indicated on a copy of DA Poster 635-1, which was provided me. I also understand that I may expect to encounter substantial prejudice in civilian life because of an Under Other Than Honorable Discharge. I further understand that there is neither automatic upgrading nor review by any Government agency of a less than honorable discharge and that I must apply to the Army Discharge Review Board or the Army Board of Corrections of Military Records if I wish review of my discharge. I realize that the act of consideration by either board does not imply that my discharge will be upgraded.

5. I understand that, once my request for discharge is submitted, it may be withdrawn only with consent of the commander exercising general court-martial authority, or without that commander's consent, in the event trial results in an acquittal or the sentence does not include a punitive discharge even though one could have been adjudged by the court. Further, I understand that if I depart absent without leave, this request may be processed and I may be discharged even though I am absent. This request is conditioned upon disapproval of the findings and sentence of any court-martial, if applicable in this case.

6. I have been advised that I may submit statements in my own behalf, which will accompany my request for discharge. Statements in my own behalf are submitted as enclosures to my Defense Counsel's transmittal memorandum. I ask that you consider all materials submitted in my Defense Counsel's transmittal memorandum as materials submitted on my own behalf.

7. I hereby acknowledge receipt of a copy of this request for discharge.



JAMES COMBS
PFC, U.S. Army
Accused

SUBJECT: Request for Discharge in Lieu of Trial by Court-Martial -- PFC James Combs,
272nd MP Company, ~~759th MP BN, 42nd MP BDE, Camp Cuervo, Iraq~~

Having been advised by me of:

- a. The basis for his contemplated trial by court-martial and the maximum permissible punishment authorized under the Uniform Code of Military Justice;
- b. The possible effects of an Under Other Than Honorable Discharge if this request is approved (including but not limited to reduction to the lowest enlisted grade (Private E-1) by operation of law and the loss of benefits administered by both the Army and other Federal agencies as indicated on a copy of DA Poster 635-1, which was provided to the soldier); and
- c. The procedures and rights available to him/her;

PFC James Combs, _____, personally made the choices indicated in the foregoing request for discharge in lieu of trial by court-martial.



DAVID T. SCOTT
CPT, JA
Defense Counsel

Data required by the Privacy Act of 1974 (5 USC 552a)

AUTHORITY: Section 301, title 5 USC and section 3013, title 10, USC.

PURPOSE: To be used by the commander-exercising general court-martial jurisdiction over you to determine approval or disapproval of your request for discharge in lieu of trial by court-martial.

ROUTINE USES: Request, with appropriate documentation, including the decision of the discharge authority, will be filed in the MPRJ as permanent material and disposed of in accordance with AR 640-10, and may be used by other appropriate Federal agencies and State and local governmental activities where use of the information is compatible with the purpose for which the information was collected.

Submission of a request for discharge is voluntary. Failure to provide all or a portion of the requested information may result in your request being disapproved.

**COURT-MARTIAL CHARGES
(FH PAM 27-7)**

PART I

TO **FROM** **DATE**

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

| | | |
|--|------------|-----|
| Name | Rank | SSN |
| COMBS III, James Edward | PFC | |
| Organization | | |
| 272nd MP Co, 720th MP BN, 42nd MP BDE APO AE 09342 | | |

2. All witnesses will remain in Iraq for the next 90 days except the following named individuals:

No other witnesses will be released without notifying the Staff Judge Advocate.

3. I recommend:

Summary Court-Martial Special Court-Martial BCD Special Court-Martial
 General Court-Martial

| | | |
|--------------------------|-------------------------------|-------------|
| NAME OF COMMANDER | SIGNATURE OF COMMANDER | DATE |
|--------------------------|-------------------------------|-------------|

PART II

TO **FROM**

I have reviewed the attached charges and conclude that each offense is supported by the evidence.
I (recommend) (direct):

Summary Court-Martial Special Court-Martial BCD Special Court Martial
 General Court-Martial

| | | |
|--------------------------|-------------------------------|-------------|
| NAME OF COMMANDER | SIGNATURE OF COMMANDER | DATE |
|--------------------------|-------------------------------|-------------|

PART III

TO **FROM**

I have reviewed the attached charges and conclude that each offense is supported by the evidence.
I (recommend) (direct):

Summary Court-Martial Special Court-Martial BCD Special Court-Martial
 Article 32 Investigation General Court-Martial

| | | |
|--------------------------|-------------------------------|-------------|
| NAME OF COMMANDER | SIGNATURE OF COMMANDER | DATE |
|--------------------------|-------------------------------|-------------|

PART IV

TO **FROM**

Commander, III Corps **Commander, 42nd MP Brigade**

I have examined the article 32 investigation and allied papers and (recommend) (~~direct~~) trial by:

Summary Court-Martial Special Court-Martial BCD Special Court-Martial
 General Court-Martial

| | | |
|--------------------------|-------------------------------|-------------|
| NAME OF COMMANDER | SIGNATURE OF COMMANDER | DATE |
|--------------------------|-------------------------------|-------------|

RICHARD W. SWENGROS *Richard W. Swengros* **11 JAN 2005**

COURT-MARTIAL CHARGES
(FH PAM 27-7)

PART I

TO **Commander, 759th MP Bn Commander** FROM **Commander, 272d MP Co** DATE **20 OCT 04**

1. Court-Martial charges against the following named individual are forwarded as Enclosure 1. Witness statements, any evidence of previous misconduct (to include properly certified DA Forms 2627) and the accused's DA Forms 2 and 2-1 are attached as Enclosure 2.
2. **Combs III, James Edward** PFC E-3

Name **272d MP Co, 759th MP Bn, 89th MP Bde APO AE 09342** Rank SSN
Organization

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

NAME OF COMMANDER **CPT JASON MARQUISS** SIGNATURE OF COMMANDER *Jason L Marquiss*

PART II

TO **Commander, 89th MP Bde** FROM **Commander, 759th MP Battalion** DATE **20 OCT 04**

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

- I (recommend) ~~(direct)~~:
 Summary Court-Martial Special Court-Martial BCD Special Court Martial
 General Court-Martial

NAME OF COMMANDER **LTC BYRON FREEMAN** SIGNATURE OF COMMANDER *Byron Freeman*

PART III

Commander, 89th MP Brigade DATE **1 Nov 2004**

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

- I ~~(recommend)~~ (direct):
 Summary Court-Martial Special Court-Martial BCD Special Court-Martial
 Article 32 Investigation General Court-Martial

NAME OF COMMANDER **DAVID D. PHILLIPS** SIGNATURE OF COMMANDER *David D. Phillips*

PART IV

TO **Commander, III Corps** FROM **Commander, 89th MP Brigade** DATE

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

- Summary Court-Martial Special Court-Martial BCD Special Court-Martial
 General Court-Martial

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

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

AFVP-CO

10 DEC 2004

MEMORANDUM FOR Colonel Richard Swengros, Commander, 42nd Military Police
Brigade, Victory Base, Iraq APO AE 09342

SUBJECT: Forwarding of Charges--United States v. Private First Class James Edward
Combs III, 272d Military Police Company, 759th Military Police Battalion, 89th Military
Police Brigade, III Corps, Victory Base, Iraq, APO AE 09342-1400

1. Applicable Law: Rules for Courts-Martial (RCM) 401
2. On or about 1 March 2003, I assumed special court-martial convening authority of the 272d Military Police Company. On 20 October 2004, the unit commander, CPT Jason Marquiss, 272d Military Police Company, preferred charges against the above mentioned accused. On 1 November 2004, I reviewed the charges preferred against the accused and concluded the offenses were supported by the evidence. I directed MAJ Margaret Compton to conduct an Article 32 investigation pursuant RCM 405.
3. On 19 November 2004, I denied the defense request for investigative assistant to be made a part of the defense team. On 20 November 2004, I denied a similar defense request for a linguist assistant to be made part of the defense team. On 28 November, CPT Scott requested a delay until 16 December 2004. Due to the 89th Military Police Brigade's transfer of authority with the 42nd Military Police Brigade on 11 December 2004, I granted the delay until 11 December 2004.
4. Consistent with RCM 401, I am forwarding the preferred charges with supporting evidence to you for your consideration and review. I am also forwarding all previous defense requests for your review and consideration.
5. POC is Captain Sheppard at cullen.sheppard@us.army.mil.

CF:
Trial Counsel
Defense Counsel
Accused
Article 32 Officer


DAVID D. PHILLIPS
COL, MP
Commanding

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

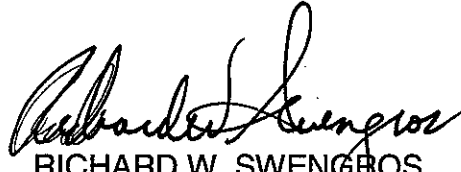
AFZH-MP

10 DEC 2004

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

SUBJECT: Reception of Charges

1. Applicable Law: Manual for Courts-Martial, United States, 2002 Edition, Rule for Courts-Martial 401.
2. On 11 December 2004, I assumed special court-martial convening authority for the 272d Military Police Company. I reviewed the charges against Private First Class James Edward Combs III. I conclude that the evidence supports the preferred charges. I ratify the decision of the Commander, 89th Military Police Brigade to direct an Article 32 investigation. I specifically ratify the appointment of Major Margaret Compton as the investigating officer.
3. On 28 November, CPT David Scott, counsel for the defendant, requested a delay until 16 December 2004. Due to the 89th Military Police Brigade's transfer of authority with the 42d Military Police Brigade on 11 December 2004, COL Phillips, CDR, 89th MP BDE, granted the delay until 11 December 2004. I specifically ratify the granting of CPT Scott's delay request up to 11 December.
4. I have also reviewed the defense request for a linguist assistant and an investigative assistant to be appointed as a confidential member of the defense team. I also ratify the decision of the Commander, 89th Military Police Brigade to deny the defense request to appoint a linguist and an investigator as a confidential member of the defense team.
5. The POC for this memorandum is CPT Chris Pawloski at VOIP 242-0256.


RICHARD W. SWENGROS
COL, MP
Commanding



DEPARTMENT OF THE ARMY
Headquarters, 42nd Military Police Brigade
Baghdad, Iraq APO AE 09342


REPLY TO
ATTENTION OF:

AFZF-JA

MEMORANDUM FOR Captain David Scott, Defense Counsel

SUBJECT: Article 45 Proceedings-Private First Class James Edward Combs, III, 272nd Military Police Company, 759th Military Police Battalion, 42nd Military Police Brigade, Camp Rasdimayah, Iraq APO AE 09390

1. Purpose. To request the presence of witnesses for the above proceedings.
2. References:
 - a. Article 46, Uniform Code of Military Justice
 - b. Rules for Courts-Martial (R.C.M.) 1001, Presentencing Procedure
3. The Government requests the presence of the following witnesses:
 - a. Jalil Abbas Ali, victim's husband
 - b. Esam Abud Jasim, victim's neighbour.
 - c. Master Saef Mezher Al-Zubide
6. POC for this memorandum is the undersigned at DNVT 242-0256.


CHRISTOPHER L. PAWLOSKI
CPT, JA
Trial Counsel

CF:
Defense Counsel
Co-Counsel

6. Pursuant to RCM 701(a)(6), the government notifies the defense of the following evidence that may be favorable to the defense: All such evidence has been previously provided to the defense.

7. The 38th Military Police Detachment (CID), 22nd Military Police Battalion, investigated this case, and all files and evidence are available at its office for further review.

8. The government acknowledges its continuing obligation to provide timely discovery and will provide additional Section III and other disclosures in the event the government discovers new or additional evidence.

I certify that this Section III and Other Mandatory Disclosure was served on the defense counsel via e-mail on 19 November 2004.


C. CULLEN SHEPPARD
CPT, JA
Trial Counsel

11 October 2004

MEMORANDUM FOR Commander, 759th Military Police Battalion, Camp Cuervo, Iraq,
APO AE 09390-2402

SUBJECT: Legal Review of AR 15-6 Investigation Concerning Shooting of Local
National on 22 September 2004

1. I have reviewed the subject investigation IAW AR 15-6, paragraph 2-3b, and subject to the comments below, find the investigation legally sufficient.
2. The proceedings comply with the legal requirements. Errors in the proceedings, if any, do not have a material adverse effect on any individual's substantial rights.
3. The investigating officer (IO) found that "PFC Combs had been briefed on the current ROE for theater." The investigation contains no evidence to support this finding. All other findings are supported by a preponderance of the evidence.
4. The recommendations are consistent with the legally sufficient findings. The IO recommended that appropriate action be taken against PFC Combs. Prior to taking any UCMJ action, the Commander should consult with his Trial Counsel.
5. POC for this action is the undersigned at sarah.wolf@vcmain.hq.c5.army.mil or DSN 822-2500.

FOR THE STAFF JUDGE ADVOCATE:



SARAH E. WOLF
CPT, JA
Administrative Law Attorney



DEPARTMENT OF THE ARMY
TASK FORCE 759 MILITARY POLICE
CAMP CUERVO, IRAQ
APO AE 09390-2402

REPLY TO
ATTENTION OF:

AFZC-Y-P-JA

22 September 2004

MEMORANDUM FOR First Lieutenant Brandt R. Wathen, 15th Military Police Detachment, 759th Military Police Battalion, 89th Military Police Brigade, Camp Volunteer, Iraq, APO AE 09390

SUBJECT: Appointment as an AR 15-6 Investigating Officer.

1. Reference: AR 15-6, Procedure for Investigating Officers and Boards of Officers, 11 May 88, with Change 1, 30 Oct 96.
2. On 22 September 2004, elements of the 272d Military Police Company, 759th Military Police Battalion were involved in a Local National shooting, resulting in her death, while monitoring the Al Rasheed IPS Headquarters. There were no injuries to soldiers or damage to vehicles reported. You are directed to investigate the circumstances behind the shooting death of an Iraqi National by PFC Combs.
3. Please supply a brief description of each casualty, including 1) full name; 2) whether or not the casualty was engaged in hostile activities. You may coordinate with the CMOC on this investigation in order to obtain this information.
4. SSG Monica Carlile, Battalion Paralegal, 759th Military Police Battalion, has a packet of statements for your assistance. You are directed to go to the MNC-I, DSN 302-822-2500; Administrative Law office for an initial brief. You will formally interview all soldiers who have previously made statements in this case. You will also interview all witnesses identified as having knowledge of these events. You are authorized to investigate any issue(s) that arise during your investigation that are related to the primary purpose of your investigation.
5. During the course of your investigation, you will record all interviews on DA Form 2823 (Sworn Statement). If, during any interview, you suspect a violation of the UCMJ by the person you are interviewing, you are required to stop the interview, and advise the interviewee of their Article 31(b) rights, using a DA Form 3881 (Right Warning Waiver Certificate). You may continue to interview that person if they agree to make further statements. If they do not, terminate the interview and contact your legal advisor. If you have any questions about whether or not the person made a knowing and valid waiver, terminate the interview and contact your legal advisor. You will advise all persons being interviewed that their statements can be discovered under