

*The witness was called at 0812 on 31 August 2007.*

**Se rgeant Sanick De La Cruz, U.S. Marine Corps, was called as a witness by the government, was sworn, and testified as follows:**

*DIRECT EXAMINATION*

*Questions by the government (LtCol Sullivan):*

- Q. I'm going to ask you to speak up clearly so I can hear all your responses, and the investigating officer and counsel for Staff Sergeant Wuterich can hear your responses. And speak clearly and slowly. Could you please state your full name and spell your last name for the court reporter.
- A. Yes, sir. My name is Sergeant Sanick De La Cruz, Sergeant Sanick De La Cruz, Sierra-Alfa-November-India-Charlie-Kilo, Delta-Echo-Lima-Alfa-Charlie-Romeo-Uniform-Zulu, sir.
- Q. And what is your current rank and your current unit?
- A. Sergeant, sir. H and S Battalion, Separation Company, sir, at Marine Corps Base Camp Pendleton, sir.
- Q. Now, I want to direct your attention to November 2005, during that time period. What was your unit in November of 2005?
- A. 3d Battalion, 1st Marines, sir.
- Q. And what was your rank in November of 2005?
- A. I was a corporal, sir.
- Q. Okay. And what was your MOS at that time?
- A. 0311, sir.
- Q. Could you give us a brief description with regard to what was the training that you received? When did you graduate from boot camp? What follow-on training did you receive? What was your first unit? And then when -- when did you join 3/1? Could you just take us through that?
- A. Yes, sir. I graduated from boot camp, sir, on September 13, 2002. And I went to SOI, sir, ITB.

Q. And that's the Infantry Training Battalion?  
A. Yes, sir.

Q. When did you graduate from SOI?  
A. About November, sir.

Q. Of what year?  
A. 2002, sir.

Q. Okay. And then did you join the Fleet Marine Force at that time?  
A. Yes, sir. I went to the Fleet, sir.

Q. Okay. What was your first unit?  
A. I was in 1st Battalion, 4th Marines, sir.

Q. Okay. 1/4?  
A. Yes, sir.

Q. And how long were you with 1/4, in what time periods?  
A. 2002 until 2005, sir.

Q. Did you deploy with 1/4 during Operation Iraqi Freedom?  
A. Yes, sir.

Q. How many times?  
A. I did twice in Iraq, sir.

Q. And when did you join 3d Battalion, 1st Marines?  
A. May 2005, sir.

Q. All right. And when you joined 3d Battalion, 1st Marines, did you receive any sort of training from May of 2005 through September 2005 when your unit deployed in theater?  
A. Yes, sir.

Q. What kind of training did you undergo with 3d Battalion, 1st Marines, after you joined them in May of 2005?  
A. We did a lot of SASO training, sir, at CAX and room clearing, sir.

Q. Now, what is SASO training? Where did you receive that training?  
A. We were at Riverside, sir, March Air Force Base,

sir.

- Q. And "SASO" stands for the stability and support operations training?
- A. Yes, sir.
- Q. And did your battalion, as a battalion unit, conduct battalion-level training up at March Air Force Base?
- A. Yes, sir.
- Q. And there was a permanent cadre at the SASO training center that conducted that training for 3d Battalion, 1st Marines?
- A. Yes, sir.
- Q. Now, you mentioned "CAX." Is that the training you underwent as a battalion at Twenty-Nine Palms here in California?
- A. Yes, sir.
- Q. And how long did the CAX training take place?
- A. We were about -- we were there for about a month, sir.
- Q. And the SASO and the CAX training, did that take place between May of 2005 and your deployment in September of 2005 in theater?
- A. Can you repeat that question again, sir?
- Q. Did -- the SASO training and the CAX training that you related to the investigating officer, did that occur during the timeframe of May 2005 through September 2005 before you went in theater?
- A. Yes, sir.
- Q. Did you all -- where was your unit headquarters? Were they up at Horno at the time?
- A. Yes, sir. We were in Horno.
- Q. Thank you. Did the -- did your battalion also undergo battalion-level training here at Camp Pendleton prior to deploying in September 2005?
- A. Yes, sir.

Q. Now, what company were you assigned to with 3d Battalion, 1st Marines, from May of 2005 through September of 2005?  
A. I was with Kilo Company, sir.

Q. And what platoon and what squad were you with?  
A. 3d Platoon, sir.

Q. And what squad?  
A. 1st Squad, sir.

Q. Who was your squad leader?  
A. Staff Sergeant Wuterich, sir.

Q. And what billet did you hold within that squad?  
A. I was a team leader, sir.

Q. Okay. A fire team leader?  
A. Yes, sir.

Q. Who were the members of your fire team?  
A. It was Graviss and Mendoza, sir.

Q. Now, who was your platoon sergeant at the time, from May of 2005 through September of 2005?  
A. Staff Sergeant Phillips (phonetic), sir.

Q. Now, in September 2005, Kilo Company, along with 3d Battalion, 1st Marines, deployed in theater?  
A. Yes, sir.

Q. When you got into theater, ultimately did you deploy with your battalion to the Haditha, Iraq, area?  
A. Yes, sir.

Q. Now, with Kilo Company itself, did you deploy to a firm base in Haditha known as Firm Base Sparta?  
A. Yes, sir.

Q. And did you occupy that firm base and were you occupying that firm base in November of 2005?  
A. Yes, sir.

Q. And were you still a fire team leader for 1st Squad and with your platoon as you described in November of 2005?  
A. Yes, sir.

Q. And you remained in that billet with that squad through 19 November 2005; is that correct?

A. Yes, sir.

Q. Who was your squad leader on 19 November 2005?

A. Staff Sergeant Wuterich, sir.

Q. I want to direct your attention now particularly to the morning of 19 November 2005. Did your squad have a resupply mission that morning?

A. Yes, sir.

Q. What was your mission?

A. Our mission was to go down to COP -- just go on outpost, sir, and drop off the Iraqi that is ongoing and pick up the outgoing and drop him off to there -- to the Firm Base Sparta, sir.

Q. Now, prior to 19 November 2005, had the battalion participated in an operation called Operation Rivergate?

A. Yes, sir.

Q. Okay. What was Operation Rivergate? Could you explain to the investigating officer what that was?

A. They were knock -- knock-and-talks, sir, you know, and searching for IED and all that stuff and caches, sir.

Q. Now, that was a mission that took place in early October of 2005 in the Haditha area?

A. Yes, sir.

Q. Now, as part of that mission, did your squad participate in what you call the knock-and-talks throughout the area around Firm Base Sparta and in Haditha?

A. Yes, sir.

Q. What -- so for the investigating officer's consideration, what do you mean when you say a "knock-and-talk"? Can you explain what that is?

A. Knock-and-talk, basically you go inside the house, sir, and -- wanted to know who they are and search their house, make sure they don't got no cache, anything like that.

Q. What's a cache?  
A. Cache of weapons, looking out -- you know, 155s, sir --

Q. Any --  
A. I --

Q. Okay. I'm sorry.  
A. -- IEDs, sir, anything -- you know, any machine gun.

Q. Now, have you ever heard of the term "census patrols"?  
A. No, sir.

Q. All right. Well, did you conduct patrols, say, in October of 2005 through 19 November 2005? During that time period, did you conduct your squad patrols in the Haditha area outside of Firm Base Sparta?  
A. Yes, sir.

Q. And during those patrols, would you note who occupied the residences within your area of operations outside of Firm Base Sparta? Did you get to know the people at all?  
A. Some of the them, sir. Yes, sir.

Q. And have you heard that -- you've explained what a knock-and-talk is. Have you heard the term "cordon and search"?  
A. Cordon and search. Yes, sir.

Q. Could you explain what the term "cordon and search" meant to you during the November 2005 timeframe when you were deployed? What did you understand that to mean?  
A. Cordon and search, sir, basically you go in there and pretty much we check out -- check out everything in there, sir.

Q. And what are you searching? Can you describe the type of searches you conducted prior to 19 November 2005 in the Haditha area from Firm Base Sparta?  
A. [No verbal response.]

Q. Did you search homes?  
A. Yes, sir.

Q. Did you search --  
A. Almost everything, sir.

Q. -- buildings, structures?  
A. Yes, sir.

Q. And did you operate -- when did you -- do you know the date that you actually occupied or came to Firm Base Sparta in Haditha, your company?  
A. Around September, sir -- I mean October, sir.

Q. And from October through 19 November 2005, is that where Kilo Company was located, at Firm Base Sparta in Haditha itself?  
A. Yes, sir.

Q. And is that where your base of operations were for the company level operations? Is that where you conducted the cordon-and-knocks and the knock-and-talks from?  
A. Yes, sir.

Q. Now, prior to 19 November 2005, had Kilo Company -- well, and I'll be more specific also. Had your squad and your platoon been involved in any combat operations in which you engaged any enemy prior to 19 November 2005?  
A. Not that I know of, sir.

Q. Prior to 19 November 2005, had Kilo Company -- in particular your squad, to your knowledge, had you suffered any IED attacks that you -- your squad had been associated with?  
A. Our squad, sir?

Q. Yes.  
A. No, sir.

Q. Had you platoon suffered any IED attacks prior to 19 November 2005?  
A. Yes, sir.

Q. Okay. What was the -- what IED attack had your platoon been involved with prior to 19 November 2005?  
A. It was just about a hundred meters outside the ECP -- ECP Two, sir.

Q. Okay. "ECP" stands for what?  
A. Entry control point, sir.

Q. Entry control point?  
A. Yes, sir.

Q. And where was the entry control point located?  
A. Located at Firm Base Sparta, sir.

Q. And so approximately a hundred meters away from ECP Two, there was an IED strike?  
A. Yes, sir.

Q. Okay. Could you describe for the investigating officer, first of all, when that occurred?  
A. I believe, like, a week from November 19, sir.

Q. Okay. A week prior to 19 November?  
A. Yes, sir.

Q. And were members of your platoon involved in that?  
A. Yes, sir.

Q. What happened, to your knowledge, with regard to that IED strike that occurred outside of ECP Two?  
A. Ortega got hit, sir, and --

Q. Who is Ortega?  
A. He's with 2d Squad, sir.

Q. Was it Lance Corporal Ortega?  
A. Lance Corporal Ortega, sir. Yes, sir.

Q. And when you say "he got hit," was he injured by the IED?  
A. Yes, sir.

Q. Do you know what kind of IED it was? Was it surface -- surface laid? Do you have any knowledge as to what type of IED it was?  
A. I don't know, sir. An IED, sir.

Q. Were there any other members of your platoon that were injured by that IED?  
A. There was about a couple more, sir.



Q. Did anything occur after that IED that injured Lance Corporal Ortega the week prior to 19 November? Did you have any conversations with any members of your squad after that IED occurred?

A. Yes, sir.

Q. And who did you have a conversation with?

A. Staff Sergeant Wuterich, sir, and Corporal Salinas.

Q. And where did that conversation take place?

A. We were at the Haditha Dam, sir.

Q. Okay. And --

A. We were -- I'm sorry, sir.

Q. And what were you doing at the Haditha Dam?

A. We were -- we were actually over there for R-and-R, sir. And the same day, that's -- that's when we find out about Ortega got hit, sir.

Q. Okay. And did you have a cycle -- with Kilo Company, was there a cycle within the platoons in which some platoons -- a platoon would be on duty at Kilo Company, a platoon would be on duty at the combat outpost, and a platoon would also recycle back to the Haditha Dam for rest-and-reset training?

A. Yes, sir.

Q. Were you on the cycle -- your platoon was back at the Dam when you found out that Lance Corporal Ortega had gotten injured?

A. Yes, sir. We were going by squad at that time. Yes, sir.

Q. All right. Well, where did the conversation take place that we're discussing now with Corporal Salinas and Sergeant Wuterich?

A. We were outside the room of the patio, sir, in the Haditha Dam, sir.

Q. And could you explain to the investigating officer what was said during this conversation?

A. Somehow, you know, we found out that they got hit. And everybody, pretty much upset, sir, about that. And we didn't know what condition he is. You know, we don't know if he's going to die or not, sir.

And we were smoking outside, me and Staff Sergeant

Wuterich and Corporal Salinas. And, for whatever reason said the type -- Staff Sergeant Wuterich, he made this comment about, if we ever get hit again, that we should -- that we should kill everybody in that vicinity, sir, in that area, so -- so, you know, to teach them a lesson, sir.

Q. Now, did this conversation take -- conversation that you've related to the investigating officer, did that take place prior to 19 November 2005?

A. Yes, sir.

Q. How many -- because in 19 November your own squad actually got hit; is that right?

A. Yes, sir.

Q. How many days before 19 November did this conversation take place?

A. About a week, sir, when Ortega got hit, sir, the same day, sir.

Q. All right. Now, on 19 November 2005, can you explain to the investigating officer what your mission was that morning and how you carried it out, what you did just before the IED detonation that took place at the intersection of Chestnut and Viper?

A. Can you repeat that question again, sir?

Q. Can you just explain to the investigating officer the steps you took on the morning of 19 November 2005 to carry out the resupply mission to the combat outpost?

A. We basically went to the COP's there. And then from there, we took off onto the river road north. And we made it out to Chestnut, sir.

Q. All right. Well, let's talk about that because this was a -- it's a military mission, right? So you didn't basically take off?

A. No, sir.

Q. Okay. First of all, where did the mission start from? Did you leave from Firm Base Sparta?

A. Yes, sir, we did.

Q. Was it a foot-mobile patrol or was it vehicular?

A. Vehicular, sir.

Q. How many vehicles?  
A. Four, sir.

Q. Okay. Could you describe for the investigating officer the four vehicles that were used?  
A. Yes, sir. First vehicle is the hard-back, sir.

Q. And what's a hard-back?  
A. Hard-back basically is you've got a 240 mounted onto the turret, sir.

Q. And that "240" is 240G?  
A. Yes, sir.

Q. It's a 7.62 machine gun?  
A. Yes, sir. Yes, sir.

Q. Is there a reason why the hard-back is selected as the first vehicle in your vehicular movements during November of 2005 timeframe?  
A. Yes, sir.

Q. What -- what was the reason that was the first vehicle in your convoy?  
A. So he -- so he could stop a vehicle up front and tell them to go away or something.

Q. And with the 240G in the turret, is that -- were you trained that that would be the most effective weapon to engage possible SVBIEDs, if the actual vehicle was attacked on the road?  
A. Yes, sir.

Q. And when you said it's a "hard-back," is that referring to extra armor that that vehicle has in place on it?  
A. They all have armor, sir.

Q. What did you mean by the "hard-back"? What is the difference between a hard-back and a high-back?  
A. Basically it's -- instead of two doors, sir, it's going to be a four-door.

Q. Now, do you know who was in the first vehicle of your four-vehicle convoy?  
A. Yes, sir.

- Q. Who -- who was that? Could you explain to the investigating officer the personnel assigned to the first vehicle in movement?
- A. Yes, sir. It's Lance Corporal Rodriguez is the driver; and Corporal Salinas is the A-driver and Sharratt -- Lance Corporal Sharratt was in the -- was in the turret, sir.
- Q. Now, what type of vehicle was the second vehicle in the convoy?
- A. That was my vehicle, sir. High-back, sir.
- Q. And, first off, can you describe the personnel assigned to that vehicle?
- A. I was the driver, sir; Lance Corporal Tatum was my A-driver; and Mendoza was in the back, sir.
- Q. What's the third vehicle?
- A. Third vehicle is a high-back too, sir.
- Q. Okay. And who were the personnel assigned to the third vehicle?
- A. Staff Sergeant Wuterich was the driver, sir; Graviss the A-driver, sir; and Doc Witt was in the back, sir.
- Q. When you say "Doc Witt," that's Hospital Corpsman Witt?
- A. Yes, sir.
- Q. Okay. Now, the fourth vehicle, who was assigned to the fourth vehicle?
- A. The fourth vehicle assigned to -- the driver is Lance Corporal Terrazas, sir; and A-driver is Lance Corporal Carlson (phonetic); and Guzman -- Lance Corporal -- PFC Guzman was in the back, sir.
- Q. Now, did you have Iraqi army also that you had assigned with you on this four-vehicle movement?
- A. Yes, sir.
- Q. How many Iraqi army personnel were assigned?
- A. Probably have about ten, something, sir.
- Q. And were they distributed through the high-backs?
- A. Yes, sir.

Q. Now, do you know the weaponry that the Iraqi army had with them that morning?

A. Yes, sir.

Q. And what were they carrying?

A. AK-47's, sir.

Q. Okay. And the Marines were carrying M16's, 203's, and 240G, as you had explained?

A. Yes, sir.

Q. Now, when you left Firm Base Sparta, did you go to the combat outpost to conduct your -- your mission?

A. Yes, sir.

Q. Did the mission encompass resupply, crypto changeover, and that type of thing?

A. Yes, sir.

Q. What time did you leave Firm Base Sparta, about?

A. Approximately about 0700, sir.

Q. Okay. And what were the lighting conditions like when you left Sparta?

A. Can you repeat that again, sir?

Q. What was the lighting conditions like? Was it dark, pitch dark, was it --

A. It was --

Q. -- sun coming up, was it bright sunlight? What was the lighting conditions like when you first left?

A. The sun was about to come out there. Yes, sir. It was still light outside already.

Q. How long did it take you to get from Firm Base Sparta to the combat outpost to conduct the crypto changeover?

A. Approximately 15, 20 minutes, sir.

Q. Okay. And what did you do after you completed that crypto changeover? What was the next thing that your four-vehicle convoy did after the changeover was completed at the COP?

A. Started heading back to Firm Base Sparta.

- Q. Okay. Can you explain to the investigative officer what occurred as you were returning to Firm Base Sparta?
- A. Yes, sir.
- Q. The route you took and -- take us through the route you took, the direction you were traveling, and then just prior to the IED strike. Could you just explain that movement?
- A. We took the river road, sir, north. And from there, we made a left at Chestnut, sir. And about five -- I passed Viper, sir, Viper Road, then --
- Q. All right. All right. Now, let's break it down. So when you made your left on Chestnut, were you first of all still in the same order of -- of march with the vehicles that you described earlier for the investigating officer? In other words, was the gun truck still the first in line, you still second, Sergeant Wuterich third vehicle, and Lance Corporal Terrazas in the fourth vehicle?
- A. Yes, sir.
- Q. When you got onto Route Chestnut, what direction of travel -- where were you traveling, east or west?
- A. From east to west, sir.
- Q. So you were heading westbound?
- A. Yes, sir.
- Q. All right. Now, you mentioned a "Route Viper." What is Route Viper?
- A. It's going from north to south, sir.
- Q. And does that intersect with Route Chestnut, the east -- east-west route?
- A. Yes, sir.
- Q. Okay. Now, as you start -- as the convoy started to cross the intersection of Chestnut and Viper, what occurred? Could you explain to the investigating officer?
- A. About three -- three seconds after I passed Route Viper, sir, is when a big explosion -- it was like it was coming -- coming from behind, sir.
- Q. Okay. I want to direct your attention now to focus in at this moment. Just prior to the -- seconds

prior to the explosion, did you notice -- did you state that you were the driver of the second vehicle?

A. Yes, sir.

Q. Had you had the opportunity to notice just prior to the detonation of the IED whether you observed any Iraqi vehicles in the area?

A. At the time, no, sir.

Q. So as you are traveling westbound, the first thing that occurs near this intersection that brings your attention to a problem is the detonation; you hear a sound?

A. Yes, sir.

Q. What happens after that, after you hear that sound? Can you explain to the investigating officer the steps you took?

A. Yes, sir. I brought my -- my vehicle to a stop, sir, and --

Q. Were you able to see what the vehicle in front of you did? Did it stop or did it continue to move? Did it do anything?

A. No. I don't remember, sir.

Q. Okay. Now, you brought your vehicle to a stop. How long after you heard the sound of the noise was it prior to you bringing your vehicle to a stop? How much time passed?

A. About right away, sir.

Q. What happened after you brought your vehicle to a stop?

A. I opened up my door, sir, and I got out there. I usually -- usually, my door doesn't open, sir. I had problems with that door. But I usually have my A-driver, Lance Corporal Tatum or Lance Corporal Mendoza, to go around and open the door for me. But this time, it just opened by itself, sir.

Q. Did you have any radio communication with any vehicle, with either your squad leader who's in the third vehicle, Sergeant Wuterich, or with the gun truck? Was there any radio comm at all?

A. Yes, sir.

Q. Was there any communications on the radio that you heard before you exited, before you got out of your HMMWV?  
A. No, sir.

Q. Okay. Well, what do you do when you get out of your HMMWV? Explain to the investigating officer what you see and what you do.  
A. Got out of my vehicle and picked up my weapon and --

Q. What was your weapon?  
A. My weapon was a 203, sir, grenade launcher.

Q. Okay. And when you got out of your vehicle, can you explain to the investigating officer what you see?  
A. Yes, sir. I noticed a white -- white car parked.

Q. And where is the white car?  
A. Directly across the street, sir, from my vehicle, from where I was at, sir.

Q. How -- how far from your vehicle was it?  
A. Approximately about 20 meters, sir.

Q. And when you say "directly across the street," is it directly across Chestnut?  
A. Yes.

Q. And what -- can you describe the white car? Did you see the type of car it was?  
A. I don't know, sir. I just know it was a white -- white, four-door vehicle, sir.

Q. Now, is the car driving? Is it moving when you see it?  
A. No, sir.

Q. What condition is it in?  
A. It is at a stop.

Q. Do you see any people in or near the white car?  
A. There is about four or five Iraqis, sir, right -- facing south, away from -- away from me.

Q. Were they in the car or outside of the car?  
A. They're outside, sir.



- Q. Where -- in relationship to the car and yourself, can you describe for the investigating officer exactly where they were?
- A. They were in the right, passenger side, sir, but they're not -- about -- I'd estimate about 5 meters, sir, away from the car, sir.
- Q. And what are they doing?
- A. They were just standing around, sir. And some of them got their hands up, just looking around, being nosey.
- Q. Okay. Now, slow down. You said they were standing around?
- A. Yes, sir.
- Q. Now, you said some of them had their hands up?
- A. Yes, sir.
- Q. Now, physically, so we can explain this for the investigating officer, are the men standing up next to the car in between -- you're -- you're still in Chestnut with your HMMWV, just outside of your HMMWV, is that correct, when you first see them?
- A. Yes, sir.
- Q. Are they in front of the car? In other words, can you see them and the car is behind them or is the car between you and the men? In other words, are they on the other side?
- A. They are on the other side, sir.
- Q. So how much -- how much of the bodies of these men can you actually physically see? Can you see their entire body or is the white car blocking some of your ability to view their entire torsos?
- A. I could only see about the upper torso, sir, and their head.
- Q. Now, as you're looking at these men, first of all, are they running at any time as you're -- at this point, we're describing for the investigating officer your initial observations of these men. Are they running?
- A. Those men are not running, sir.

- Q. Are they doing anything physically with their feet that you can see?
- A. No, sir. No.
- Q. Can you see where their heads are turned and where they're looking? Can you see where their heads are?
- A. They're -- they're looking around, sir. That's about it.
- Q. Are they doing any -- could you describe for the investigating officer the spacing between themselves? How -- are they close together or are they spaced 10 meters apart, 20 meters apart? Can you just, you know, describe in detail what you see?
- A. They were -- they were pretty close, sir, about elbow's distance.
- Q. Now, you mentioned that you saw -- you stated that you saw some had their -- their hands in a certain position?
- A. Yes, sir.
- Q. Okay. Describe that. Describe what you saw, for the investigating officer, with regard to some of these men having their hands in a certain position.
- A. Some of them have -- their hands are interlocked, sir. And some -- and some of them just have -- you know, have their hands down, sir.
- Q. Okay. Now, how many -- when you say "their hands were interlocked," how many of these men did you see that had their hands interlocked? Could you describe the number of the men that had their hands interlocked, for the investigating officer?
- A. I don't remember, sir. I just know some of them did.
- Q. Was it more than one?
- A. It was probably more than one. Yes, sir.
- Q. Was it all five?
- A. No. Not all five, sir.

- Q. Okay. Now, could you please demonstrate -- could you please stand up and just demonstrate for the investigating officer what you mean when you say, in your words, "some had their hands interlocked"? Could you just stand up and demonstrate for the investigating officer what you saw when you were observing these men adjacent to the white car?
- A. Yes, sir. They were about like this, sir.

**GC (LtCol Sullivan):** And, for the record, the -- the witness has stood up, hands interlocked on the top portion, slightly behind his head, for the record.

*Questions by the government counsel (LtCol Sullivan) (continued):*

- Q. At this point, as you're observing these men, how many seconds pass that you have eyes on these men where they're still all standing?
- A. I think it was, like, kind of like a split second, sir.
- Q. Okay. At any time as you're watching them, did they run?
- A. No, sir.
- Q. At any time as you're watching them, was that car moving in any way?
- A. No, sir.
- Q. As you're watching them, what happens?
- A. One of them drops, sir, in the middle. That made me -- made me look around, see what -- what was going on, sir.
- Q. Did you hear anything as you were watching the men drop?
- A. I -- I heard some pops, sir.
- Q. And could you describe for the investigating officer the sound of the pop or the noise that you heard?
- A. It was just like pop-pop-pop.
- Q. Now, when you heard that, you said a man -- one of the men dropped?
- A. Yes, sir.

- Q. Can you describe what you mean with regard to what you saw when you use the term "a man dropped"? What happened?
- A. He basically just, like, dropped like lifeless in a backward -- backward position, sir.
- Q. Did the other men at this time that were near the car do anything after that first man made the physical movements you've just described?
- A. No, sir.
- Q. What did you do? When you saw that action and you heard those pops, what did you do physically?
- A. That made me look, see what was going on, sir.
- Q. Where did you look?
- A. Somehow, I looked to my left right away, sir, and I saw --
- Q. What did you see?
- A. I saw Staff Sergeant Wuterich in the kneeling, sir, shooting at their direction.
- Q. And when you say "in the kneeling," could you describe for the investigating officer what you mean by that?
- A. He was in the kneeling position, like Marine -- like Marine rifle qual, sir, qualification, sir.
- GC (LtCol Sullivan):** And for the record the witness actually raised his hands in the witness box to -- to his chest level.

*Questions by the government counsel (LtCol Sullivan)(continued):*

- Q. Were you indicating like holding a weapon?
- A. Yes, sir.
- Q. When you observed Sergeant Wuterich in that kneeling position, was he holding his weapon?
- A. Yes, sir, he was holding his weapon.
- Q. Did you observe him personally firing his weapon?
- A. Yes, sir.
- Q. How long did you look at Sergeant Wuterich firing his weapon in the kneeling as you described?
- A. Not that long, sir.

Q. Five minutes?  
A. No, sir.

Q. A few seconds? Could you describe for the investigating officer a timeframe?  
A. Probably less than -- less than a second, sir.

Q. And what did you do after you observed Sergeant Wuterich in the kneeling position as you described for the investigating officer? What -- what steps did you take?  
A. That's when I looked forward again to see those five Iraqis, sir.

Q. And what did you see when you looked forward? Once you looked forward again, were you looking at the white car and the men as you described?  
A. Yes, sir.

Q. And what did you see?  
A. They -- they disappeared, sir.

Q. Did you see them running?  
A. No, sir.

Q. Did you see where they were?  
A. No, sir.

Q. What did you do?  
A. Sir, I went -- I went -- I went to go ahead and advance through -- through the car.

Q. And how far -- could you explain to the investigating officer, just take us through the physical steps that you did to get towards the car and what you did when you got there?  
A. I ran over there, sir.

Q. Okay. And did you get to the white car?  
A. Yes, sir.

Q. What position of the white car did you get to?  
A. I was in the rear. The rear bumper, sir.

Q. And what did you see when you arrived at the rear bumper area of the white car?  
A. All of them were dead, sir.

- Q. Could you describe for the investigating officer the position of the bodies that you observed, first of all, once you got to the rear bumper of the white car?
- A. They were in a pile, sir, just laying dead, sir.
- Q. And do you -- how many men did you see as you described, laying dead?
- A. Four or five, sir.
- Q. And how far away from the white car were the bodies?
- A. How far away, sir?
- Q. Correct.
- A. The men?
- Q. Yes
- A. From the car, sir?
- Q. Yes.
- A. I'd say about 10 feet, sir, from the car.
- Q. When you were traveling, when you were making the physical movements to go from your area next to the HMMWV as you described to get to the -- to the back or the bumper area of the white car, as you described for the investigating officer, at any time did you see any men running or doing any physical movements for the period that you were traveling to the white car?
- A. No, sir.
- Q. What did you do when you got to the rear bumper of the white car?
- A. I know -- I knew they were dead, sir, but I just wanted to make sure they were. And so I shot at them.
- Q. Okay. Could you describe for the investigating officer how you shot at the men?
- A. I raised my weapon up and fired about -- fired kind of like rapid fire, sir.
- GC (LtCol Sullivan):** All right. And for the record, the witness has raised his arms above his shoulder level, indicating how he raised his weapon at the time, made the physical movements.

*Questions by the government counsel (LtCol Sullivan)(continued):*

- Q. How many rounds did you fire into the men?  
A. I would say about eight rounds, sir.
- Q. And could you describe how you fired? Did you -- was it spray? What did you do?  
A. Just kind of like a rapid fire, just pressing the trigger, sir.
- Q. After you stopped firing, did you have the -- could you explain to the investigating officer, first of all, how long did it take you to fire those rounds?  
A. About -- about a second, sir.
- Q. What happened after you finished firing? Could you explain what happened next?  
A. That's when Staff Sergeant Wuterich advanced through too, noticing my -- right there, and start shooting at those five Iraqis too, sir.
- Q. Okay. When you say, "Staff Sergeant advanced," could you -- Wuterich advanced. Could you explain to the investigating officer, first of all, what physical movements you saw, you observed, Staff Sergeant Wuterich make when you say you saw him advance?  
A. He -- he ran right there where -- where the dead bodies at, sir.
- Q. Okay. Where did he come from, what direction? Could you explain the direction where he's coming from?  
A. He's coming from north, sir, north -- northeast, sir.
- Q. Okay. Was he coming from the rear portion of the white car or was he coming from -- was he coming from the area of his HMMWV, where his HMMWV was located?  
A. I don't know. He was coming from the -- from where I saw him in the middle of the road, sir.
- Q. Right. So -- that's what I mean. Where -- did he seem -- did he appear to be coming from the area where you had last saw him, as you testified to, in the kneeling position?  
A. Yes, sir.

- Q. How long did it take him to get from that area to the white car area, how much time?
- A. I don't know, sir. It was just right away. He was right there.
- Q. So is it fair to say a matter of seconds?
- A. Yes, sir.
- Q. What did Sergeant Wuterich do when he got to the white car area? Can you describe for the investigating officer what you saw him do in relationship to the -- to the bodies of these men that were next to the car?
- A. Yes, sir. He went to each -- each Iraqi male, sir, and shot at them.
- Q. How close did he get to the Iraqi males when he shot at them?
- A. Pretty close, sir.
- Q. Let me -- well, you are going to have to describe for the investigating officer what you mean by "pretty close." Are we talking 20 feet, 10 feet, within feet?
- A. Within feet, sir, in the muzzle -- his muzzle, the weapon -- the muzzle of his weapon, sir, was about --
- Q. Now, were the --
- A. -- about a -- about a foot from where -- from the upper torso he was shooting. I don't remember, but he was shooting right there in the upper torso, sir.
- Q. Now, when you say he was shooting at the upper torsos; first of all, was Sergeant Wuterich standing upright when he began to shoot at the torsos of these men?
- A. Yes, sir.
- Q. Were the men down on the ground?
- A. Yes, sir.
- Q. Did you see exactly where he fired? Do you know if he fired simply at the torsos? Did you observe him fire into the head area at all?
- A. I just know he was shouting -- he was shooting at each -- each one of them, sir.



- Q.** And could you describe -- when you say he shot at each one, did he stay in a static position in one area and fire at the bodies or did he move through the bodies and fire down into them?
- A.** He moved through the bodies, sir.
- Q.** Can you describe for the investigating officer what you mean by -- by that? Describe as well as you can how Sergeant Wuterich moved through the bodies and fired his M16.
- A.** One by one, sir. I mean, he went one by one, sir.
- GC (LtCol Sullivan):** Now, Your Honor, can I just have a moment to retrieve some photographs?
- IO:** Yes.
- GC (LtCol Sullivan):** For the investigating officer, I'm referring to the photographs that have been marked as Exhibit 132 and that have been tendered to the investigating officer.
- Your Honor, may I approach?
- IO:** You may.
- GC (LtCol Sullivan):** Sergeant De La Cruz, I'm going to hand you a series of photographs that have been marked as Investigating Exhibit 132. And I'd like you to take a look at these photographs. And when you've looked at these series of photographs, just go ahead and look up at me. So just take a moment right there to look at each one of those photographs please.
- WIT:** Aye aye, sir.
- GC (LtCol Sullivan):** And when you have -- it's going to take a minute or so. When you have, just go ahead and look up at me.

*The witness did as directed.*

*Questions by the government (LtCol Sullivan) (continued):*

- Q.** Okay, Sergeant. Now, I'm going to -- I have a copy also of Exhibit 132. And I just want -- for the record purposes, I want you to look at what has been marked as number 1 of 15. And I'm going to ask you

if that is a fair and accurate depiction of the bodies of the men adjacent to the white car as you observed them in the early morning hours of 19 November 2005 after they had been shot by Sergeant Wuterich and yourself as you've described for the investigating officer?

**A.** Yes, sir.

**Q.** Now I'm going to ask you to take a look at what has been marked as 2 of 15, photograph, from 132. And is that a fair and accurate depiction of one of the decedent Iraqi males as he appeared after he was engaged on 19 November 2005, as you've described for the investigating officer?

**A.** Yes, sir.

**Q.** And number 3 of 15, again, and -- is a fair and accurate depiction, again, of one of the Iraqi males that was shot and killed in the early morning hours of 19 November as you saw these men immediately after they were engaged next to the white car?

**A.** Yes, sir.

**Q.** 4 of 15, again, is a depiction of an Iraqi male on his back. Again, that also is a fair and accurate depiction as you saw this man, his body after he'd been shot in the early morning hours of 19 November 2005 as you've described for the investigating officer?

**A.** Yes, sir.

**IO:** I just have a question.

Did the -- the notebook, was that pulled out at the time that you had witnessed him being shot, or is that something you don't remember?

**GC (LtCol Sullivan):** Is that for -- are you referring to 4 of 15, sir?

**IO:** Right. Yeah. You said that's a fair and accurate -- as he saw them on that -- right after he had been shot.

**GC (LtCol Sullivan):** Right. I -- yes, sir. I asked about the body.

*Questions by the government (LtCol Sullivan) (continued):*

**Q.** But that's a question from the investigating officer. I'm going to direct your attention to 4 of 15. There's a notebook depicted next to the body. Was that notebook there immediately after that man was shot?

**A.** I don't remember, sir.

**Q.** 5 of 15 is a -- depicts, again, a different view of the decedent males -- again, is this a fair and -- this -- this photograph has some damage to the cranial -- well, the head area of the decedent male depicted in 5 of 15. Is that a fair and accurate depiction of the -- of that decedent male as you observed him after the engagement in the morning of 19 November 2005?

**A.** Yes, sir.

**IO:** Now, wait a minute.

**GC (LtCol Sullivan):** Yes, sir.

**IO:** Picture one, you said was fair and accurate, right?

**WIT:** [No verbal response.]

**IO:** So did you roll over that body?

**WIT:** No, sir.

**IO:** In picture five, the body is rolled over.

**WIT:** [No verbal response.]

*Questions by the government (LtCol Sullivan) (continued):*

**Q.** Where was it when you -- after these men were killed, where was the body positioned? Was it face down or face up? Was the body rolled over?

**A.** I think they were about -- this -- this is the most accurate one of the --

**Q.** Okay. And he's referring to 1 of 15, saying that --

**A.** Yes, sir.

**Q.** Now, you -- obviously, you didn't take these photographs on the morning of 19 November 2005?

A. Oh. No, sir.

Q. Do you know who took these photographs?

A. No, sir.

Q. Okay. Page 6 of 15, again, did you note -- does this appear to be a fair and accurate depiction of one of the decedent males that was engaged and killed in the morning, as you described, of 19 November 2005?

A. I don't remember, sir.

Q. I want to go forward to photograph 14 of 15. And it depicts a vehicle in that photograph. Is that a fair and accurate depiction of the white vehicle as you saw it on the morning of 19 November 2005 as you described for the investigating officer?

A. Yes, sir. But I don't remember if the -- all the windows -- I mean all the doors were open, sir.

Q. Right. But the vehicle itself, does that look like it's the vehicle -- I'm not asking about the doors. But the vehicle itself in general, does it look -- appear to be the white vehicle that you saw on the morning of 19 November, as you testified to?

A. Yes, sir.

**GC (LtCol Sullivan):** Okay. I retrieved those.

*Questions by the government (LtCol Sullivan) (continued):*

Q. What happened after Sergeant Wuterich stopped firing? After he had gotten to the area where the bodies were and had fired as you described for the investigating officer, what happened after he completed firing?

A. We just looked at each other and just -- and I -- I went -- I went to where the IED blast is, sir.

Q. Did Sergeant Wuterich say anything to you?

A. No, sir.

Q. Did you say anything to him?

A. No, sir.

Q. Now, you say when you -- you then left that area?

A. Yes, sir.

Q. What did you do?  
A. That's when I run -- run over there to where the IED blast and noticed that -- that we got hit.

Q. And was that the fourth vehicle?  
A. Yes, sir. That was the fourth vehicle.

Q. And what did you note when you arrived at that area?  
A. I saw Terrazas laying down right there by the crater, sir. He was already dead. And I saw Doc Witt pulling out Carlson, out of the HMMWV.

Q. When you were at the white car as you've described, observed it and engaged these men, I want to ask you at any time during that engagement of the men at the white vehicle that you described for the investigating officer, did you receive any incoming fire at all?  
A. No, sir.

Q. As you went from -- after the engagement of the five men at the white car as you described, as you traveled to the fourth HMMWV, did you receive any incoming fire at all?  
A. No, sir.

Q. When you got to the fourth HMMWV and you noted that Lance Corporal Terrazas was killed in action, at that -- when you were at that area, did you receive any incoming fire that you noted?  
A. No, sir.

Q. How long were you at the fourth HMMWV? What did you -- could you describe the steps you took once you arrived there?  
A. I was -- I was just only there for about less than a minute, sir.

Q. And then what did you do?  
A. That's when I heard a lot of firing from the -- from the south. I think it was Corporal Salinas's team was shooting down south.

Q. All right. Salinas was shooting down south?  
A. Yes, sir. I think -- I think it was Corporal Salinas's team was shooting down -- down south, sir.

Q. Did you see what they were shooting?

A. No, sir.

Q. Well, what did you do when you saw that?

A. That's when I immediately grabbed Graviss and one of the Iraqi army, sir, to start clearing houses to the north, sir.

Q. Before you did that, did you -- did you see what Salinas was firing southward at?

A. No, sir.

Q. Were you receiving any incoming fire from the south after you noted what -- what Salinas was -- had fired?

A. Not that I know of, sir. No.

Q. Did you ever -- were you able to observe anybody firing at the Marines from the southerly area at all, at any time while you were down in that fourth HMMWV area?

A. No, sir.

Q. Well, so then, if I understand your testimony, then you then left that area with Lance Corporal Graviss and some Iraqi army personnel?

A. Yes, sir.

Q. And then you pushed north -- northward?

A. Yes, sir.

Q. Okay. What did you do when you pushed northward?

A. Started clearing that house right at the corner of Viper and Chestnut, sir, the only house there.

Q. Okay. And can you describe for the investigating officer what you did to enter that home?

A. We entered that -- that -- that house, and there's nobody in there. And we were at the rooftop and -- you know, and noticed that there was another house right there just across Chestnut, sir, by itself. So we went south, just -- just across Chestnut, sir.

Q. And -- and when you say "we," who went with you?

A. It was -- it was Graviss and the Iraqi army, sir.

Q. And how long did it take you to go from the fourth HMMWV to the northern area to the first house that you described that was -- that was vacant and then

- to continue to this second home? How long did it take you? How much time is elapsed in that?
- A. From all the way to the second house that we went to, sir?
- Q. Yes.
- A. Probably like two minutes, sir.
- Q. Okay. And while you were making these movements, were you hearing any firing coming from the convoy area at all?
- A. Incoming fire, sir?
- Q. Right.
- A. No, sir.
- Q. Were you ever under fire on -- when you made your movements from the fourth HMMWV to the -- first of all, to the first vacant house to the north that you described, and then when you moved to the second home?
- A. No, sir.
- Q. What did you do when you got to the -- to the second home?
- A. We cleared that house too, sir.
- Q. Okay. What do you mean by the term "cleared"? Could you explain to the investigating officer what that term meant to you?
- A. Basically the door was locked, sir. And we were just kicking in there and started clearing rooms inside, make sure there's no -- you know, there's no insurgent hiding or anything like that, sir.
- Q. And when you go in -- do you know what the term "positive identification" means?
- A. Yes, sir.
- Q. And prior to 19 November 2005, had you ever received training with regard to what positive identification meant?
- A. Yes, sir.
- Q. Had you received that training at SASO?
- A. Yes, sir.
- Q. Did you receive that training at the RCAX that you

- described?
- A. Yes, sir.
- Q. Did you receive that training from your battalion when you were training at Horno -- in Horno?
- A. Yes, sir.
- Q. All right. Did your platoon sergeant, Staff Sergeant Fields, ever conduct training with you with regard to what positive identification meant under the rules of engagement?
- A. Yes, sir.
- Q. And did you receive that training on occasion while you were actually in Iraq too, in November of -- October and November 2005, prior to the 19th?
- A. Yes, sir.
- Q. Did you receive that sometimes at the dam during your rest-and-reset training periods?
- A. Yes, sir.
- Q. What was your understanding with regard to what the term "positive identification" meant on 19 November 2005?
- A. Positive identification, make sure you have a positive ID of a person, that he's committing any hostile act or hostile intent, sir.
- Q. What was your understanding when -- in this second home that you described that you went in to clear, did you think you could go in and kill everybody inside the house without positively identifying whether they were an insurgent or civilian or woman or child or an unarmed man?
- A. No, sir.
- Q. Why didn't you think you could just go and kill everybody inside that house?
- A. Because it's going to be a civilian out there, sir. There's going to be a civilian in there.
- Q. And what -- what had you been trained to do with regard to entering a home that possible could contain civilians, prior to 19 November 2005?
- A. Could you repeat that question again, sir?
- Q. Yeah. Prior to the 19th of November -- you know,



we've talked about some of the training you received, not only here at the States but also at rest and reset and all that type of thing. Had they trained you? Had you received training that in some of these homes in the Haditha area there may be civilians inside?

A. Yes, sir.

Q. Had they talked about the requirement to try not to enter and kill civilians if you enter -- enter structures?

A. Yes, sir.

Q. Did they -- did anybody train you -- did they talk to you about why it was important for the Marines to try and not kill civilians when they enter homes?

A. Yes, sir.

Q. What did they talk to you about? What was your training with regard to why that was important?

A. We got to be -- we got to have a minimum damage, sir. And you don't -- you don't want to -- you don't want to kill any civilians, sir.

Q. And had you actually -- had Staff Sergeant Fields trained you on occasion with regard to why that was important?

A. Yes, sir.

Q. How about Lieutenant Kallop? Had he ever conducted any platoon-level training with regard to minimizing damage to the civilian population, if you could do that?

A. Yes, sir.

Q. Well, when you went to that home, that second home that you are discussing, did you enter with any other Marines?

A. Yes, sir.

Q. Who entered with you?

A. Lance Corporal Graviss, sir.

Q. And could you take the investigating officer through the steps that you did to clear that home?

A. Basically, we kicked -- the door was closed, sir. So we just kicked in there. And we rushed -- bum-rushed in, sir. It was basically just --

Q. Was there any --  
A. And --

Q. Were there anybody inside the house?  
A. No. Nobody was inside the house, sir.

Q. Okay. What did you do to -- to clear the house?  
Did you search and that type of thing?  
A. Yes, sir.

Q. Did you find anything?  
A. No, sir.

Q. What did you do after that, after that clearing of  
that home?  
A. After that, sir, we went across, going north across  
Chestnut, sir, and cleared more houses, sir.

Q. Okay. How many more houses to the north of Chestnut  
did you clear?  
A. About four or five more, sir.

Q. Did any of those homes that you're -- and, again,  
is -- are you clearing these houses with Lance  
Corporal Graviss?  
A. Yes, sir.

Q. Do you have any other Marines with you?  
A. Just the Iraqi army, sir. No, sir.

Q. And how many Iraqi army personnel do you have with  
you?  
A. Just one, sir.

Q. Okay. So there was three of you?  
A. Yes, sir.

Q. And were you looking for the trigger man that  
potentially had triggered that IED?  
A. Yes, sir.

Q. Out of the three or four more homes that you  
actually cleared to the north, were there any --  
were they occupied? Did some of those homes have  
any people in them?  
A. Yes, sir.

Q. What type of people were in the homes, the three or

four other homes that you cleared that -- that morning?

A. You got some Iraqi children, Iraqi elders, Iraqi male, women, babies, sir.

Q. Okay. And -- and those other three or four homes, did you enter those homes in the same way where you kick in the door and go in?

A. Yes, sir.

Q. As you described earlier?

A. Yes, sir.

Q. All right. Let's talk about what was the first home that you entered that actually had Iraqi civilians inside?

A. The second house up north, sir.

Q. And you -- how did you enter that home?

A. Well, basically, some of rooms -- some of the houses we kicked in there, sir, but some of them are -- we -- we know that there's people in there, but we don't know if there's -- if, you know, there's an enemy combatant or insurgent, sir, so -- and we noticed there's a woman, so we didn't shoot at them, so.

Q. Why didn't you?

A. Not showing any hostile act, hostile intent, sir.

Q. On these homes to the north, how many civilians did you come into contact with that morning?

A. A lot, sir.

Q. Well, could you -- when you say "a lot," could you give your best estimation for the investigating officer?

A. I'll say about 25, sir, estimate.

Q. And could you -- can you give the investigating officer a description of the breakdown of the age, the sex, gender? How many were men, how many adult women, how many children, that you came in contact with during these clearings of the three or four other houses?

A. All the -- all the males, fighting age, sir, we detained them, all of them.

Q. Did you -- and how many people did you detain?  
A. We detained about approximately about 12, sir.

Q. And were they -- were they men?  
A. Yes, sir.

Q. All of them?  
A. All of them.

Q. Did you detain any of the women?  
A. No, sir.

Q. How about children?  
A. No, sir.

Q. Did you engage -- first of all, the adult men, were any of them armed?  
A. No, sir.

Q. Did you engage and kill any of these -- any people as you were clearing the three or four houses that you are describing to the north?  
A. No, sir.

Q. And what did you do after you detained the adult men? Who did you -- what did you do with those detainees?  
A. About -- some of them, we -- we dropped them off right there on the corner of Viper and Chestnut, sir. And most of them, we -- they were staying in the house with us.

Q. And did you -- did you personally question any of the -- the adult men?  
A. Yes, sir.

Q. And are you aware of what HET means, the human exploitation team? Are you aware of who that is?  
A. Yes, sir. It's -- it's Justin.

Q. Sergeant Laughner, Justin Laughner?  
A. Yes, sir.

Q. Was he a HET member assigned to -- a HET team member assigned to Kilo Company while you were in Iraq in October and November of 2005?  
A. Yes, sir.

- Q. And based upon your experience, did the HET teams also debrief and question detainees to gather information?
- A. Yes, sir.
- Q. And during your detaining process, is what you were talking about that you took those individuals into detention during the clearing operations as you described after the IED had gone off; is that right?
- A. Yes, sir.
- Q. How many children did you come into contact while clearing the three or four houses to the north as you described?
- A. Around ten, sir.
- Q. Had your squad -- in the Chestnut/Viper -- so the investigating officer understands, that Chestnut/Viper area, that has residential structure -- well, that has homes on both sides of -- of those routes; doesn't it?
- A. What was the question again, sir?
- Q. There are homes all along Chestnut and the Viper area, isn't there?
- A. Yes. Yes, sir. There is.
- Q. Had you patrolled -- has your -- had your squad, prior to 19 November 2005, ever conducted any cordon-and-knocks or cordon-and-searches, to your knowledge, through that area?
- A. Yes, sir.
- Q. And during -- prior to 19 November 2005, were you present with your squad when you did some cordon-and-searches and cordon-and-knocks through that area?
- A. Yes, sir.
- Q. During those cordon-and-searches and cordon-knocks through that area prior to 19 November 2005, did you become aware of the fact that some of these houses actually had civilians living in them?
- A. Yes, sir.
- Q. Now, at some -- some point after you had gone north and cleared the -- the three to four houses that you described, did you return back to the Chestnut/Viper

area where your four-vehicle convoy had stopped and where the IED had detonated? Did you get back to that point at some time during the morning of 19 November 2005?

A.

Yes, sir.

Q.

Okay. What time did you get back? In other words, how long did it take you to go north and clear the houses as you described with Lance Corporal Graviss and the Iraqi army, take those detainees, and that type of thing? How long did that take you to do those things, approximately?

A.

Approximately about half an hour, sir.

Q.

What -- what did you do then after you had those men in your detention? What did you do?

A.

We were just searching for any intel items like that in their house.

Q.

And -- and how long did it take for you to complete all of that before you got back to the intersection of Chestnut and Viper where your four-vehicle convoy was?

A.

I didn't understand the question, sir.

Q.

In other words, I'm asking how long did it take for you to complete all your clearing, detention, the searching, the steps you've related to the investigating officer? What I want to know is how long did it take you before you get back to where your vehicle was, the fourth vehicle that had been hit, how long do you -- does it take you to complete everything on the north side before you get back to where your squad is?

A.

Before we actually went back, sir, and we stood out there and provided security, sir?

Q.

Right.

A.

That's not until the afternoon, sir.

Q.

Did you ever at any time travel south to any of the houses that Sergeant Wuterich and a fire team went? Did you ever go to those houses to the south after the IED had detonated?

A.

Yes, sir.

Q.

What time did you go into those -- south to the houses?

A. Approximately about 1700, sir, 1800, sir.

Q. So it was at the end of the day. At any time during the morning had you gone down there?

A. No, sir.

Q. Okay. At some point, do you become aware of the fact that the QRF with Lieutenant Kallop and Corporal Sanchez's squad arrive at the Chestnut/Viper intersection we're talking about?

A. Yes, sir.

Q. How long did it take for the QRF to arrive?

A. I'm not so sure, sir. I don't --

Q. What happens after they arrive? What do you do and what do you -- what actions do you take after the QRF arrives?

A. I didn't know what they did, sir, from there on.

Q. But did you stay in that area of Chestnut and Viper for the remainder of the day?

A. Oh. Yes, sir.

Q. Okay. And what -- what were you doing as the morning passed into the early afternoon hours? What were you physically doing with your fire team?

A. We were to provide guardian angels, sir.

Q. Okay. So you were in a security position?

A. Yes, sir.

Q. Where were you in a security position?

A. Staff Sergeant Wuterich gave us an order to go to relieve 1st Platoon, sir, run security up to that house, just in the corner of Viper and Chestnut, sir.

Q. At some time -- after you took that position, at some time, did you have the opportunity to have a conversation with Sergeant Wuterich at the Chestnut/Viper intersection in the afternoon?

A. Yes, sir. That was before that, sir.

Q. Okay. When was that conversation?

A. Right there on the corner of -- by the HMMWV, sir, high-back.

Q. Okay. What -- and could you describe for the investigating officer, first of all, how long after the IED detonated did you have the opportunity to talk to Sergeant Wuterich at the Chestnut/Viper intersection?

A. How long, sir?

Q. Yeah. How much time had passed?

A. Had been passed, sir?

Q. The IED went off in the morning, right?

A. Yes, sir.

Q. How much time had passed after the IED went off before you had an opportunity to talk to Sergeant Wuterich?

A. About eight, nine hours, sir.

Q. So is it in the afternoon now?

A. Yes, sir.

Q. The QRF has arrived? Is that right?

A. Oh. Yes, sir.

Q. It was obviously after the QRF? Had the casualties -- had Guzman and Terrazas and Carlson, had they been evacuated?

A. Yes, sir.

Q. And so it was now towards the end of the afternoon; is that right?

A. Yes, sir.

Q. Can you describe for the investigating officer, first of all, where you were when you saw Sergeant Wuterich at the end of the afternoon?

A. We would -- we were inside the high-back, sir.

Q. Was there anybody else present?

A. Yes, sir. There -- our squad, 3d Squad, sir, they were just around, hanging around, sir, around security.

Q. All right. And did you -- what did Sergeant Wuterich say to you when you were at the high-back?

A. He told me that if anybody asks about those -- those guys in -- the five Iraqi males at the white car, that they were running away and the Iraqi army shot



them.

Q. And did you say anything to Sergeant Wuterich when he said that to you?

A. No, sir.

Q. And was there anybody else with you, right there, when Sergeant Wuterich said those words to you?

A. No, sir.

Q. So it was just you and him?

A. Yes, sir.

Q. And you -- did you say anything in response?

A. No, sir. I don't remember.

Q. What did you -- what did you think when Sergeant Wuterich said that to you?

A. That I had done something wrong, sir.

Q. Well, first of all, let's break it down. Had the -- had the men been running away when they were engaged?

A. No, sir.

Q. Had the Iraqi army -- to your observation, to your knowledge, had the Iraqi army ever shot those men?

A. No, sir.

Q. Did you say anything back to Sergeant Wuterich?

A. Like conversation, sir?

Q. Yes.

A. No, sir. I don't remember.

Q. Well, at some point, your squad actually returned to Firm Base Sparta on the evening of 19 November 2005; is that right?

A. Yes, sir.

Q. What time did you get back to the firm base?

A. Around almost like 2230, sir.

Q. Did -- did you have any conversations after you returned to the firm base with Sergeant Wuterich with regard to what had occurred out at Chestnut and Viper that night; the evening of 19 November?

A. No, sir.

**Q.** At some -- some point after 19 November --

**DC (LtCol Vokey):** Sir, is it possible that we take a break at this point just for a few minutes?

**GC (LtCol Sullivan):** Sure.

**DC (LtCol Vokey):** If it's a good time.

**GC (LtCol Sullivan):** No. Lieutenant Colonel Vokey, it's a great -- it's a good time.

**IO:** Let's take a ten-minute recess.

**GC (LtCol Sullivan):** Roger.

*The witness was warned.*

*The Article 32 investigation recessed at 0915, 31 August 2007.*

*The Article 32 investigation was called to order at 0936, 31 August 2007.*

**GC (LtCol Sullivan):** Sir, with your permission, we're back on the record.

Sergeant De La Cruz, I'm just going to remind you that you remain under oath as your examination continues.

*Questions by the government (LtCol Sullivan) (continued):*

**Q.** One of the things, Sergeant De La Cruz, that I want to ask you about -- and I apologize. I should have asked this earlier in your examination. I want to take you back to that timeframe on 19 November 2005 immediately after, you testified, you exited -- you left -- got out of your HMMWV, you heard some pops, and you looked to your left and saw Sergeant Wuterich in the kneeling position. I had forgotten to ask you this question: How far from you was Sergeant Wuterich when you saw him in that position, as you described to the investigating officer?

**A.** Approximately 15 meters, sir.

**Q.** And how far was Sergeant Wuterich from the white car, in that position as you described?

**A.** I don't know, sir.

Q. And how far were you from the white car?  
A. 20 meters, sir.

Q. Okay. Now, we concluded -- prior to the break, I was asking you some questions as to whether there had been any conversations in the evening of 19 November 2005 after you returned to the firm base. And I want to continue now with my examination from that point on.

After the 19th of November, that evening, at some point did your company commander speak to your squad?  
A. That -- that night, sir?

Q. Well, when did -- first of all, was -- who was your company commander of Kilo Company on 19 November 2005?  
A. Captain McConnell (phonetic), sir.

Q. After this engagement that we're discussing on 19 November, at some point, did Captain McConnell speak to you?  
A. To me, sir?

Q. Well, your squad?  
A. Yes, sir.

Q. Okay. When was that?  
A. Like, a couple of days, sir, after the 19th, sir.

Q. Okay. And could you describe for the investigating officer when he spoke to you? I mean, excuse me, where he spoke to you?  
A. We were at the briefing room, sir.

Q. Okay. And is that on -- the briefing room on the Kilo Company firm base?  
A. Yes, sir.

Q. And is that a room next to the Kilo Company COC?  
A. Yes, sir.

Q. Who was present?  
A. I believe the whole squad, sir.

Q. And when -- and it's your squad that you're talking about?

A. Yes, sir.

Q. Was it your whole platoon or was it just the squad?

A. I -- I think -- I think just our whole squad, sir.

Q. And Lance Corporal Terrazas had been confirmed KIA that morning and had -- and his body had been cas-evac'ed from there; is that correct?

A. Yes, sir.

Q. Was that your first KIA during your deployment with Kilo Company?

A. Yes, sir.

Q. Could you describe for the investigating officer what Captain McConnell said to you in the briefing room then the day following -- in the days following 19 November as you related?

A. That -- that we lost Terrazas and we just have to move on, sir.

Q. During the brief to the squad, did he ever question the Marines individually with regard to what had happened?

A. No, sir.

Q. Okay. So was the focus of this conversation briefing you to either to keep -- remember Terrazas but keep your -- keep your -- keep -- keep your focus, you had a mission to continue here in Haditha and your squad needed to push on and be focused for the remaining portion of your deployment?

A. Yes, sir.

Q. Did something occur after that conversation with Captain McConnell, did you have an opportunity to talk with Sergeant Wuterich, after Captain McConnell spoke to you?

A. Yes, sir.

Q. Could you relate to the investigating officer, first of all, where you spoke to Sergeant Wuterich and what was said after the -- at Captain McConnell's speech to the squad?

A. Well, it wasn't only myself, sir, but the whole squad, sir.

Q. Okay. And where did Sergeant Wuterich speak to the squad?

A. Well, they wanted us to meet up by the smoke pit, sir. And when we got there, there was like a couple guys smoking not from our -- not from our platoon. They were from other platoons, sir. So they told us to go right there by the port-a-potties, sir.

Q. Okay. The port-a-potties?

A. Yes, sir.

Q. All right. And who went to the port-a-potty area?

A. The whole squad, sir.

Q. And when you say "the whole squad," could you relate to the investigating officer the Marines that you are talking about that were present at the port-a-potty area?

A. Doc Witt.

IO: I'm sorry. Who?

WIT: Doc Witt, sir.

*Questions by the government (LtCol Sullivan) (continued):*

Q. Is that Hospital Corpsman Witt?

A. Yes. Yes, sir.

Q. Roger.

A. You've got Corporal Salinas's team, which is Sharratt, Rodriguez, and Tatum; and my team, Mendoza and Graviss, sir; and Staff Sergeant Wuterich, sir.

Q. Okay. And could you relate to the investigating officer what Staff Sergeant Wuterich said in this conversation at the -- the port-a-potty area that we're talking about?

A. Pretty much, you know, TJ is -- is gone and -- and he -- he also said that, you know, that the -- that the Iraqi army shot at those -- that they were running away and shot those Iraqi army -- I mean Iraqi males, sir.

Q. Okay. And did you say anything to Sergeant -- Staff Sergeant Wuterich when he said that the men had been running away and that the Iraqi army had shot at them?

A. No, sir.

Q. And I want to be clear for the record. At any time during the engagement of those men at the white car, did you ever see them running away?

A. No, sir.

Q. Did you ever see the Iraqi army firing at them?

A. No, sir.

Q. Did Sergeant Wuterich say anything else during this conversation that we're relating about the engagement at the white car?

A. That's all I can remember, sir.

Q. After this conversation and prior to February of 2006, were there any other conversations that you had with Sergeant Wuterich about what had happened with the men at the white car on 19 November?

A. Yes, sir.

Q. Okay. When was the next time you had a conversation with Sergeant Wuterich about the engagement of the men at the white car?

A. I don't -- I don't remember when. I believe it was when we had the -- the Colonel Watt was coming in, the army colonel, sir, to investigate it.

Q. Okay. When did you become aware of the fact that there may be an army colonel coming to Kilo Company Firm Base to investigate? Can you explain to the investigating officer how you became aware of that?

A. It was brought up to us by the platoon sergeant or platoon commander, sir.

Q. Okay. And who was your platoon sergeant?

A. Staff Sergeant Fields, sir.

Q. And platoon commander?

A. Lieutenant Kallop, sir.

Q. And can you relate what they said about the possibility of an Army colonel coming to investigate? What did they tell you?

A. They told us that they were going to investigate it, and we just have to tell what happened.

Q. Did they tell you what they were investigating?

A. Yes, sir. The 19th, sir, what happened.

Q. All right. Now you need to --

IO: I'm sorry. Even though it's amplifying, I can't understand what you're saying.

WIT: November 19, sir.

*Questions by the government (LtCol Sullivan) (continued):*

Q. And you need to continue to speak clearly so everyone can hear your responses. Okay, Sergeant De La Cruz?

A. Yes, sir.

Q. When you got informed that the Army may be sending a colonel to investigate November 19, after you received that information did you have an opportunity to speak with Sergeant Wuterich at all?

A. Yes, sir.

Q. Where was that?

A. I don't remember, sir.

Q. Well, what did Sergeant Wuterich talk to you about?

A. Basically, I'm the one who wanted to know what we should -- you know, I was worried, sir.

Q. Okay. Well, you -- all right. You were worried about what?

A. I was worried about the -- you know, that we probably committed a murder, sir.

Q. Well, because you were worried, did you go and seek out Sergeant Wuterich to talk to him?

A. Yes, sir.

Q. Okay. And where did you talk to him? Can you remember?

A. I don't remember, sir.

Q. Was it at Kilo Company firm base or were you back at the dam?  
A. I don't remember, sir.

Q. Okay. Can you recall what you talked about?  
A. Yes, sir.

Q. Could you relate to the investigating officer what you talked to Sergeant Wuterich about after you received word that the Army may be sending a colonel to investigate 19 November?  
A. About the -- that -- that the Iraqi -- the Iraqi army shot them and I'm the one who said, you know, "stop, stop, qif." And -- "qif" in Iraqi language, sir, which is stop, sir. And they didn't. And so the Iraqi army ignored it, and the Iraqi army shot them. And I shot at them too.

Q. All right. Now, first of all, is this a discussion you're having with Sergeant Wuterich with regard to what you should tell the Army colonel?  
A. Yes, sir.

Q. All right. Now, first of all, who -- who in this conversation discussed that maybe you should say that you said "qif, qif" and "stop, stop"?  
A. I don't remember.

Q. Was that your idea or Sergeant Wuterich's idea?  
A. It was my idea, sir.

Q. Okay. And why did you say that maybe you should say that to the Army colonel if he -- if he actually comes to investigate?  
A. So we don't get in trouble, sir.

Q. What did Sergeant Wuterich say in response when you -- when you told him "I could say that" -- or you could say that?  
A. "Just go for it," sir.

Q. Now, so we're clear for the record, on 19 November 2005, did you ever say to these men "qif, qif, stop, stop" --  
A. No, sir.

Q. -- to the men that were killed next to the car?  
A. No, sir.



- Q. So what we're talking about is you're -- you're having a discussion with Sergeant Wuterich about creating a lie that you can tell to Colonel Watt; is that right?
- A. Yes, sir.
- Q. And why did you want to lie to Colonel Watt?
- A. Because I don't -- I didn't want our squad to be -- to get in trouble, myself and Staff Sergeant Wuterich, sir.
- Q. Eventually, did Colonel Watt come to Kilo Company firm base and interview the Marines?
- A. Yes, sir.
- Q. And did he interview you on approximately February 21 of 2006?
- A. Yes, sir.
- Q. And did you give any sworn statement to Colonel Watt?
- A. Yes, sir.
- Q. And in that sworn statement, did you tell him that you had said "qif, qif" and "stop" to the men at the white car?
- A. Yes, sir.
- Q. And did you tell him that they had been running away and that the Iraqi army had shot at them?
- A. Yes, sir.
- Q. And when you told Colonel Watt that, was that a lie?
- A. That was a lie, sir.
- Q. And so you gave him a false statement?
- A. Yes, sir.
- Q. After you gave him that false statement, were -- in February of 2006, did you have another opportunity at all to become aware of the fact that now the Naval Criminal Investigative Service was potentially interested in investigating how the civilians in Iraq had been killed in Haditha in 19 November 2005?
- A. Yes, sir.

- Q. How did you become aware of the fact that the Naval Criminal Investigative Service was now potentially going to come and investigate this 19 November 2005 engagement?
- A. We found out from our platoon sergeant they were coming, sir.
- Q. And after you received that word, you got that word after Colonel Watt had taken statements and left Haditha; isn't that right?
- A. Yes, sir.
- Q. After you received word that the Naval Criminal Investigative Service was going to potentially question the Marines with regard to what had happened, did you have a conversation with Sergeant Wuterich?
- A. Can you repeat that question again, sir?
- Q. After Colonel -- after you had given a statement to Colonel Watt on February 21, 2006, in March of 2006, you became aware that Navy -- the Naval Criminal Investigative Service, what we call NCIS, was also probably going to come and ask you what happened on the 19th; isn't that right?
- A. Yes, sir.
- Q. When you received that word from your -- from your unit, at any time did you then go back to Sergeant Wuterich and talk to him about the fact that you might have to give statements to NCIS?
- A. No, sir.
- Q. Well, did NCIS actually come and start taking statements from you and your fellow squad mates that were involved in the incident on 19 November 2005?
- A. Yes, sir.
- Q. Where did NCIS come and start taking statements?
- A. At Haditha Dam, sir.
- Q. Okay. And did -- were you questioned by NCIS?
- A. Yes, sir.
- Q. And when they questioned you, did you again provide them false information about what really happened with the five men near the white vehicle?
- A. Yes, sir.

- Q. What did you tell NCIS that was a lie?  
A. That they were running away, sir, and the Iraqi army shot them.
- Q. Okay. And why did you give that false information to NCIS in March of 2006 at the Haditha Dam?  
A. I didn't want to get in trouble. I didn't want the whole squad to get in trouble. I didn't want Staff Sergeant Wuterich to get in trouble, sir.
- Q. And at any time during this NCIS questioning, did you speak with Sergeant Wuterich at all about what was happening?  
A. After I gave a statement, sir, that -- that very first statement they asked -- when they questioned us, sir.
- Q. Okay. On the first day that NCIS questioned you?  
A. Yes, sir.
- Q. Okay. Was that at the Haditha Dam?  
A. Yes, sir.
- Q. And was that in March of 2006?  
A. March. Yes, sir.
- Q. Okay. After you were questioned by NCIS, did -- you saw Sergeant Wuterich?  
A. Yes, sir.
- Q. Could you relate to the investigating officer what you talked to Sergeant Wuterich about after you had given your first statement to NCIS?  
A. I was going up the stairs, sir, at the Haditha Dam, sir. And he was coming down. I was going up. I had just got done.
- And he was like, "Hey, you still on the same story?"
- I was like, "Yeah, I'm still on the same story."
- And that's about it, sir.
- Q. Eventually, were you questioned by NCIS again, after you gave them this first statement containing the false information as you've related to the investigating officer?  
A. Yes, sir.

Q. And prior to leaving Iraq, were you questioned by NCIS at Al Asad?

A. Yes, sir.

Q. And eventually, did you tell them the truth about what had happened?

A. Yes, sir.

Q. Now, after you got back from Iraq, this investigation continued. As you sit here today, you've received a grant of immunity; isn't that right?

A. I received a grant of immunity. Yes, sir.

Q. Yeah. You were initially charged in 21 December of 2006 with violations of the Uniform Code of Military Justice; is that correct?

A. Yes, sir.

Q. And then, after that, you've received a grant of immunity, those charges were dismissed, and you are testifying here today for the investigating officer's consideration under a grant of immunity and an order to testify; isn't that right?

A. Yes, sir.

Q. Now, what is your understanding as you sit here today with what regard -- what does that grant of immunity from the convening authority and that order to testify require of you in this proceeding and all other proceedings from here on?

A. For me to tell the truth, sir.

Q. And have you had the opportunity to meet with defense counsel prior to today?

A. No, sir.

Q. You've never met with Lieutenant Colonel Vokey or any other member of that team and answered any of their questions?

A. No, sir.

GC (LtCol Sullivan): And, Your Honor, at this point, can I take one minute to return to my counsel table just to ensure that I've --

IO: Yes.

*The government counsel conferred.*

**GC (LtCol Sullivan):** Your Honor, at this point, we're going to tender the witness to Lieutenant Colonel Vokey.

Did you want a break, Lieutenant Colonel Vokey?

**DC (LtCol Vokey):** Sir, we'd like you to break before we start.

**IO:** Does this -- okay. We're in recess.

*The witness was warned.*

*The Article 32 investigation recessed at 0952, 31 August 2007.*

*The Article 32 investigation was called to order at 1015, 31 August 2007.*

**GC (LtCol Sullivan):** You're reminded you remain under oath. I tender you to Lieutenant Colonel Vokey.

**WIT:** Aye aye, sir.

*CROSS-EXAMINATION*

*Questions by the defense (LtCol Vokey):*

**Q.** Good morning, Sergeant De La Cruz. How are you doing?

**A.** Good, sir. How are you today?

**Q.** My name is Lieutenant Colonel Vokey. I'm counsel for Staff Sergeant Wuterich. And I don't know if we've met, but we've seen each other before; right?

**A.** Yes, sir.

**Q.** And I notice you've got some ink on your arm there, a tattoo, grim reaper. Any significance to that thing?

**A.** No, sir.

**Q.** No? All right. Sergeant De La Cruz, you're a pretty good Marine?

**A.** Yes, sir.

**Q.** You are?

A. Yes, sir.

Q. How about when you were with 3/1 out in Haditha on the deployment, did you get along with other members of your squad, your platoon?

A. Yes, sir.

Q. How about Lieutenant Kallop? Did you get along with the Lieutenant?

A. Yes, sir.

Q. Sergeant Wolf?

A. Yes, sir.

Q. Corporal Sanchez?

A. Yes, sir.

Q. How about Sergeant Wuterich? Did you get along with him?

A. Yes, sir.

Q. Tatum?

A. Yes, sir.

Q. Wright?

A. Yes, sir.

Q. Got along with pretty much everybody?

A. Pretty much, sir.

Q. About about any -- you ever get in any fights with anybody from your platoon, any junior Marines?

A. Any junior Marines, sir? Not that I remember, sir.

Q. Not -- you don't remember any?

A. No, sir.

Q. All right. Now, you were charged in this case, as Lieutenant Colonel Sullivan said? You had charges against you, right --

A. Yes, sir.

Q. -- at one time? And what were you charged with?

A. Five counts of false statements, sir, and five counts of unpremeditated murder, sir.

Q. So murder and false statements?

A. Yes, sir.

Q. Right? That was in December of 2006, you were charged?

A. Yes, sir.

Q. Now, 22 March of this year you got immunity?

A. I believe so, sir.

Q. Sound right? Same time you also got the order to testify and cooperate?

A. The same time? No, sir. I was ordered to testify first, sir.

Q. All right. All right. Sergeant De La Cruz, let me -- let me show you copies of your testimonial immunity grant and your order -- your order to answer questions posed by investigators or counsel. Take a look at those, just make sure that I've got the right documents there.

IO: And, Colonel Vokey, that's Exhibit 20?

DC (LtCol Vokey): That is, sir.

*Questions by the defense (LtCol Vokey) (continued):*

Q. Those the right documents?

A. I believe so. Yes, sir.

Q. All right. I'll take back those copies of Exhibit 20. And did you catch the dates at the top of them, 22 March for both of them?

A. Yes, sir.

Q. So you were given immunity and ordered to testify on the same date, by General Mattis, right?

A. Yes, sir.

Q. And what's your understanding of that order to cooperate and testify?

A. My understanding, sir, I was to -- that I have to testify, sir.

Q. And what about cooperate? Do you have to cooperate and speak with counsel in the case?

A. Yes, sir.

Q. That's what General Mattis ordered you to do; right? Do you need to review it again to make sure you know what General Mattis is ordering you to do?

A. No, sir.

Q. That's exactly what General Mattis ordered you to do; right, to testify and to cooperate with counsel?

A. That's right. Yes, sir.

Q. Now, your charges were dismissed April of -- about a little more than a week later, April of this year; right, April 2007? That sound right?

A. Yes, sir.

Q. April 2, 2007?

A. Yes, sir.

Q. Okay. So you had about three months from the time you were charged with murder and false statements until your charges were dismissed; right?

A. Three months. Yes, sir.

Q. Yeah. December to April?

A. Yes, sir.

Q. Maybe a little more than that?

A. [No verbal response.]

Q. So when you were charged, did you get a bunch of discovery in the case? I mean did the prosecution hand you lots of evidence and statements and all that kind of stuff?

A. No, sir.

Q. Or your attorneys?

A. No, sir.

Q. You didn't get any discovery in the case when you were charged? Did your attorneys get anything?

A. I -- I don't know, sir.

Q. Did you ever have a chance to go back and see any of that evidence? Did you look at any pictures that was turned over to you?

A. No. I never seen a picture, sir, at that time. No, sir.



- Q. How about did you go back and read your own statements over? I mean, you were charged with murder. Didn't you want to see some of the evidence against you?
- A. Yes, sir.
- Q. And did you see any of that evidence?
- A. I only -- I only saw the -- the statement I had provided, sir.
- Q. Just your statement? That's all you saw?
- A. Yes, sir.
- Q. Didn't see anyone else's statements, no pictures?
- A. No pictures, sir.
- Q. So -- well, when Lieutenant Colonel Sullivan showed you pictures here today, were those -- is that the first time you've seen those pictures?
- A. The pictures, sir?
- Q. Yeah. The pictures that Lieutenant Colonel Sullivan showed you of the men from the white car, have you seen those before?
- A. I've seen them before, sir.
- Q. So you have seen some of the evidence prior to today?
- A. Yes, sir.
- Q. All right. What else have you seen?
- A. Nothing. Just that.
- Q. Just those pictures?
- A. Yes, sir.
- Q. Not a -- not a single thing else that either your attorneys have shown you, prosecutors have shown you?
- GC (LtCol Sullivan): Your Honor, just one question -- well, it's an objection I'll raise is counsel is asking questions about his communications with attorneys.
- DC (LtCol Vokey): No, sir, I'm not.
- GC (LtCol Sullivan): Well, just -- I just want to raise the issue. It may go into an area of privilege. And I

just wanted to be circumspect about that. And that's all. We're respectfully raising the issue about that.

This client is represented by counsel. Ms. Sarah Clevin (phonetic) is present here in court. And that's why I'm raising the -- I'm just raising that respectfully.

**IO:** And -- well, the question hasn't called for the communication between counsel and client. So I'm going to allow him to answer the question.

But, Colonel Vokey, you're compounding your questions. And I know you are trying to get to it, but he's not answering when you're changing your question. So either just withdraw so I know --

**DC (LtCol Vokey):** Thank you, sir.

**IO:** -- when he says "yes," which he's saying yes to.

**DC (LtCol Vokey):** Thank you, sir.

*Questions by the defense (LtCol Vokey) (continued):*

**Q.** All right. Sergeant De La Cruz, other than the pictures in court and your own statements, have you seen any other evidence in this case?

**A.** No, sir.

**Q.** None at all?

**A.** No, sir. None at all.

**Q.** Your attorneys haven't shown you anything?

**A.** No, sir.

**Q.** Prosecutors haven't shown you anything?

**A.** Yes, sir. No.

**IO:** I'm sorry? Could --

*Questions by the defense (LtCol Vokey) (continued):*

**Q.** That's a "no"?

**A.** No, sir. No. Not at all, sir.

Q. All right. Now, your -- your case was dismissed with prejudice; is that correct?  
A. Yes, sir.

Q. And what does that mean to you?  
A. It means I can never be charged for this again.

Q. You could never be charged ever again with -- with the crimes that you were charged with, with false statements --  
A. Yes, sir.

Q. -- and those murders; right, the five false statements, the five murders?  
A. Yes, sir.

Q. Correct? Never again can you be charged with those, ever; right?  
A. Yes, sir.

Q. Now, you know Lance Corporal Sharratt; right?  
A. Yes, sir.

Q. And you know his charges have been dismissed; don't you?  
A. That's what -- I don't know, sir.

Q. And his charges were dismissed without prejudice, so they can be charged again. But in your case, you can never be charged with those -- those murders or those false statements ever again for any reason; right?  
A. Yes, sir.

Q. That's what dismissal with prejudice means, you're completely safe on those charges; correct?  
A. If you --

Q. We need an audible answer.  
A. If you say so, sir. Yes, sir.

Q. No. I -- I'm asking you. Is that -- isn't that correct? Isn't that you're understanding, that you're completely safe from those five murders, those false statements, ever again?  
A. Yes, sir.

Q. All right. Now, you were granted immunity on the 22nd of March of this year. And did you have opportunity to talk with Lieutenant Colonel Sullivan or any member from the prosecution team?

A. No, sir.

Q. You have never spoken with them?

A. No, sir.

Q. You have never sat down for an interview with Lieutenant Colonel Sullivan, Major Erickson, or any member from the prosecution?

GC (LtCol Sullivan): For the record, I thought the question was before 22 March. I mean, I -- maybe I misunderstood the question.

IO: Well, all right. That's not the way I interpreted the question. I thought it was before today.

But why don't we put a timeframe on it, just to be clear for him.

*Questions by the defense (LtCol Vokey) (continued):*

Q. Before today, have you ever spoken with anybody from the prosecution team?

A. Before today, sir?

Q. Yes.

A. I have, sir. Before today.

Q. All right. Who have you spoken with?

A. Lieutenant Colonel Sullivan, sir.

Q. And is Lieutenant Colonel Sullivan the only one you've ever spoken with?

A. Yes, sir. After they dropped charge -- after they dropped my charges, sir.

Q. Oh. So did any of them speak to you before they dropped the charges?

A. No, sir. No -- no -- no, sir.

Q. All right. At any time, has any of the prosecutors spoken with you?

A. No, sir.

Q. And how many times have you spoken with Lieutenant Colonel Sullivan?

A. Probably like six times, sir.

Q. All right. And did you have your counsel present?

A. Oh. Yes, sir.

Q. Every single time?

A. Every single time, sir.

Q. And where did these interviews take place? Here at Camp Pendleton?

A. Yes, sir.

Q. Any of them out in Washington, D.C.?

A. No, sir.

Q. No? Always here?

A. Always here. Yes, sir.

Q. Now, your order to cooperate and testify includes cooperating with defense counsel as well, doesn't it?

A. Yes, sir.

Q. Now, you testified at the Article 32 for Lance Corporal Tatum in July of this year; correct?

A. Yes, sir.

Q. And that's where we first saw each other, isn't it?

A. Yes, sir.

Q. And you were here with one of your attorneys; correct?

A. Yes, sir.

Q. Up at -- up at Camp Horno, at Legal Team Delta; right?

A. Yes, sir.

Q. And I approached you and your attorney there and asked to speak with you, didn't I?

A. You -- yes. Yes. You approached my attorney. Yes, sir.

Q. And you and your attorney were there for two days; correct, waiting for you to testify?

A. We were only there for one day, sir.

Q. I'm sorry. You were --  
A. We were only there for one day, sir.

Q. You were there for one day only?  
A. Yes, sir. I was.

Q. And I asked to come interview you; right? You were sitting right next to your attorney, and I asked to -- to talk to you right then because you weren't in court; right?  
A. You didn't ask me, sir. You asked my attorney, sir.

Q. And I wasn't allowed to interview, was I?  
A. No. See --

Q. You said no?  
A. No. You have -- he told you to ask Mr. Dan Moreno (phonetic), sir, my other attorney, sir.

Q. Okay. Tillman Finley (phonetic) is one of your attorneys, isn't he?  
A. Yes, sir.

Q. And so is Dan Moreno?  
A. Yes, sir.

Q. And you have a third attorney as well?  
A. Yes, sir.

Q. And is that -- that's the person who is present in the courtroom?  
A. Yes, sir.

Q. So why is it that I couldn't interview you on that day when you had an attorney present? Why would you not cooperate with me?  
A. I don't know, sir.

Q. Because General Mattis ordered you to, didn't he?  
A. Yes, sir.

Q. Now, did General Mattis's letter say that he's ordering you to cooperate with defense counsel, but you can pick the time and place? Does it say that anywhere in the order from General Mattis?  
A. I don't think so, sir.

Q. Did the prosecutors have to fly out to Washington, D.C., to interview you?  
A. No, sir.  
Q. No. They did it right here --  
A. Yes, sir.  
Q. -- right? Now, your attorney told me that I had to fly out to Washington, D.C., to talk to you; didn't he?

GC (LtCol Sullivan): Well --

WIT: I don't know, sir. I don't know what you guys talked about, sir.

*Questions by the defense (LtCol Vokey) (continued):*

Q. You were sitting right next to him when I talked to him, weren't you?

A. Yes, sir.

Q. And you don't remember that?

A. I don't remember you -- he's asking you to fly out to Washington, D.C., sir.

Q. You don't have any knowledge of that?

A. No knowledge, sir.

Q. And have you traveled out to Washington, D.C., ever, to speak with your attorneys?

A. Yes, sir. I did, sir.

Q. How many times?

GC (LtCol Sullivan): Your Honor --

Ms. Sarah Clevin: Sir, this -- as his attorney, I object to this line of questioning. This is privileged communications.

IO: Yeah. You know, I don't want to take comments from people outside the hearing, so.

GC (LtCol Sullivan): Well, then I'll -- Your Honor, that was the -- I tried to raise the issue before. And I think we're getting into an area now where they are going to be asking about communications between

counsel.

**IO:** Well, I don't think they are. He asked him whether he traveled to Washington, D.C., to meet with counsel. I'm going to allow the questions he asked.

**Ms. Sarah Clevin:** Sir, the number of times we've met with our clients.

**GC (LtCol Sullivan):** That -- that is a privileged communication, from the government's standpoint.

If he's --

**IO:** Okay.

**GC (LtCol Sullivan):** If the question is traveling to D.C. --

**IO:** Well, I understand. You know, it's very interesting because he has no charges, nor can he be charged. He has immunity in order to testify. This whole counsel interfering with -- or being present for interviews is a unique thing. I've expressed that to you once before. I don't have the same interpretation as everyone else around here seems to have it that attorneys have to be present for people who can't be charged under the Uniform Code of Military Justice.

**GC (LtCol Sullivan):** Well, yes, sir. I --

**IO:** But I'm going to allow that question. And we'll move on.

**GC (LtCol Sullivan):** Well, can I -- can I respond to the comment you just made?

**IO:** No. I want him to -- allow him to answer the question and move on.

**GC (LtCol Sullivan):** Okay.

*Questions by the defense (LtCol Vokey) (continued):*

**Q.** All right. Sergeant De La Cruz, I'll ask you again, how many times have you traveled to Washington, D.C., to talk to your attorneys?

**A.** A couple, sir.



Q. A couple?  
A. Yes.

Q. Are we talking about two or three or --  
A. Yeah. It's two, sir.

Q. -- six or seven? All right. When you are traveling out there, are you on government orders?  
A. I don't -- I don't know, sir.

Q. Who is paying for your plane ticket to fly out there? Are you paying for your plane ticket to fly out there when you go out?  
A. No, sir.

Q. The government is paying for it, aren't they?  
A. No, sir.

Q. Well, then who is paying for your plane ticket?  
A. My attorney, sir.

Q. Your attorneys are paying it all?  
A. Yes, sir.

Q. And there's been no government travel out to the east coast whatsoever?  
A. Yes, sir.

Q. All right. Let's talk about November 19. All right. Tell me about the IED. The IED went off that morning; right, November 19? It was loud?  
A. [No verbal response.]

Q. You've got to answer verbally. We've got to pick it up on the reporter.  
A. I didn't get the question, sir. What is --

Q. The IED, when it exploded was it loud?  
A. Yes, sir.

Q. Could you feel the concussion?  
A. I -- I -- I just noticed the IED blowed up right behind -- right behind me, sir.

Q. Didn't you say in one of your statements that the force was so great that it actually pushed your vehicle forward?  
A. I can't remember saying that, sir.

Q. So did that happen?  
A. Well, I felt it. Yes, sir.

Q. So that's a pretty big explosion if it's moving your vehicle?  
A. Not -- not obviously, like moving my vehicle, sir, but I felt it, sir.

Q. Did it push your vehicle forward or was that a false statement that you made?  
A. It's -- I'm not going to say it was a false statement, sir, but -- but it did. But I was kind of -- I felt it, sir. I don't know. I said in that statement that it pushed forward. And that's what I meant is I felt it.

Q. Okay. Well, let me just ask you, did it push your vehicle forward?  
A. No, sir. I -- I don't think it pushed --

Q. And you were the second vehicle in a convoy of four, right?  
A. Yes, sir.

Q. So Terrazas's vehicle that got hit with the IED was quite a distance back there?  
A. Yes, sir.

Q. So when it blew, to feel the concussion two vehicles up, it's got to be a pretty big blast; right?  
A. Yes, sir.

Q. And how loud was it?  
A. It was pretty loud, sir. I don't know.

Q. Can you compare it to anything? I mean, was it the loudest thing you've ever heard?  
A. I don't know, sir.

Q. Pretty down loud?  
A. Loud, sir.

Q. And what else did you notice about the IED blast? Could you see things flying in the air?  
A. I didn't see flying things in the air, sir.

Q. Okay. You -- immediately after it exploded, you exited your vehicle; right?  
A. Yes, sir.

Q. And you said that this is the first time you didn't have trouble with your door, it just opened really quick, and you were out immediately; right?  
A. Yes, sir.

Q. Did you notice any of the flying debris from -- from Terrazas vehicle coming -- raining down on you at all?  
A. I don't remember, sir.

Q. Any pieces that were shot hundreds of feet in the air floating down? Did you notice?  
A. I don't remember, sir.

Q. Did you look back at all towards the IED site when you got out of your vehicle?  
A. No, sir.

Q. All right. So -- all right. Let's talk about your convoy; all right? We've already heard that you were traveling back as a resupply mission. Let's talk about the order of that convoy; all right?  
A. Aye aye, sir.

Q. Now, first vehicle was who?  
A. It was Lance Corporal Rodriguez, Corporal Salinas, and Lance Corporal Sharratt, sir.

Q. Okay. Second vehicle was you, which was you, Tatum, and Mendoza; right?  
A. Yes, sir.

Q. And exactly who is sitting where in your vehicle?  
A. I was sitting on the driver's side, sir, truck driver. And Lance Corporal Tatum was sitting next to me, sir -- or not really next to me but right on the passenger side, sir.

Q. A-driver of --  
A. A-driver. Yes, sir.

Q. And this was an armored-up, high-back HMMWV; right?  
A. High-back. Yes, sir.

Q. Okay. And in the back was Lance Corporal Mendoza?  
A. Yes, sir.

Q. Now, Staff Sergeant, then Sergeant, Wuterich was back in the third vehicle; correct?  
A. Yes, sir.

Q. And you are sure of who was in your vehicle when that happened; right? You're positive?  
A. Yes, sir.

Q. Okay. And this road you were on was Chestnut; right?  
A. Yes, sir.

Q. And kind of describe the way Chestnut was. What did it look like?  
A. You got two-way traffic, sir. You've got a median in the middle. That's about it, sir.

Q. All right. How wide was -- now, you -- you guys were driving on the right side of the road; is that correct?  
A. Yes, sir.

Q. Nobody was driving on -- on the other side of the median at that time, before the explosion; right?  
A. I don't -- I -- I don't remember, sir.

Q. Everybody was driving on the right side?  
A. I don't know, sir.

Q. Okay. You were driving on the right side?  
A. Yes, sir.

Q. And that portion of the -- of the paved road you were driving on, how big is it? I mean, is it a very, very tiny, narrow lane just enough to fit or is it wider than that?  
A. It's wider than that, sir.

Q. And can you guess about how wide the -- the pavement on that road was?  
A. I estimate from the road that we were at, the westbound, sir, to the eastbound, and plus the median, about 20 meters, sir.

Q. Okay. I'll tell you what I'm going to do. I'm going to have you draw us a picture.

Okay. Sergeant De La Cruz, do you want to step up here for me please.

A. Aye aye, sir.

Q. All right. I want you to draw a line for me straight down Chestnut, showing both sides and the median. Can you do that?

A. Aye aye, sir.

Q. Okay. Okay. All right. Now, in the diagram you just drew -- and we'll have this marked and photographed later. The diagram you drew, we have one long road. You have kind of a long, narrow, oval shape in the middle. Is that what you're saying is the median?

A. Yes, sir.

Q. Okay. Put some hashmarks or something and show it's a median. Just kind of scribble through it so we all know -- can recognize that that's a median.

There you go. All right.

So what we have on the other sides of the median are the two different sides of Chestnut, correct?

A. Yes, sir.

Q. And you've indicated at the top of the picture there is another what looks like a road going -- going -- going straight up on the picture, right?

A. Yes, sir.

Q. And what is that road?

A. That's Viper, sir.

Q. That's Viper. If you would, go ahead and write "Viper" right there.

All right. So moving back to my question, the one I was asking you, I want to make sure I'm perfectly clear on this.

GC (LtCol Sullivan): Your Honor --

DC (LtCol Vokey): There's two sides to the road.

IO:           Feel free to move around.  Yes.

DC (LtCol Vokey):  I'll wait till Colonel Sullivan gets over there.

GC (LtCol Sullivan):  Excuse me.

*Questions by the defense (LtCol Vokey) (continued):*

Q.           There's a median in between, and there's two sides of the road on either side of the median, correct?

A.           Yes, sir.

Q.           Now, one of them -- let me have the pen here.  I'm going to make a little "X" mark on each side of the road.  Okay?  Do you see that?

A.           [No verbal response.]

Q.           From one side of the pavement to the other.  Okay? What would you say the distance is between --

IO:           Hold on.  He's going to have to respond to that.  I think he just moved his head.  There's no way to record --

DC (LtCol Vokey):  Okay.

IO:           -- a response.

*Questions by the defense (LtCol Vokey) (continued):*

Q.           Do you see the two "X's" that -- that I've listed here?

A.           Yes, sir.

Q.           Okay.  What do you estimate as the distance between these two "X's", that's the distance of the paved road on just one side?

IO:           Are you meaning in reality or are you meaning in that picture there?

DC (LtCol Vokey):  No.  In reality.

*Questions by the defense (LtCol Vokey) (continued):*

- Q. How big was it there on Chestnut that day? How wide is this portion of the road? I noticed you --
- A. I'll say nine, sir. Nine, sir.
- Q. Nine? You are saying it's nine meters wide?
- A. Yes, sir.
- Q. All right. Is it wide enough to have two HMMWVs driving down the road next to each other simultaneously? Is it that wide?
- A. I think so, sir.
- Q. Yes? You think so?
- A. I do. Yes, sir.
- Q. Okay. Now, the other side of the road, roughly the same distance?
- A. The same distance, sir.
- Q. And how about the median? How wide was the median?
- A. About two meters, sir.
- Q. Two meters?
- A. Yes, sir.
- Q. All right. I'm going to hand you the pen back again. Now, I don't want to -- I don't want to turn this picture upside down or disorient you. Looking at the picture with Viper at the top, which was your convoy traveling that day before it got hit with the IED?
- A. From east to west, sir.
- Q. Okay. From east to west, that's from right to left; correct?
- A. Right to left. Yes, sir.
- Q. Okay. Now, is that picture that you've drew -- driven wide enough -- is -- is the -- is the paper wide enough to show the location of the four HMMWVs on there, or is that not wide enough?
- A. That's -- that's -- that's good, sir.
- Q. Okay. Now, when the IED goes off, you stopped your vehicle; correct?

IO: I just can't hear him.

*Questions by the defense (LtCol Vokey) (continued):*

Q. When the IED went off, you immediately stopped your vehicle?

A. Yes, sir.

Q. And you got out?

A. Yes, sir.

Q. And did others in the convoy do the same?

A. I know -- I know Lance Corporal Tatum did. And I -- I don't -- I don't know if they -- you know, I don't remember, sir.

Q. All right. Did -- the -- was the first vehicle stopped when you got out, the first HMMWV?

A. I don't remember, sir.

Q. Don't know?

A. Yes, sir.

Q. All right. When you were driving in this convoy before the IED went off, did you maintain dispersion, distance -- a certain distance between the HMMWVs?

A. Yes, sir.

Q. And is that part of normal convoy procedures, to maintain good dispersion between the vehicles?

A. Yes, sir.

Q. And was there an SOP, a standard, was there something briefed that morning that said what the proper distance is between the HMMWVs?

A. The brief that morning, I don't remember, sir.

Q. Well, were you familiar with any kind of SOP that said what the distance was supposed to be for the vehicles?

A. Yes, sir.

Q. And what was that?

A. About 15 to 30 meters, sir.

Q. 15 to 30 meters?

A. Yes, sir.



Q. And were you maintaining proper dispersion that morning before the IED went off?  
A. Try -- I tried to, sir.

Q. So we're talking about 15 to 30 meters between HMMWVs then?  
A. Yes, sir.

Q. If proper dispersion is going on?  
A. Yes, sir.

Q. Okay. When the IED goes off, is there -- is it standard to do a herringbone? Do you know what I'm talking about when --  
A. Yes, sir.

Q. -- I say "herringbone"?  
A. Yes, sir.

Q. And what is a herringbone?  
A. Herringbone basically, you know, get off to the side of the road and first vehicle go that way, second vehicle go this way, other vehicle go this way, and then this way right here, sir.

Q. So if you're the driver of the second vehicle and you're going to herringbone, you look at which way the first vehicle went and you go a different direction; is that correct?  
A. Yes, sir.

Q. Okay. Did you do that that morning?  
A. No, sir.

Q. You did not?  
A. I didn't do that.

Q. All right. When you stopped your vehicle, did you stop in the middle of the road? Did you pull over to the right, to the left? What did you do?  
A. I was -- I was on the right side right here, sir.

Q. You pulled over to the right side?  
A. Yes, sir.

Q. Okay. And -- all right. You can have a seat for now.  
A. Aye aye, sir.

Q. And in your vehicle, you were the driver, right?

A. Yes, sir.

Q. And you're positive that you were the driver?

A. Yes, sir.

Q. And you're positive that Mendoza was in the back?

A. Yes, sir.

Q. So let me ask you, if Mendoza were to say that he looked at the driver of his vehicle get out of the HMMWV, he'd be describing you on that morning, wouldn't he?

A. I don't know, sir.

**GC (LtCol Sullivan):** I object, Your Honor, to the question. And the government's position on these type of questions that -- are improper when counsel communicates information that's already been testified to from a witness. It's an improper question.

And that's just for the record.

**IO:** I understand your objection.

Can you answer?

**WIT:** I don't know, sir.

**IO:** I'm sorry. Was that your answer to me or was that the answer to the question?

**WIT:** I don't know, sir.

**IO:** Okay. Go ahead.

*Questions by the defense (LtCol Vokey) (continued):*

Q. Would Mendoza know who the driver is? Did he know you were the driver?

**GC (LtCol Sullivan):** And again, it's improper to ask this witness what is in the mind -- to speculate on what the knowledge base of another witness is.

**IO:** One word, speculation.

**WIT:** I guess he should know, sir.

*Questions by the defense (LtCol Vokey) (continued):*

**Q.** All right. You knew who the people were in your vehicle,; right?

**A.** Yes, sir.

**Q.** And you ever give a -- a convoy brief or -- or say anything to the people riding in your vehicle?

**A.** Yes, sir.

**Q.** And how about that morning? You speak to your -- the people riding in your vehicle that morning?

**A.** They all just went to their HMMWVs, sir. I --

**Q.** And got in? Is that -- were those normal HMMWV assignments?

**A.** Yes, sir.

**Q.** So if you are going to load up, you knew that you're driving that vehicle, Mendoza knows he's riding in the back?

**A.** Yes, sir.

**Q.** And is that because he's a junior Marine? Mendoza ride in the back because he's a junior Marine or why --

**A.** No.

**Q.** -- is that his assignment?

**A.** No, sir.

**Q.** Well, why did you give him that assignment, to ride in the back?

**A.** Because I got Tatum as the -- as the A-driver.

**Q.** Okay. Did you assign Tatum as the A-driver?

**A.** Yes, sir.

**Q.** All right. And then you assigned Mendoza to be in the back?

**A.** Yes, sir.

**Q.** And have you been in the back of those high-back HMMWVs?

**A.** Yes, sir.

Q. And can you see out front at all, if you're standing in the back?

A. Out front? Yes, sir.

Q. Can you see the driver as he steps out of the vehicle?

A. If I'm -- if I'm look -- if I'm looking at him.

Q. You can? If you're looking, you can -- you can see your driver step out of the vehicle?

A. Yes. If I -- if I'm looking at him. Yes. If he's trying to get out. Yes, sir. If I'm in the other side --

Q. All right.

A. Where the driver's side is, sir.

Q. Okay. Okay. I'm going to ask you to come back up to the picture again, if you would.

A. Aye aye, sir.

Q. Grab -- if you would, grab -- grab your marker. Now, please draw a square to represent the four HMMWVs that day. You said they're going to fit on that picture, as a scale?

A. I know where my vehicle is, sir. I don't know where the other is.

Q. Okay. Then put -- you know where the first vehicle was?

A. I don't know, sir.

Q. All right. Put your vehicle -- show me where your vehicle was that day.

Okay. And please put a "2" in there to show vehicle two.

You don't know where other the vehicles were that day?

A. I don't remember, sir.

Q. You're positive you don't remember at all?

A. I don't remember, sir.

Q. Okay. Anything refresh your memory?

A. I don't know.

- Q. I mean, is there anything I could show you that's going to make you remember where the vehicles were that day?
- A. Well --
- Q. Do you remember giving a --
- A. Go ahead, sir.
- Q. Go ahead. I'm sorry.
- A. Well, you can show me anything, sir.
- Q. Okay. Do you remember giving a statement to Colonel Watt?
- A. Yes, sir.
- Q. And do you remember, in that statement, providing a drawing for Colonel Watt?
- A. I believe so, sir.
- Q. Do you remember that? I'm going to hand you Investigative Exhibit number 146. Take a look at that. Make sure you recognize that document. And turn the pages as you need to.
- And just flip through as you -- just to make sure you recognize it.
- All right. Sergeant De La Cruz, is that your statement?
- A. It's my statement. Yes, sir.
- Q. Let me take that back from you.
- Now, in that statement you provided to Colonel Watt, you drew a pretty-detailed diagram of what happened that day, didn't you?
- A. Can I look at that -- that -- that diagram in your hand, sir.
- Q. Well, I'll hand it back to you. Do you recognize that picture? Is that picture yours? Did you draw this? Did you draw this, Sergeant De La Cruz?
- IO: You can move closer. You're making them move over.

*Questions by the defense (LtCol Vokey) (continued):*

**Q.** I'm just asking, "Did you draw this?" I'm not asking you to study it. Did you draw this?

**A.** No. I didn't do that one.

**Q.** Is -- is this not your signature at the bottom of the page?

**A.** That's my signature, sir. But I didn't do that -- that -- that diagram, sir.

**Q.** Did --

**A.** That's not my handwriting. The only handwriting I have is I signed down here.

**Q.** Okay. And it says down here "provided by," and that's your signature, right?

**A.** Yes, sir.

**Q.** So you did not provide this diagram?

**GC (LtCol Sullivan):** The question was did he -- did he do the diagram or not? I mean, can --

**IO:** Well --

*Questions by the defense (LtCol Vokey) (continued):*

**Q.** Sergeant De La Cruz, did you provide this diagram?

**A.** I didn't do it, sir, but I just -- I signed --

**Q.** So somebody drew it for you?

**A.** Yes, sir.

**Q.** And then you signed it?

**A.** Yes, sir.

**Q.** So is this what you remembered or are other people putting ideas in your head?

**GC (LtCol Sullivan):** Well, that's an argumentative question, Your Honor.

**IO:** Well, Colonel Vokey, that's a -- that's a -- you can't answer that question with a yes or no. It's two questions in one, so why don't you break that up.

*Questions by the defense (LtCol Vokey) (continued):*

**Q.** Is this what you remembered?

**A.** From what happened, sir? No, sir.

**Q.** Did somebody write this down and give it to you?

**A.** Yes, sir. I believe so, sir.

**Q.** So the things on this diagram were not of your memory?

**GC (LtCol Sullivan):** Well, I'm going to object, Your Honor. I think the questions are argumentative with regard to a specific document. I think the foundational question should be, "Who drew the diagram?" Let's find that first.

**IO:** Well, you'll have an opportunity to do that.

**GC (LtCol Sullivan):** Okay, sir.

**DC (LtCol Vokey):** Sir, I just want to comment that not one objection from the defense during Lieutenant Colonel Sullivan's examination, nor was there yesterday either.

**IO:** Counsel have the opportunity to voice their objections if they desire to do so.

*Questions by the defense (LtCol Vokey) (continued):*

**Q.** All right. Sergeant De La Cruz, who drew that diagram I showed you?

**A.** I don't know, sir.

**Q.** You have no idea?

**A.** No idea, sir.

**Q.** So you just signed your name to it, and somebody else drew the diagram?

**A.** Yes, sir.

**Q.** Did you discuss this diagram with --

**IO:** Colonel Vokey --

**DC (LtCol Vokey):** -- one of the investigators?

**IO:** -- unless he's going to draw, he doesn't need to be questioned while he's standing.

So you can sit down.

**WIT:** Yes, sir.

*Questions by the defense (LtCol Vokey) (continued):*

**Q.** So you don't remember where any of the vehicles were that day on the road?

**A.** I don't remember, sir.

**Q.** All right. Now, after you've gotten out of the vehicle and there was shooting with the white car, you walked back to the fourth vehicle, right?

**A.** What was the question again, sir?

**Q.** After the shooting at the white car, you walked back to the fourth HMMWV, correct?

**A.** Yes, sir.

**Q.** Now, did you see the third HMMWV on the way there?

**A.** I don't remember, sir.

**Q.** Any time that day did you notice the position of the other HMMWVs from the your squad?

**A.** No, sir.

**Q.** But you're signing off on a diagram that somebody else drew and you're saying that you provided it?

**A.** That was the false statement, sir.

**Q.** Oh, the diagram was a false statement too?

**A.** I don't know, sir.

**Q.** You don't know if it's a false statement?

**A.** I don't know who drew it, sir.

**Q.** You don't know who drew it?

**A.** I know -- I know I signed it.

**Q.** You signed it and it says provided by you; correct?

**A.** Yes, sir.

**Q.** So it was not provided by you?

**A.** I don't know who drew it, sir.



Q. So what's false about it? Is it the person who drew the diagram? Is that false?

GC (LtCol Sullivan): Your Honor, he said it was his false statement that he's already acknowledged on direct.

IO: I have a pretty good idea of what he's trying to say about the document, but I'm going to allow the counsel to ask his question.

*Questions by the defense (LtCol Vokey) (continued):*

Q. What's false about the diagram?

A. I don't know, sir. I don't know who drew that, sir. I don't know.

Q. All right. So the green two that's indicated on the diagram is your vehicle?

A. Yes, sir.

Q. All right. Now, do you know where the location of the white car was relative to your vehicle?

A. Yes, sir. I know where the white vehicle is.

Q. Please walk up there and draw a square indicating where the white car was.

A. Aye, sir.

*The witness did as directed.*

DC (LtCol Vokey): Put a "W" inside. You can have a seat again.

*Questions by the defense (LtCol Vokey) (continued):*

Q. All right. Sergeant De La Cruz, I noticed from your diagram that your vehicle is directly across the road from the white car. That's what it appears from what you drew. Is that correct?

A. That is correct, sir.

Q. Almost a perfect straight line straight down to the white car?

A. Yes, sir.

Q. All right. Now, I'm going to show you Investigative Exhibit 146 again and have you take a look at that diagram, the one that you signed. Take a minute to

look that over.

*The witness did as directed.*

*Questions by the defense (LtCol Vokey) (continued):*

Q. Are you familiar with it now?

A. Familiar to this thing, sir?

Q. Yeah?

A. [No verbal response.]

Q. Now, looking at that diagram, are the positions of the vehicles there, is that true?

A. This is false, sir.

Q. That is false?

A. Yes, sir.

Q. Now, you didn't draw those false diagrams. Somebody else did?

A. I don't know, sir. I think so, sir.

Q. You think somebody else drew them?

A. Yes, sir.

Q. Or you know somebody else drew them?

A. I don't know who drew them. I didn't do them, so I don't know who else --

Q. You didn't draw them?

A. I didn't draw them, sir.

Q. Now, take a look at that again. In there, in that picture, the white car seems to be directly across from vehicle number one, isn't it?

A. From this point of view, sir? From this diagram?

Q. Yes.

A. Yes, sir.

**GC (LtCol Sullivan):** Sir, I'm going to interject with an objection to relevancy. He already stated that he didn't draw this diagram. It's not his diagram. It's not accurate. What is the relevance of crossing on a diagram that he didn't author? For the record.

**IO:** Colonel Vokey, I'm going to allow you to continue the questioning, but I don't really need a whole lot more questions along this line, unless you are going into some new --

**DC (LtCol Vokey):** Well, sir, I never had the opportunity to talk to this witness before, so I'm trying to find out some information.

**IO:** I appreciate that it's for the nature of the 32. I don't need any more commentary. I'm telling you it's not helping me. I'm going to allow you to ask your questions. I think I got the central point, but you're allowed to ask your questions.

**GC (LtCol Sullivan):** Your Honor, I just need to make a record. And I want to make a record that there's going to be an affidavit attached to this proceeding with regard to the comment that he hasn't had the opportunity made available to talk to this witness --

**DC (LtCol Vokey):** Can we have a recess?

**IO:** Sergeant De La Cruz, we're going to take a recess. During this recess, I want to remind you not to discuss your testimony with anyone except for your own counsel; okay?

**WIT:** Aye, sir.

*The Article 32 investigation recessed at 1102, 31 August 2007.*

*The Article 32 investigation was called to order at 1303, 31 August 2007.*

**GC (LtCol Sullivan):** Sergeant De La Cruz, I'll remind you you're still under oath and continue under cross-examination of Lieutenant Colonel Vokey.

**WIT:** Aye, sir.

*Questions by the defense (LtCol Vokey) (continued):*

**Q.** All right. Sergeant De La Cruz, when I asked you about that white car, the same one that you drew on the diagram marked a "W"?

**A.** Aye, sir.

Q. Tell me about the white car. What did it look like?  
A. Four-door, sir. That's about it, sir. White.

Q. So was it a sedan, four-door sedan?  
A. Yes, sir.

Q. Any particular markings anywhere on the front, side, the top, the back?  
A. Not that I remember, sir.

Q. Any kind of decorations or things added to it to make it look like something else?  
A. I don't remember anything like that.

Q. So to look at the white car, there wasn't anything to indicate that it looked like a taxi at all?  
A. Yes, sir. I didn't see anything that -- I didn't see anything of the stuff that you're telling me, sir.

Q. Nothing to make it look like a taxi; is that correct?  
A. Yes, sir.

Q. I'm going to show you, on your screen, Investigative Exhibit 59, the photo from there.

IO: It's on his screen. I didn't think you wanted to broadcast it.

You want it on the big TV?

The television is not turned on.

DC (LtCol Vokey): I can do it from here.

*Questions by the defense (LtCol Vokey) (continued):*

Q. All right. Do you see the image on your screen, Sergeant De La Cruz?  
A. Yes, sir.

Q. That's page 16 and 17 of Investigative Exhibit 59. Is that the white car that you saw there on Chestnut?  
A. Yes, sir.

Q. Looked just like it?

- A. Looked just like it, sir.
- Q. Okay. Go to the last page, 17. Now, when you saw the white car, you approached it from the rear; correct? You said you walked to the rear of it?
- A. Yes, sir.
- Q. Did you see this electrical cord -- it goes from the back window into the trunk. Did you see that at all?
- A. No, I didn't notice that, sir.
- Q. All right. Now, If you see an electrical cord like that, does that mean anything to you?
- A. If I see it, sir? Probably, sir.
- Q. It looks a little bit unusual, doesn't it?
- A. Yes, sir.
- Q. What would that suggest to you, having an electrical cord going to the trunk?
- A. Could be anything, sir.
- Q. It could be an IED in the back, couldn't it?
- A. It could have been, sir.

DC (LtCol Vokey): Thank you. You can turn it off.

*Questions by the defense (LtCol Vokey) (continued):*

- Q. All right. You testified earlier today that you got out of your HMMWV very quickly; correct?
- A. Yes, sir.
- Q. And you stood right next to your HMMWV; correct?
- A. Yes, sir.
- Q. And you were oriented towards the white car; is that correct?
- A. Yes, sir.
- Q. Looking right at the white car?
- A. Yes, sir.
- Q. And you are looking at the white car and you saw one of the males drop?
- A. Yes, sir.

Q. And you turned your head and you saw Staff Sergeant Wuterich; is that correct?

A. That is correct, sir.

Q. Can you see the diagram from there?

A. Yes, sir.

Q. All right. On the same diagram that you drew about Chestnut and Viper intersection, you have a "2" representing your vehicle that pulled over on the side of the road; correct?

A. Yes, sir.

Q. And on other side of the road -- actually off the road, was the white car; right?

A. Yes, sir.

Q. When we talked earlier we discussed that the distance between -- of the pavement to the pavement is about 9 meters; right?

IO: Lieutenant Colonel Vokey, I'm just seeing your back.

*Questions by the defense (LtCol Vokey) (continued):*

Q. And that the other side of the road is going to be the same distance too, about 9 meters?

A. Yes, sir.

Q. And you said that the distance of the median is about 2 meters?

A. Yes, sir.

Q. So nine plus nine plus two, that's 20 meters. So you would estimate that from your car to the white car from where you were standing, the white car was about 20 meters; is that right?

A. Yes, sir.

Q. Okay. Now, 20 meters, a meter is a little bit more than a yard, isn't it?

A. Yes, sir.

Q. A little bit more than a yard, a little bit more than 60 feet, maybe 66 feet. Does that sound about right?

A. About, sir.

Q. Now, the individuals who got out of the white car got out and they were not on the road side of the car. They were on the other side of the car; correct?

A. Yes, sir. They were on the other side.

Q. I'm sorry. You said on the other side?

A. They were facing south, sir.

Q. Facing south?

A. Yes, sir. Away from vehicle.

Q. Okay. Facing south, looking at this picture is looking down; correct? If I draw an arrow down, that's south; right?

A. Yes, sir.

Q. I've got an arrow pointing to the top of the picture, north; right? So the Iraqi males, the men that got out of the car were on the south side of the white vehicle; correct?

A. Yes, sir.

Q. So it's at least 60 feet, 66 feet, maybe a little more to where you saw the individuals; correct?

A. Maybe, sir.

Q. Okay. Now, you testified that you heard the shot and you turned your head at a 45-degree angle and saw Staff Sergeant Wuterich?

A. Yes, sir.

Q. And he was in the kneeling position and he was firing?

A. Yes, sir.

DC (LtCol Vokey): Now, sir, during the break, I took the liberty of measuring the distance of the courtroom from the back wall to the front wall and found that it's 40 feet. If anybody wants to check it, I'm fine with that. Offer of proof that it's 40 feet.

IO: The measurements don't have the entire -- you said from the door to this wall?

DC (LtCol Vokey): From the door to this wall.

IO: I don't have the measurement down here.

Counsel, do you want to measure it as well?

**GC (LtCol Sullivan):** I'll take the general representation.

**IO:** I'll accept it's 40 feet.

**DC (LtCol Vokey):** And I also measured from the center of the chair behind the court reporter to the right over to the fire alarm pull, which is out near the door, is 10 feet. From the center of the chair to the start of that is 10 feet.

**IO:** I have 11 feet to the court reporter door. Sounds about right.

**DC (LtCol Vokey):** Now, Sergeant De La Cruz, can you stand up for a minute and come back to the back of the courtroom?

*The witness did as directed.*

*Questions by the defense (LtCol Vokey) (continued):*

**Q.** Now I'd like you to walk back to the door, your back against the door. Now, this represents from where you are to that wall is 40 feet. So it's still at least 20 feet shorter than what you -- you say you viewed on that day; right? Now, looking straight at that chair -- can you see the chair behind the court reporter?

**A.** Yes, sir.

**Q.** And can you see the fire alarm box I'm referring to?

**A.** Yes, sir.

**Q.** Now, that's 10 feet. You didn't have to turn your head to see that fire alarm, did you? You can keep your head straight ahead and just look over there? I mean, in your peripheral vision, you're going to see it, aren't you?

**IO:** I can't understand a word he's saying from over there.

**WIT:** Yes, sir. I'm saying yes.

**DC (LtCol Vokey):** Okay. You can make your way back to your seat.



*Questions by the defense (LtCol Vokey) (continued):*

- Q. How far was Sergeant Wuterich from the Iraqi males in the white car when you saw him fire?  
A. From the Iraqi male, sir?
- Q. Yeah.  
A. I don't know, sir.
- Q. How far from the white car?  
A. From where I -- I could probably estimate it, sir.
- Q. Do you remember?  
A. From me to Staff Sergeant Wuterich, I could estimate it, sir.
- Q. How far was Staff Sergeant Wuterich from the white car?  
A. I don't remember.
- Q. Okay. Now, you gave a series of statements, a lot of statements, to NCIS; correct?  
A. Yes, sir.
- Q. Well, first you gave a statement during the Watt investigation on 19 February; correct? Do you remember that?  
A. Yes, sir.
- Q. The one I showed you this morning?  
A. Yes, sir.
- Q. And on 18 March you gave another statement to NCIS. Do you remember that?  
A. Yes, sir.
- Q. And that first NCIS statement you said was false; correct?  
A. Yes, sir.
- Q. Then on the 24th of March you gave another statement to NCIS involving only training. Do you recall that?  
A. Yes, sir.
- Q. Now, on 2 April of '06 you gave another statement to NCIS while you were at Al Asad. Do you recall that?  
A. Yes, sir.

**Q.** Now, if I recall your testimony correctly, that's the statement when you finally came forward and said this is the truth; right?

**A.** Yes, sir.

**DC (LtCol Vokey):** All right. I'm going to show you a copy of your statement from 2 April.

Sir, I apologize. We don't have -- this one wasn't one of our defense exhibits. I'm not sure if it was a government exhibit, and now we're missing this one.

**IO:** You want this to be marked as the next exhibit in order?

**DC (LtCol Vokey):** Yeah. It would be Exhibit 185, I believe.

**IO:** I think we're past those numbers. Captain Hur what are we on?

**GC (Capt Hur):** It would be 193.

**IO:** 193. Any objection? Well, have you seen this statement, Lieutenant Colonel Sullivan?

**GC (LtCol Sullivan):** May I see? Thank you.

**IO:** Any objection to Investigative Exhibit 193, Lieutenant Colonel Sullivan?

**GC (LtCol Sullivan):** No, sir.

**DC (LtCol Vokey):** Handing a copy to the investigating officer.

All right. I'm going to hand you a copy of this 2 April statement that we just admitted as Exhibit 193. Focus your attention about the fourth paragraph about midway down, the sentence that starts "he also." Take a look at that and read that sentence.

*The witness did as directed*

*Questions by the defense (LtCol Vokey) (continued):*

**Q.** Have you had a chance to read that statement? That

A. one sentence is all I need you to read.  
I'm not done reading it yet, sir.

Good to go, sir.

Q. Okay. Now, in that statement you said that Staff Sergeant Wuterich was 10 feet away from the Iraqis; correct?

A. Yes, sir.

Q. And this is the statement you said was the truth, that 10 feet away from the Iraqis was Sergeant Wuterich; correct?

A. Yes, sir.

Q. So if you were 60 feet away, 20 feet further from the back of the courtroom, looking right at the white car and Staff Sergeant Wuterich is only 10 feet away, you don't really need to turn your head. He's going to be in your vision, isn't he?

A. If it's 10 feet away, you said, sir?

Q. I mean that's what you said. You said he was 10 feet away.

A. Yes, sir, I did say that.

Q. And this is the statement that you said you were telling the truth?

A. That's right, sir, I did say that, sir.

Q. Now, when you immediately -- you said the IED went off, you immediately got out of the car; correct?

A. Yes, sir.

Q. Did you see the white car before you got out of your HMMWV?

A. No, sir.

Q. Did you see the first HMMWV in front of you?

A. No, sir.

Q. You're driving. Is it not right in front of you?

A. I don't remember, sir.

Q. Okay. So you exit the vehicle, you close the door of your HMMWV?

A. I don't remember closing it. I probably left it open.

- Q. You stepped down and you looked -- the first thing you did was what? Look at the white car?
- A. Yes, sir. Noticed the white car and the four or five Iraqis out there.
- Q. All right. Did you take your eyes off the white car at any time before the shooting?
- A. I don't remember, sir. I just noticed it.
- Q. Did you look back towards the fourth vehicle, the fourth HMMWV?
- A. I don't think, sir.
- Q. And you didn't look up at the first HMMWV either; right? Isn't that what you said?
- A. Yes, sir.
- Q. Now, the military-age males, you said, were already out of the car when you got out of the HMMWV?
- A. Yes, sir.
- Q. Why would they be out of the HMMWV? Why would they already be out of the car?
- GC (LtCol Sullivan): Your Honor, if it's a speculation objection, do you want me to just not raise it? I know we had an 802. I don't want to do anything improper.
- IO: I don't think it's improper for you to place objections. I just can't rule on it.
- GC (LtCol Sullivan): Well, I think to ask this witness to speculate as to why the five men got out of the car, that's speculation right there.
- IO: I understand your objection.
- DC (LtCol Vokey): I'll rephrase the question, sir. It wasn't a fully phrased question.

*Questions by the defense (LtCol Vokey) (continued):*

- Q. You said in earlier statements that it was standard for Iraqis who were stopped to get out of their car; is that correct?
- A. Yes, sir.

Q. And when you saw these males standing outside the car, is that what you thought was happening?

A. I thought that was going on, yes, sir.

Q. Okay. Now, an IED had just gone off seconds before this; correct?

A. Yes, sir.

Q. As in the IED went off, you said you immediately stopped your vehicle, you immediately got out. So maybe a couple seconds at best; right?

A. Yes, sir.

Q. And you see four or five military-aged males standing pretty near your vehicle; right?

A. Yes, sir.

Q. So what action did you take?

A. Everything happened so quick, sir. Everything happened so quick, got out of the car. Saw the white car, saw the Iraqis out there lined up, and one of them dropped. That's how quick it is, and that's when I looked to my left, and that's when I saw Staff Sergeant Wuterich in the kneeling shooting.

Q. Okay. So you get out of the HMMWV -- you're looking directly at the white car because, as you drew your picture, you're right across from it; correct? I mean it must be -- let me answer that question. You were directly across from the white car; correct?

A. Yes, sir.

Q. Direct line of sight, and that's where you're looking?

A. Yes, sir.

Q. Staff Sergeant Wuterich was in what vehicle?

A. Third vehicle, sir.

Q. So he's going to be a greater distance away from the white vehicle?

A. I don't know, sir.

Q. Did you see his third HMMWV right behind yours? Like touching?

A. I don't remember, sir. I didn't see anything.

Q. The normal dispersion between vehicles is 15 to 30 meters in convoy; correct?  
A. I understand, sir.  
IO: When you say you understand, are you agreeing? Saying yes?  
WIT: Yes, sir.

*Questions by the defense (LtCol Vokey) (continued):*

Q. So you immediately stopped the vehicle. You get out without any problems, and you immediately look at the males in the white car. How long elapses before you hear the pop and see the drop?  
A. Less than a second, sir.  
Q. Less than a second?  
A. Yes, sir.  
Q. Now, you also testified that they had their backs to you; is that correct?  
A. Yes, sir.  
Q. I'm sorry. That the males from the white car had their backs to you; correct?  
A. Yes, sir.  
Q. And you could see that from where you were?  
A. Yes, sir.  
Q. And you said that you could see at least from the upper part of the torso; correct?  
A. Yes, sir.  
Q. You stopped lots of Iraqis on the road before, haven't you?  
A. Yes, sir.  
Q. And it's pretty standard that they'll get out of the car and surrender themselves to you; is that correct?  
A. Yes, sir.  
Q. And what do you normally do when that happens?  
A. We search them, sir.  
Q. How many times have you seen this happen where

you've seen -- you're stopping an Iraqi from a vehicle and he surrenders and you search him? About how many times has this happened? How many times has it happened that you've either participated in or you've witnessed?

A. Numerous times. Every time we -- every time we stop a car, we search it, sir.

Q. That's pretty standard, isn't it?

A. Yes, sir.

Q. So would you say more than ten times?

A. More than ten, sir.

Q. Lots more?

A. Lots more.

Q. More than 50?

A. Probably, sir.

Q. And they get out of the vehicle -- and I think you said in your statement "they know the drill" or something along those lines. They know the drill. Get out. What, are they supposed to raise their hands and expect a search; is that right?

A. Yes, sir.

Q. These individuals in the white car were turned facing the other direction, weren't they?

A. They were facing south.

Q. They were facing south away from all the Marines?

A. Yes, sir.

Q. Away from the convoy?

A. They were right there in the convoy area.

Q. They were facing away from the convoy, weren't they?

A. They were facing away, yes, sir.

Q. Away from the Marines. Now, when you stop an Iraqi vehicle and he surrenders, doesn't he usually face you? That way they can see that you're surrendering and that they're willing to be searched? Isn't that normal.

A. No. They usually turn around, sir, because that's when you search them from the back. You don't have them searched right there in front because they can

just punch you or anything. You never know.

Q. So you're saying that it would be normal, once you stop them, that they would turn their backs to you right after an IED went off?

A. I'm not saying all of them, sir, but some of them know.

Q. When you got out of your HMMWV, right after you stopped, did you have a weapon out?

A. Yes, sir.

Q. Was it at the ready?

A. Yes, I -- yes, sir. Alert to the dirt, sir.

Q. Alert in the dirt?

A. Yes, sir.

Q. You were standing up?

A. Yes, sir.

Q. Did you perceive a threat at that time?

A. Can you repeat that question?

Q. Did you perceive a threat from the white car?

A. No, sir.

Q. Why not?

A. Because they were just standing around, sir, and not showing any threat or anything like that, sir.

Q. Now, you're familiar with the enemy TTP's over there, aren't you?

A. Yes, sir.

Q. And is it not uncommon that after an IED attack, there would be some kind of secondary attack?

A. Yes, sir. It's possible, sir.

Q. Sometimes sniper fire?

A. Yes, sir.

Q. Sometimes another IED, a vehicle-borne IED?

A. Yes, sir.

Q. It's not uncommon at all, is it?

A. Not uncommon. No, sir.



IO: I'm sorry. I didn't hear your response.

WIT: I said it's not uncommon at all, sir.

*Questions by the defense(LtCol Vokey) (continued):*

Q. So an IED had just gone off moments before, you got out and you immediately said this not a threat?

A. Yes, sir.

Q. And you didn't see the wire coming back to the trunk of the vehicle then?

A. No, sir.

Q. What about yelling? Did you yell anything to them? Get down? Qif? Stop? Anything like that?

A. I don't remember, sir.

Q. You didn't say anything at all?

A. I don't remember, sir. Yes, sir.

Q. So you just stood there with the alert in the dirt, but took no action to do anything about the males next to the car?

A. Yes, sir, because it happened so fast, sir. I didn't have no reaction whatsoever, sir. I didn't even have time to cross the street right away and literally search them. That's when, right away -- I couldn't explain it. I -- it just -- a split second that's -- it happened like that, sir.

Q. Now, you did fire at those individuals at the car, didn't you?

A. Yes, I did, sir.

Q. Who fired first?

A. Staff Sergeant Wuterich, sir.

Q. You sure about that?

A. Yes, sir.

Q. You're sure you didn't fire while you were sitting in that position?

A. No, sir, I didn't fire.

Q. Now, did you hear any other firing going on at the time that you engaged the white car? Did you hear any other firing going on?

A. No, sir.

Q. Any AK-47 fire?

A. [The witness shakes his head in the negative.]

Q. Either incoming or outgoing?

A. I couldn't tell, sir.

Q. You couldn't tell if there was other firing going on?

A. Yes, sir.

Q. You had the Iraqi army folks in the back of your vehicle?

A. Yes, sir.

Q. Were they all there?

A. Yes, sir.

Q. And there was no other Iraqi army in any of the other four vehicles?

A. I believe the third vehicle had some Iraqi army, sir.

Q. When you get out of your HMMWV and you're looking at the white car, do you have any visibility with what's going on with the Iraqi army folks?

A. No, sir. I never even thought about it.

Q. You didn't see them?

A. I couldn't see them.

Q. You didn't hear them?

A. I didn't hear them.

Q. You didn't hear them yell commands to each other?

A. No, sir.

Q. You didn't hear anybody yell any commands at them?

A. No, sir.

Q. You were just focused just on the white vehicle?

A. Yes, sir.

Q. Now, you made statements that you did fire at those people in the vehicle, didn't you?

A. Yes, sir.

Q. That upon exiting your vehicle, you fired on them, didn't you?

A. Upon? No, sir. Right after.

Q. Your first -- your statement to the Watt investigation, your first NCIS statement, you stated that you were the one firing at the males standing up by the white car?

A. In the false statement I made, yes, sir.

Q. And those statements also said that they were running?

A. Yes, sir.

Q. And you also said that you yelled "qif qif," didn't you?

A. Yes, sir.

Q. And what does "qif qif" mean?

A. Stop, sir.

Q. And you know that term? You know the term "qif"?

A. Yes, sir.

Q. And that's Arabic?

A. Yes, sir.

Q. And how do you know that term?

A. From numerous deployments I've been in Iraq, sir.

Q. You either picked it up or you were taught certain basic words or phrases in Arabic?

A. Yes, sir.

Q. And "qif" would be one of them?

A. Yes, sir.

Q. How many seconds after the IED went off did you stop your vehicle?

A. Right there and then, sir. About a second, sir. I don't know.

Q. All right. Now, you said that when you first got out of the HMMWV and you looked at the males over there, you did not perceive them as a threat; correct?

A. Yes, sir.

- Q. Now, you've also said that Staff Sergeant Wuterich was the one firing at the males and not you; correct?
- A. Yes, sir.
- Q. Now, first you said it was you?
- A. On the false statement, yes, sir.
- Q. On the Watt statement and on the first NCIS statement, you said it was you?
- A. Yes, sir, Colonel Watt, sir.
- Q. And later on you changed it to Sergeant Wuterich was the one firing; correct?
- A. Because that's the truth, sir.
- Q. Okay. You changed your answer to Sergeant Wuterich was the one who initiated firing at the males; right?
- A. Yes, sir. That's the truth, sir.
- Q. So you get out of your HMMWV, you see the males, and you don't perceive them as threat. Why?
- A. Because I don't see any weapon on them, sir. They got their hands up, some of them have their hands up. They're just being nosey. They looked like a regular Iraqi civilian to me, sir.
- Q. Now, help me understand your word. You said that they're being nosey. What do you mean by "nosey"?
- A. Just looking around, sir. You know, they got their hands up right there and just looking around to see what was going on.
- Q. Okay. Because an IED had just gone off, a very loud IED; correct?
- A. Yes, sir.
- Q. It had just gone off seconds before when you said they were just looking around, nosey, like they're curious?
- A. Yes, sir.
- Q. Now, you must be looking at these four males in the white car within about two or three seconds of the IED blast going off; right?
- A. I don't know how long it was. I just know that it was about half a second, sir. Right there and then.

- Q. And then you did not perceive them as a threat because they were just standing there?
- A. Yes, sir.
- Q. And now you're saying that Sergeant Wuterich was the one on a knee firing at them first; correct?
- A. He was, sir.
- Q. And then after he started firing first, you proceeded behind the rear of the vehicle and shot them when they're on the ground?
- A. Yes, sir.
- Q. Why did you shoot them on the ground?
- A. Because I didn't know, well, if Staff Sergeant Wuterich -- what Staff Sergeant Wuterich saw. I don't know if Staff Sergeant see -- I cannot speak for him so -- I don't know what he saw, sir. At first I thought they were innocent, sir, and then when I saw Staff Sergeant Wuterich shooting at them they might be a threat. He might saw something that I didn't see, sir.
- Q. Now, when you were talking with Lieutenant Colonel Sullivan earlier, you said that when you walked behind the car, you looked down, you believed they were all dead?
- A. Yes, sir.
- Q. So you saw Iraqi males that you thought were no threat, and then when you walked around the vehicle, you thought they were dead; correct?
- A. Yes, sir.
- Q. So why would you shoot at the bodies, then, if they're not a threat and you think they're already dead?
- A. I just want to make sure they're dead, sir.
- Q. To make sure they're dead?
- A. To make sure, yes, sir.
- Q. But they're not a threat. They're still not a threat, are they?
- A. I just want to make sure, yes.
- Q. Just want to make sure?
- A. Yes, sir.

Q. Now, later that afternoon you went back to the site of the white car, didn't you? Much later in the afternoon?

A. Yes, sir.

Q. As a matter of fact, you went back and you felt the urge to urinate on one of the bodies, didn't you?

A. Yes, sir. I did that.

Q. Do you remember which one you urinated on?

A. Yes, sir.

Q. Did you recognize it from the photos Colonel Sullivan showed you earlier?

A. Yes, sir.

Q. It was one whose head was split open?

A. Yes, sir.

Q. So you're pissing on his skull, isn't that what you were doing?

A. Yes, sir.

Q. Now, why did you do that? Did Staff Sergeant Wuterich order you to do that?

A. No, sir.

Q. That's all on your own?

A. Yes, sir.

Q. Now, did someone see you do this?

A. I don't know, sir.

Q. I believe in your statement you said, "I think someone might have seen me do it." Is that true?

A. Might have been. I don't know, sir.

Q. Now, or -- didn't Staff Sergeant Wuterich come up to you saying "knock it off" when you're pissing on a dead guy's skull?

A. No, he didn't, sir.

Q. He didn't say anything to you?

A. Yes, sir. He didn't say anything like that, sir.

Q. Did you just stop urinating when you felt that all the urine was gone?

A. Yes, sir, I stopped.

Q. Now, this isn't the only thing you've done to bodies, is it?  
A. It's the only thing, sir.

Q. Were you with Wright later or that day in a place referred to as house four?  
A. Yes, sir.

Q. I'm talking about Lance Corporal Wright.  
A. Yes, sir.

Q. And when we started talking, you said, yeah, you get along with Lance Corporal Wright; correct?  
A. Yes, sir.

Q. And is there anything that he has against you that you know of?  
A. No, sir.

Q. Now, Lance Corporal Wright said that you were with him in house four. You looked down at the body and said, "I killed that motherfucker," and you kicked him in the head. You're not familiar with that at all?  
A. No. That was the only time I went to house four, sir, was to take all those dead bodies that was there, sir. I didn't clear that house, sir.

Q. I didn't say you cleared the house. I said you kicked the head of a dead body?  
A. Oh, no, I didn't, sir.

Q. You didn't do that?  
A. Yes, sir.

Q. So Lance Corporal Wright must be lying?  
A. I don't know, sir.

Q. You didn't do that?  
A. I didn't do that, sir.

Q. You were in house four though, weren't you?  
A. That's where I believe there were the guys with -- the five guys, sir -- the four guys, sir?

Q. That is correct.  
A. In the bedroom, sir?

- Q. That is correct. You don't know?  
A. No. No.
- Q. You don't know if you were there or you weren't in there?  
A. I was there, sir, but I didn't kick the dead Iraqi there, sir. If I had the guts to tell that I urinated and I confessed about it, why would I just kick him, this Iraqi? Now that you say that I killed that guy -- I never been there, sir. Pissing is worse than kicking.
- Q. Oh, is it? Pissing on a skull is worse than kicking the head of a dead body?  
A. They're both the same, sir.
- Q. I don't know. I don't normally deal with dead bodies that way. Is it worse?  
A. They're both worse, sir, but it's just --
- Q. You think pissing is worse?  
A. They're both worse, sir.
- Q. Now, you're aware that Lance Corporal Wright did say that you kicked the body, didn't you?  
A. No.
- Q. You're not aware? Because I believe in one of your statements you commented on it. Do you not remember that?  
A. No, sir.
- Q. I'll find it for you. Hold on. All right. I got it. You remember giving a statement to NCIS on the 16th of May, 2006?  
A. I believe so, sir.
- DC (LtCol Vokey): Sir, may I offer this one to be the next one, I believe 194?
- GC (LtCol Sullivan): No objections.
- IO: Investigative Exhibit 194 will be a statement -- on what date?
- DC (LtCol Vokey): 16 May 2006.

*Questions by the defense (LtCol Vokey) (continued):*



Q. Now Sergeant De La Cruz, it says here -- I'm sorry. Sergeant De La Cruz. Apologies -- that I had been asked if there is anything else I could remember about the events of 19 November. Wait, I'm reading from the wrong page. Hold on.

Okay. All right. It says in your statement, your words, that "I had been asked while I was in the house located to the west of route Viper if I kicked one of the Iraqi males in the head and said, 'I killed that motherfucker.' I did not." Do you remember saying that in your NCIS statement?

A. I said I did not, sir.

Q. You want me to show you the statement?

A. All right, sir.

Q. I'm showing you IE 194, your statement of May 16, 2006. Make sure that's your statement, your initials, your signature at the end.

A. Sir, where's the part I said I kicked the Iraqi male, sir?

Q. Second page right here. Right here.

*The witness peruses the document.*

*Questions by the defense (LtCol Vokey)(continued):*

Q. You see it?

A. Yes, sir.

Q. So you were asked about kicking the head of the dead body?

A. Yes, sir. I was asked, sir.

Q. So you were aware of the allegation that someone made about you kicking a body in the head; right?

A. At that time. I just found out right now, sir, about -- this time that you asked -- you were asking me and I didn't know who it was, sir.

Q. Now -- but abusing dead bodies is not all you do. You've also abused detainees while you were in Iraq; correct?

A. Yes, sir.

Q. You have?

A. Yes, sir.

Q. What have you done?

A. I just -- if they don't cooperate, then I just, you know, I just hit them where they're not really getting a bruise. It's not really a hard hit or anything like that, sir.

Q. So if you simply asked somebody a question and they don't answer, you just go ahead and hit them?

A. No, sir. If they don't cooperate, sir. If they don't want to get up or --

Q. Okay. Again, reading from the same statement you said that, your words, "Basically, when we asked them questions and they did not answer, we would kick them in a manner that would not leave marks on them." Did you say that?

A. Yes, sir.

Q. So why did you piss on the body? Why did you urinate on the body by the car?

A. Sir, I know it was wrong to do. At that time, my emotions take over. I got TJ -- TJ is gone and you got two other Marines that got injured from the blast. And I know it was the wrong thing to do, sir, and at that time my emotions took over, and I wasn't really thinking right. And that's what make me do it. And I thought they were guilty after Staff Sergeant Wuterich shot them.

Q. So you thought they were a threat?

A. After Staff Sergeant Wuterich shot them, yes, sir.

Q. Now, after you left the white car, you went back to the fourth HMMWV to check on the casualties; right?

A. Yes, sir.

Q. All right. Any time after leaving the white car and on route or arriving at the fourth HMMWV, were there any incoming fire to your position? To the squad's position?

A. No, sir.

Q. How about outgoing fire?

A. At that time -- well, when I arrived at the blast area, yes, sir. It was an outgoing.

- Q. Now -- so there was no -- you saw no incoming fire or sense no incoming fire on Route Chestnut while you were there?
- A. Yes, sir.
- Q. None at all?
- A. None at all.
- Q. No small arms fire?
- A. No small arms fire, yes, sir.
- Q. Yet on 19 February and 18 March of 2006 you put that in a statement, that, yes, there was incoming fire, didn't you? Do you recall that?
- A. Yes, sir.
- Q. Now, when you testified at the Article 32 for Lance Corporal Tatum last month you said, "No, there was no incoming fire;" right?
- A. Yes, sir.
- Q. So is this another thing that you lied about or were you just mistaken?
- A. I did lie about that, sir. That's the false statement that I gave them, to the NCIS, sir from April 2 when we were left behind -- everybody, my whole battalion was gone -- and it was only myself, Lance Corporal Tatum, Lance Corporal Sharratt, and Salinas left behind and Mendoza. That's the time that, you know, I decided to tell truth, sir. Everything from there, sir, before that, pretty much is a false statement, sir.
- Q. Now, on the April 2 statement that you gave, this is when you came clean; right? At Al Asad?
- A. Yes, sir.
- Q. You said, "First of all, I would like to say that the statement I provided to NCIS on 18 March was correct with the exception of the events that occurred around the Iraqi's car." So that's a lie too because the incoming fire was not at the Iraqi's car. That's an entire different matter that you lied about; is that correct?
- A. Can you repeat that question again, sir?
- Q. You said in this statement that the only thing you lied about in your earlier statements was about the

- white car. Isn't that what you said?
- A. Yes, sir.
- Q. Now, I'm asking you about after the white car and receiving incoming fire on Chestnut and you said that the earlier statements were lies now as well; right?
- A. Yes, sir.
- Q. So when you say in this statement that the only thing that was a lie was the white car, that's not true, is it?
- A. That's not fully the whole statement that was given. From here, then and now, sir, this is what matters, sir. And I know that -- that mattered too, sir. But this is the most important thing right now, sir.
- Q. So this time, whatever you're saying we can trust as being the truth? Even if it's after 2 April we don't need to worry about it?
- A. Not not worry about it. He just didn't get into the statement, sir.
- Q. I understand. Now, let's talk about Staff Sergeant Wuterich telling you to lie.
- A. Yes, sir.
- Q. Now, you said that on four separate occasions Staff Sergeant Wuterich told you to lie?
- A. Yes, sir.
- Q. The first time was on that very same day, 19 November, when he told you to lie; right?
- A. Yes, sir.
- Q. And the second time was -- I think you didn't remember the date, but it was right before the Watt investigation; correct?
- A. Can you repeat that again, sir?
- Q. Right before Colonel Watt came down to investigate that's when you also had a conversation with Staff Sergeant Wuterich?
- A. Yes, sir.
- Q. And during that conversation it was you who told Staff Sergeant Wuterich that you were going to say qif qif that you yelled to the occupants of the

- white car; correct?
- A. Yes, sir.
- Q. Staff Sergeant Wuterich didn't say, hey, use this story, did he?
- A. No, sir.
- Q. You came up with that all on your own?
- A. Yes, sir.
- Q. And you also told Lieutenant Colonel Sullivan that you lied because you were worried that you committed murder; right? That's what you told him earlier today?
- A. Yes, sir.
- Q. You were worried that you committed murder; right?
- A. Yes, sir.
- Q. Now, when we just talked about the white car a few minutes ago, you said that you didn't shoot them, that Staff Sergeant Wuterich did, initially; correct?
- A. Yes, sir.
- Q. And that when you walked around the back of the car, they were already dead?
- A. Yes, sir.
- Q. And that you shot dead bodies; right?
- A. Yes, sir.
- Q. So why would you be worried about if you committed murder? You just shot dead bodies?
- A. That's what I'm talking about, sir. I shot at them. I shot at them, sir.
- Q. But that wouldn't be murder, would it? Shooting dead bodies is not murder. You didn't kill them.
- A. The fact that I shot at them, sir.
- Q. Or maybe -- maybe you're worried about being -- that you committed murder because you were the first one to shoot at the males of the white car?
- A. No, sir.
- Q. So the purpose of you two getting together prior to the Watt investigation -- All right. Let me go

back. If you say that Staff Sergeant Wuterich was the one firing; right?

A. Yes, sir.

Q. At the white car, and you didn't perceive a threat, from the white car.

A. Yes, sir.

Q. Then why did you ever say that you had fired?

A. Because I fired at them, sir. I was afraid there was going to be, like, forensics going on and they're going to know my weapon and all that, and that's about it, sir.

Q. But you didn't shoot them, you're saying.

A. I didn't shoot them, sir?

Q. Why did you come up with the story of he shot them while they're running away?

GC (LtCol Sullivan): Your Honor, and I'm sorry, Lieutenant Colonel Vokey, respectfully, I believe, you know, with all due respect to everyone --

IO: I'm only smiling because you're allowed to make objections. It doesn't offend of me. It doesn't cause a problem at all.

GC (LtCol Sullivan): We've had conversations about it, sir. I just want to make sure I'm --

IO: I don't find it disrespectful if you raise an objection. I expect you to do your job.

GC (LtCol Sullivan): Yes, sir. I just -- the objection for the record is he mischaracterized the response from the witness on that question.

IO: I heard it as well. Thank you.

Colonel Vokey, if you're going to recapture, and I know it's a technique, you have to be accurate in order for the question to be --

DC (LtCol Vokey): Was I inaccurate?

IO: You were just a little bit off.

DC (LtCol Vokey): Okay.

*Questions by the defense (LtCol Vokey) (continued):*

Q. So why say that you fired if it was Staff Sergeant Wuterich?

A. Because I fired at them, sir, the dead bodies, sir.

Q. So when you and Staff Sergeant Wuterich get together -- this is prior to the Colonel Watt investigation -- you got together to what? Make sure your stories match?

A. Yes, sir.

Q. And who initiated this conversation?

A. I did, sir.

Q. Where did this happen?

A. I don't remember, sir.

Q. So you came up to Staff Sergeant Wuterich, you're saying, and said we need to get together on a story?

A. Yes, sir.

IO: I'm sorry, did you say yes?

WIT: Yes, sir.

*Questions by the defense (LtCol Vokey) (continued):*

Q. And I think you testified that you say his response to your plan was just go for it; right? Is that what he said?

A. I don't remember, sir. But I know that's how it went.

Q. You don't remember what he said?

A. That's what we went with, sir.

Q. Well, maybe this was part of the plan you discussed, but why when Sergeant Wuterich gave his statement to Colonel Watt it made no mention of this, of the Iraqi shooting?

A. I don't know, sir.

Q. Did you not discuss that with him?

A. I don't know why.

**Q.** Well, you got together with Staff Sergeant Wuterich so your statements would line up, your stories would match. Did he tell you why he wasn't going to tell the same story as you? Because that's not very good getting together on a story, is it?

**IO:** Again, Lieutenant Colonel Vokey, he's not answering quickly enough for you so when you ask the second question, he's got to answer in between.

**DC (LtCol Vokey):** All right.

**WIT:** Can you repeat that question again, sir?

*Questions by the defense (LtCol Vokey) (continued):*

**Q.** Did you all discuss having two different stories?

**A.** The same story, sir.

**Q.** It's the same story?

**A.** Sticking to the story, yes, sir.

**Q.** So based on your meeting, I can't understand why Staff Sergeant Wuterich would have a different story to Colonel Watt, would you?

**A.** [The witness shakes his head in the negative.]

**IO:** There's a question pending. This is what we're having trouble with. You're shaking your head, but I don't know if you responded the question or not. If you can't answer the question just say you can't answer it as well.

**WIT:** Aye, sir.

**IO:** So the question is still hanging out there, Sergeant De La Cruz.

**WIT:** I can't answer that. I don't know, sir.

**IO:** And Sergeant De La Cruz, it's okay for you to say you can't answer, especially if you don't understand the question and you're lost; all right?

**WIT:** Yes, sir.

*Questions by the defense (LtCol Vokey) (continued):*



- Q. Now, are you aware that in his statement to Colonel Watt, that Sergeant Wuterich said that he engaged the males in the car. Are you aware of that?
- A. I don't know, sir.
- Q. It's not something you discussed with Sergeant Wuterich?
- A. We had this story to stick in, sir. So I don't know what else -- you know, if he changed his statement like I changed mine, and I finally told the truth. I don't know if he's aware of that.
- Q. But when you gave that statement to Colonel Watt, you're saying it was a lie; right?
- A. That is a lie, sir.
- Q. It is a lie?
- A. Yes, sir.
- Q. So prior to Watt -- this meeting prior to the Colonel Watt investigation, Sergeant Wuterich is not ordering you to lie, he's not telling you to lie, he's not suggesting to lie; is that right? Did he order you to lie?
- A. That's what he told me. That's what he told me to -- that the Iraqi army shot them. I don't know what else, the other story that -- I mean --
- Q. I thought you just said that you gave him the idea of what happened?
- A. He gave me the idea, sir, from the beginning. From the beginning, sir.
- Q. Did you just testify that you told him what you were going to say and he just said "go for it"?
- A. Repeat that question again please, sir.
- Q. Didn't you just testify earlier that you proposed the lie to Sergeant Wuterich and his response was "just go for it"?
- A. He knew it was the story, yes, sir.
- Q. Did he tell you to lie?
- A. Yes, sir. He told me what to lie, sir. Yes, sir.
- Q. I thought you just said that you told him that you were going to lie?
- A. I went in there and asked him first because that's

not going to cut it, that the Iraqi army shot them.  
That's not going to cut it, what he told me.

- Q. Okay. So what was the order from Staff Sergeant Wuterich that was a lie?
- A. That that's what we were going for, that's what we were going to say.
- Q. Did Staff Sergeant Wuterich give you an order to lie?
- A. Yes, sir.
- Q. What was the order?
- A. That the Iraqi army had shot them, sir.
- Q. Did he tell you to say that to the investigators?
- A. Yes, sir.
- Q. So it wasn't your idea after all that you told Staff Sergeant Wuterich about -- you're saying it was his idea to lie?
- A. Yes, sir.
- Q. But you initiated this conversation?
- A. From the beginning, sir, since November 19, sir, he told me to lie, sir.
- Q. I'm talking about right prior to the Watt investigation, you went to see him, didn't you?
- A. That's what you said.
- Q. We met up, sir. Yes, sir.
- Q. Now, you also met in the stairwell one time at Haditha Dam, didn't you?
- A. Yes, sir.
- IO: Your going to help me by putting a date on it. There's a possibility of meeting in a stairwell many times. It would be helpful for me to put a date or a time.

*Questions by the defense (LtCol Vokey) (continued):*

- Q. You testified that the third time that you spoke with Sergeant Wuterich was in a stairwell at Haditha Dam; isn't that correct?
- A. The fourth time, sir.

Q. That was the fourth time?  
A. Yes, sir.

Q. Okay. And why did you have this conversation?  
A. Because I just got done talking to the NCIS, sir, the first time that they interviewed me.

Q. Now, did you go up to Sergeant Wuterich and say, hey, this is what I told NCIS?  
A. No, sir. I was coming up the stairs and he was going down the stairs, sir. And he told me, "Hey, still the same?" And I said, "Yes, still the same."

Q. Is that all he said at that time?  
A. Yes, sir.

Q. Those are the only words spoken?  
A. Yes, sir.

Q. Do you recall another meeting prior to that in the stairwell where you came up to Sergeant Wuterich and said, "Hey, I told them that the Iraqis fired at the males in the white car"?  
A. I don't remember, sir.

Q. That you told NCIS that the Iraqis shot the men in the white car. You don't remember that?  
A. Can you repeat that question again, sir.

Q. Do you remember walking up to Sergeant Wuterich in the stairwell at Haditha Dam saying, "Hey, I just told NCIS that the Iraqis fired at the males in the white car"?  
A. I don't remember, sir.

Q. Do you remember Sergeant Wuterich saying to you, "Why the hell did you say that? Just tell them the truth"? Do you recall that?  
A. No, sir.

Q. All right. I want to ask you about a conversation that you had with Sergeant Wuterich and Corporal Salinas concerning Ortega. Do you remember testifying about that this morning?  
A. Yes, sir.

Q. And you said that Sergeant Wuterich stated we should kill everyone in the area to send a message or

something like that; is that right?  
A. Yes, sir.

Q. Now, I've looked through all your statements. You didn't put that in any of your statements, did you?  
A. I don't know why they didn't put it in there. I don't know.

Q. Well, when was the first time you told somebody?  
A. I told it to Special Agent Bingham (ph), sir.

Q. When was that?  
A. That was when we got back here, sir, from Iraq.

IO: Do you have a month and a year that you got back from Iraq, timeframe?

WIT: Yes, sir. Like early April, sir, like around mid-April, sir.

IO: 2007?

GC (LtCol Sullivan): No, sir. It would be '06, sir.

IO: '06?

WIT: Yes, sir.

*Questions by the defense (LtCol Vokey) (continued):*

Q. I'm going to ask you a question I think I already asked you four times, but obviously I was not clear because I just got it from my co-counsel. When you exited your HMMWV, right after the IED blast, it was a couple of seconds; correct?  
A. Right then and there, yes, sir.

Q. And you saw the males at the white car; right?  
A. Yes, sir.

Q. And then it was only a second or two later that Sergeant Wuterich was firing; is that right? I think you said maybe a second?  
A. Half a second I said, sir.

Q. And you said that he was only 10 feet away from the Iraqis at that time?  
A. On the statement that I made, yes, sir.

Q. He was 10 feet away; isn't that right?  
A. On the statement that I made, yes, sir.

Q. Is that statement a lie?  
A. I don't really know what's the distance, sir. I just know that Staff Sergeant Wuterich was shooting at them and if you want me to give an estimate, I gave you an estimate, sir. I don't know what --

Q. Well, on 2 April of '06, which was over a year ago, you said he was ten feet away from the Iraqis; right?  
A. Yes, sir.

Q. Are you saying that that was a lie?

GC (LtCol Sullivan): Objection, your Honor. This witness has responded to that three times. Now, we're getting into argument. He said he gave his best estimate.

IO: My problem with that, Colonel Vokey, is a lie versus a mistake. I think you got to get it out there because whether something is accurate, whether something is intentionally false, and whether something is --

DC (LtCol Vokey): I agree, sir. It's tough to tell.

IO: Well, you keep doing that, and you keep getting the same type of answer because -- the question is, is that accurate? Was it ten feet away or do you not know that that is accurate?

WIT: I don't know if that is accurate or not, sir.

IO: Well, why did you put it in a statement and swear to it as being the truth?

WIT: Because they wanted me to give an estimate, sir.

IO: Who wanted you to put a number in there and swear that it is true?

WIT: The special agent, the one that gave me a photograph of that, sir.

IO: You can continue, Colonel Vokey.

*Questions by the defense (LtCol Vokey) (continued):*

Q. All right. And Sergeant De La Cruz, you were given a polygraph, weren't you?

A. Yes, sir.

Q. And you failed that polygraph?

A. Yes, sir.

DC (LtCol Vokey): No more questions, sir.

*EXAMINATION BY THE INVESTIGATING OFFICER*

*Questions by the investigating officer:*

Q. Sergeant De La Cruz, I just have a few questions for you and then we'll take a recess and then counsel will do follow-up with you.

A. Yes, sir.

Q. When you moved around the white vehicle where the bodies were at, did you see any weapons at all?

A. No, sir.

Q. Did you see any weapons at all in the white car?

A. No, sir.

Q. Did anyone indicate to you that they retrieved weapons from any of those individuals that you described that were shot by Staff Sergeant Wuterich or yourself?

A. From what I know, there was none, sir.

Q. We talked a lot about this 2 April statement and these estimates of 10 feet. You also put in the same sentence that Sergeant Wuterich was at the eight o'clock position behind the Iraqis. What do you mean by "eight o'clock position behind the Iraqis"? Which way is the clock oriented? Tell you what, why don't you stand up, with that diagram, point out the clock for me. Are you looking south with that being twelve? What would the eight o'clock be?

A. The five Iraqi individuals were facing south. That's twelve o'clock, sir.

Q. Twelve o'clock. All right.

- A. And eight o'clock would be in the direction of, like, northeast, sir.
- Q. So directly, just a little bit diagonal to the east?
- A. Yes, sir.
- Q. So Staff Sergeant Wuterich, as he's firing at the Iraqis, would have to be firing from the front of the vehicle --
- A. Yes, sir.
- Q. -- towards the Iraqis?
- A. Yes, sir.
- Q. And he'd have to clear the front of the vehicle because you said the vehicle is blocking a clear line of sight?
- A. For me, sir?
- Q. Yes.
- A. Yes, sir.
- Q. So based on the diagram you drew and what you're testifying, without regard to how many feet, Staff Sergeant Wuterich would have to have been in the distance to your left and then down towards the vehicle in order to engage the targets without having to shoot over the vehicle?
- A. Yes, sir.
- Q. Did you feel any pressure to put particular distances into your sworn statement?
- A. In a way, yes, sir, because I don't really know.
- Q. Were you advised you could put approximate distances in your statement?
- A. Yes, sir. I was being advised.
- Q. Did you type this statement and then sign it, or did someone else type it for you?
- A. Somebody else typed it for me, sir.
- Q. Did you have an opportunity to review it? Is that why your initials are there? Is that the standard practice?
- A. Yes, sir.
- Q. And when you reviewed it, did you suggest that --

say that this is an approximate distance because you didn't really know?

A. I don't really know, sir.

Q. I'm just asking. Did you tell them, look, I don't really know if this was 10 feet and you're making it look like it's actually 10 feet?

A. I don't know, sir.

Q. All right. You don't remember?

A. I don't remember, sir.

Q. I want to clear up -- and we had a long series of questions. I got a little lost looping around about conversations you had with Staff Sergeant Wuterich. Did you ever have a conversation with Staff Sergeant Wuterich where he told you to tell investigators that you said "qif qif"?

A. Yes, sir.

Q. When did that conversation occur where Staff Sergeant Wuterich told you to use the words "qif qif" when you were talking to investigators?

A. I don't remember, sir. I know I asked him before -- maybe before Colonel Watt got there in Haditha, sir. And that's why I got more worried about it and --

Q. Well, when Colonel Watt came to do the investigation, that was approximately what time of year? Was that around the time that you gave the statement in February of 2006?

A. Yes, sir.

Q. So was this conversation you're describing, did it happen a couple days after the incident in November 2005, or did it happen closer to February 2006?

A. Around that time, sir, February -- close to February something.

Q. February?

A. Something like that, sir.

Q. Now, you also testified that you approached Staff Sergeant Wuterich and you said to Staff Sergeant Wuterich you were going to say "qif qif"?

A. I didn't want to guess, sir, you know? I didn't want to guess or anything like that because it's a big mistake. We had this conversation, sir. That's



all I know, sir.

Q. You had a conversation with Staff Sergeant Wuterich sometime before Colonel Watt came?

A. Yes, sir.

Q. And in that conversation -- it's relatively important for me to try to figure out who came up with the idea to say "qif qif"? You or Staff Sergeant Wuterich?

A. I did.

Q. You did?

A. Yes, sir.

Q. And did you tell Staff Sergeant Wuterich that were you were going to say in your statement that you said "qif qif"?

A. Yes, sir.

Q. Did Staff Sergeant Wuterich suggest to you that you should come up with something before you told him that's what you're going to do?

A. I would come up with something else, sir?

Q. Yeah, some kind of story?

A. He already told me that the Iraqi army shot them and that they ran away, so --

Q. So was this conversation you were having trying to amplify the story because you didn't think you could sell it?

A. Yes, sir.

Q. After that conversation with Staff Sergeant Wuterich, what did you believe he wanted you to do?

A. After that conversation, sir? To lie, sir.

Q. And did you provided a false statement to Colonel Watt in part because you believed Staff Sergeant Wuterich wanted you to?

A. Yes, sir.

Q. And you were trying to protect yourself as well?

A. Yes, sir, and the squad and them, sir.

Q. Now, when you were interviewed by Colonel Watt, and I have a statement here that is the rights

advisement given to you, did you understand that he was conducting an investigation which could lead to criminal charges?

A. Yes, sir.

Q. And those criminal charges could be against you or other members of your squad?

A. Yes, sir.

Q. Did you think if you provided false information that you might throw the investigation off or maybe avoid charges against yourself or someone else in your squad?

A. That was my plan, sir.

Q. You said that was your plan. Did you have some kind of agreement with Staff Sergeant Wuterich --

A. No, sir. That's pretty much what we were trying to do, sir, I mean, that's --

Q. So would you say the conversation you had with Staff Sergeant Wuterich encouraged you to provide a false statement, to lie?

A. Yes, sir, so we wouldn't get in trouble, sir.

Q. But you didn't have a particular version of facts that both of you were supposed to go in and recite; is that correct?

A. Can you ask the question again?

Q. I know that's a tough question. It's because I'm a lawyer. I'm sorry. You were asked a lot of questions. Why would you provide a statement about the Iraqis shooting these individuals and saying "qif qif" if Staff Sergeant Wuterich didn't say that to the same investigator? Normally, if you have an agreement to give a story, both people would tend to say the same thing. That would be an example of an agreement.

A. I don't know.

Q. So my question is when you finished this conversation with Staff Sergeant Wuterich and you said you were going to lie based on the conversation, did you have a particular version of facts you were going to say or did you just think you were going to go with a lie in general?

A. Just lie in general, sir.

Q. And part of that you were going to say that you said "qif qif"?

A. Qif qif, yes, sir.

Q. Now, I'm going to jump way back early in the testimony in cross when you were shown the statement and there is a diagram drawn and admitted and you end up signing your name to it, and that was part of a statement to Colonel Watt. Did Colonel Watt have a diagram or an idea of what happened when he was questioning you about what happened, or were you given the opportunity to just state what happened on that day?

A. They were just giving us -- to tell the story, sir.

Q. Okay. And then after you told your version of what happened did Colonel Watt provide that diagram for you to draw it or write in what happened?

A. I believe so, sir. Yes, sir.

Q. So you don't know who the author of that diagram is, but was that diagram to assist you in telling what happened on that day?

A. Yes, sir.

Q. And your testimony today is that diagram is not accurate?

A. It's not accurate, yes, sir.

Q. Did you tell Colonel Watt it wasn't accurate?

A. No, sir.

Q. Why not?

A. Because I lied, sir. It was false.

Q. Because you didn't want to tell Colonel Watt the majority of the truth? Is that why?

A. Yes, sir.

Q. And was it your understanding that if you shot a body that was dead that you could be charged with murder?

A. Yes, sir.

Q. Why -- well, never mind.

IO: Okay. Let's take a ten-minute recess.

During this recess please don't discuss your testimony with anyone.

**WIT:** Aye, sir.

*The Article 32 investigation was called to order at 1422, 31 August 2007.*

**GC (LtCol Sullivan):** Sergeant De La Cruz, go ahead and resume your seat. I remind you that you continue to be under oath. Go ahead and please sit down, and you'll continue with questions by the investigating officer.

**IO:** I have no further question for you at this time, but any follow-up, counsel?

**GC (LtCol Sullivan):** I was going to tender him to Lieutenant Colonel Vokey. I think he said he had a couple of follow-up questions and then with your permission -- I don't think I will, based upon what Lieutenant Colonel Vokey will do here.

**IO:** Okay.

*RE-CROSS-EXAMINATION*

*Questions by the defense (LtCol Vokey):*

**Q.** All right. Sergeant De La Cruz, when you're watching -- you're looking at the white car and you're seeing the four or five males on the other side of the white car, and you hear a pop and someone drops; right?

**A.** Yes, sir. I saw them drop, yes.

**Q.** Did you see who dropped first?

**A.** One of the Iraqi males in the middle, sir.

**Q.** If I showed you a picture, could you recognize which one fell first?

**A.** I possibly could, sir.

**Q.** I'm going to hand you the first picture.

**IO:** 132 is evidence that is a series of photographs; right?

DC (LtCol Vokey): Yes, sir.

GC (LtCol Sullivan): Yes, sir.

*Questions by the defense (LtCol Vokey) (continued):*

Q. Sergeant De La Cruz, let me show you page 1 of 15 of Investigative Exhibit 132. Can you tell me from that picture who is the first one to drop?

A. Probably the one in the middle, sir. I'm guessing this one -- this Iraqi here.

Q. All right. You said "the one in the middle," and you're guessing it's the one who has a blue and white plaid shirt and, looks like, tan pants?

A. Yes, sir.

Q. Can you tell --

GC (LtCol Sullivan): Lieutenant Colonel Vokey, just for the record, because I couldn't see, could you --

IO: It's the individual bent over his legs.

GC (LtCol Sullivan): Roger. Thank you, sir.

IO: And to clarify the record, it was a guess that is the first person. It wasn't definitive; is that correct? He kept saying "I'm guessing."

*Questions by the defense (LtCol Vokey) (continued):*

Q. Do you have any idea the order of who else fell after that?

A. No, sir.

Q. You don't know who the last one to fall is?

A. No, sir.

Q. All right. I'm sorry. I'm going to show you the same photo again. You said, if I recall, you said you believed it was the person who was bent over backwards with the plaid blue and white shirt, and that was a guess. If he was not the first one to fall, who do you believe would have been the first one to fall?

A. I don't know, sir.

Q. You don't know?  
A. No, sir.

Q. If it's not him, you just don't know?  
A. I don't know, sir. Just saw one in the middle, sir.

Q. Just the one in the middle?  
A. Yes, sir.

Q. So by saying one in the middle, you're not referring to the gentleman at the bottom of the picture in the blue warm-up suit?  
A. No, sir.

Q. Or the gentleman at the top of the picture who also seems to have kind of a blue and white checkered shirt; right?  
A. I don't know, sir.

Q. It would not be that one, or you don't know?  
A. I don't know. I'm just guessing it's the one in the middle. He fell back like that and just fell back, sir, like a lifeless -- fell back, sir.

Q. Okay. So the one you saw fell back?  
A. Yes, sir.

Q. And in this photo there's only two that are on their backs; correct?  
A. In this photo, yes, sir.

Q. The one you identified at first?  
A. Yes, sir.

Q. And then this gentleman who's got, looks like kind of a black -- looks like a sweater or a long-sleeve shirt with stripes down the side; correct?  
A. Yes, sir.

Q. All right. I want you to make one more mark on this exhibit, if you would. Please, stand up here?  
A. Aye, sir.

Q. And this is the same chart that I had Sergeant De La Cruz draw concerning Chestnut and Viper. I've marked it as Investigative Exhibit 195. So please take the pen and draw in there -- put a "W" where Sergeant Wuterich was when you saw him fire for the

A. first time.  
"W," sir?

Q. Yes. Put a "W," please.

*The witness did as directed*

*Questions by the defense (LtCol Vokey) (continued):*

Q. And you have indicated -- it appears to be somewhat in the middle of the south road on Chestnut; correct?

A. Yes, sir.

DC (LtCol Vokey): Okay. You can have a seat.

Sir, do you want to inspect? It's the same rubber rifle, training rifle we used before.

IO: I'll let the trial counsel ensure it's the same one.

*Trial counsel did as directed.*

*Questions by the defense (LtCol Vokey) (continued):*

Q. All right. Sergeant De La Cruz can you stand up again?

A. Aye, sir.

Q. Now, I believe you said that you proceeded around the rear of the white vehicle and you shot the bodies on the ground; correct?

A. Yes, sir.

Q. Please take the weapon and demonstrate exactly how you were pointing down at the bodies.

A. Pointing down at the bodies, sir?

Q. When you were shooting.

A. Like this.

Q. Okay. Now let the record reflect that the witness has his right arm --

A. I got a broom stick. It's just a little -- I was holding it like this, sir.

Q. Okay. A broom stick, which is a handle in the front of the M16; right?

A. With a 203 grenade launcher, yes, sir.

Q. I'm sorry. A 203?

A. Yes, sir.

Q. And the witness is holding their rifle with his elbow about ear high. All right. Your hand is on the top of the weapon. Your weapon is at an angle; correct?

A. Yes, sir. At an angle.

Q. All right. And is that a technique you used -- something you were trained to do while you were shooting like that?

A. No, sir.

Q. It was not?

A. It was not.

Q. So why are you shooting down at the bodies in that manner?

A. Because I was on the side, sir; and I'm just shooting at them, sir.

Q. I mean, they weren't moving, though; right?

A. No, sir.

Q. You thought they were dead?

A. They were dead, right, sir.

Q. So why are you leaning up this high with your elbow to shoot dead bodies?

A. I don't know, sir. My instinct just took over and I shot them like that.

Q. Is this something gangster style that you see in the movies? Is that what you're doing?

A. No, sir.

Q. Because you could have just shot them just as our holding the weapon now; right?

A. I could have, yes, sir.

IO: You're going to have to describe how he's holding the weapon right now.

*Questions by the defense (LtCol Vokey) (continued):*



- Q. Okay. How would you describe the way you're holding the rifle?  
A. At the alert, sir.
- Q. The alert ready?  
A. Yes, sir.
- Q. So with the -- by your shoulders?  
A. This is ready, sir.
- Q. The butt in the shoulder and the barrel pointing down at a 45-degree angle. Okay. I'm sorry. Please demonstrate again how you were shooting the weapon at the body?  
A. [The witness demonstrates.]
- Q. Okay. So you've got your hand about level to the top of your head. Your right hand is about level to the top of your head.  
A. Yes, sir.
- Q. You're holding the front of the M16 where the M203 is; right?  
A. Yes, sir. The broom stick, sir.
- Q. The broom stick? Okay.  
A. Yes, sir.
- DC (LtCol Vokey): Retrieving the exhibit. No more questions, sir.
- GC (LtCol Sullivan): Yes, can I just briefly retrieve that exhibit?

*REDIRECT EXAMINATION*

*Questions by the government counsel (LtCol Sullivan):*

- Q. Sergeant De La Cruz, please step out of the witness stand.  
A. Aye, sir.
- Q. I believe earlier in your testimony you said that after you finished firing, Sergeant Wuterich came up to those bodies at close range and fired into them?  
A. Yes, sir.

Q. Can you demonstrate to the investigating officer how Sergeant Wuterich fired at those bodies when they were in the ground?

A. Demonstrate right now? He was running and he did this. Wham. With every single one of them about this close. Pop, pop, pop, pop. And then the last body. Pop. And that's when I was right there.

Q. And for the record the witness had the weapon in the lower position of his body and he indicated that he went around in a physical motion firing into the bodies. Thank you.

IO: I figure I should describe the height. So it's about 2 to 3 feet off the deck.

GC (LtCol Sullivan): Thank you, sir. I have no further questions, sir.

IO: Sergeant De La Cruz, can you take a seat?

WIT: Aye, sir.

IO: Sergeant De La Cruz, are you aware of any personal matter or assignments that will make you unavailable to testify?

WIT: No, sir.

IO: So as far as you know, you're available to testify in any further proceedings?

WIT: Yes, sir.

IO: Counsel want him subject to recall?

DC: Yes, sir. Subject to recall.

IO: Would telephonic be sufficient?