
 UNITED STATES)
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 vs.) Article 32 Investigation
)
 Edward T. Card)
 Maj, USMC)
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 I MHG, I MEF)

The Article 32 Investigation in the aforementioned case opened on 19 April 2011, at 0901.

PERSONS PRESENT

INVESTIGATING OFFICER:	LtCol P. S. Rubin, USMC
GOVERNMENT COUNSEL:	Maj A. Goode, USMC
GOVERNMENT COUNSEL:	Capt E. G. Gordon, USMC
DEFENSE COUNSEL:	Maj A. Workman, USMC
DEFENSE COUNSEL:	Capt J. S. Baehr, USMC
CIVILIAN COUNSEL:	Mr. H. Faraj, USMC, Retired
COURT REPORTER:	SSgt K. C. Myers, USMC

TESTIMONY

DEFENSE WITNESSES	PAGE
GySgt J. C. Hawks	
Direct Examination	16
GOVERNMENT WITNESSES	PAGE
HM1 A. R. Slaughter	
Direct Examination	30
Cross-Examination	46
Redirect Examination	65
Recross-Examination	70
Examination by the Investigating Officer	73
Recross-Examination	75
1stSgt E. Cook	
Direct Examination	79
Cross-Examination	97
Examination by the Court	137
Redirect Examination	140
Recross-Examination	144
Mr. M. A. Jimenez	
Direct Examination	162
Cross-Examination	177
Redirect Examination	209
Recross-Examination	211

Mr. C. L. Russell	
Direct Examination	217
Cross-Examination	233
Recross-Examination	245
Sgt T. G. Cotton	
Direct Examination	251
Cross-Examination	262
Redirect Examination	278
Examination by the Investigating Officer	279
Recross-Examination	281
J. D. Stephens	
Direct Examination	284
Cross-Examination	296
GySgt C. A. Duran	
Direct Examination	321
Cross-Examination	329
Mr. T. K. Kadrie	
Direct Examination	353
Cross-Examination	368
Redirect Examination	390
Cross-Examination	415
Redirect Examination	431

Mr. J. W. Phillips

Direct Examination 435

Examination by the Investigating Officer 469

Cross-Examination 549

Examination by the Investigating Officer 601

SA J. R. Periard

Direct Examination 473

Cross-Examination 486

IO: This hearing will come to order. The investigation is convened by Lieutenant General T. D. Waldhauser, Commander General, 1st Marine Expeditionary Force by his appointing order, dated 10 March 2011.

I'm Lieutenant Colonel P. S. Rubin, United States Marine Corps. I've been detailed as investigating officer under Article 32(b) of the Uniform Code of Military Justice to inquire into the truth of the matters set forth in the charge sheet, dated 18 January 2011, in the case of Major Edward T. Card, United States Marine Corps, the accused. Copies of the charge sheet and appointing order have been furnished to the investigating officer and all counsel and will be inserted in the record as Investigative Exhibits 1 and 2, respectfully.

You're Major Edward T. Card, United States Marine Corps?

ACC: Yes, sir. Good morning.

IO: You may remain seated, Major Card. Good morning. Thank you very much for standing.

Present at this investigation including myself, Lieutenant Colonel Rubin, the investigating officer, and Major Edward Card, United States Marine Corps, who's the accused:

Detailed counsel for the accused, Major Adam Workman, United States Marine Corps; Captain James Baehr, United States Marine Corps.

Civilian defense counsel, Mr. Hatham Faraj.

And counsel for the government, Major Andrea Goode, United States Marine Corps; and Captain Evan Gordon, United States Marine Corps.

I am a judge advocate certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice. I am not aware of any matters that I believe may be ground for challenge against me to disqualify me as the investigating officer.

Do counsel for either side desire any questions or any challenges?

GC (Maj Goode): No, sir.

DC (Maj Workman): No, sir.

IO: Counsel, at this time, will each of you state your legal qualifications, status as to oath, the authority by whom you were appointed and/or detailed, and any disqualifying capacity in which you may have acted.

GC (Maj Goode): Yes, sir. Good morning, sir. I am Major Andrea Goode, United States Marine Corps. This is Captain Evan Gordon, United States Marine Corps. We are both certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice. We have been detailed to this investigation by Lieutenant General T. D. Waldhauser, the convening authority, and we have not acted in any disqualifying manner.

IO: All right. Major Workman and Captain Baehr.

DC (Maj Workman): Good morning, sir. I'm Major Adam J. Workman, United States Marine Corps. I am certified and qualified in accordance with Article 27(b) and sworn under Article 42(a). I was detailed to this case by myself in my capacity as Senior Defense Counsel, Legal Service Support Team Delta.

This is Captain Jim Baehr.

DC (Capt Baehr): Good morning, sir. I'm Captain James S. Baehr. I've been detailed to this court-martial by Major Mark D. Sameit, Senior Defense Counsel, Legal Team Echo. I am qualified, certified, and sworn under Article 27(b) and 42(a) of the Uniform Code of Military Justice. I have not acted in any disqualifying manner.

IO: All right. Gentlemen, just to make sure, you're both detailed counsel? There's no IMC?

DC (Maj Workman): That is correct, sir.

IO: Understood. Thank you.

DC (Maj Workman): And, sir, we've been detailed to this investigation by Lieutenant General T. D. Waldhauser, the convening authority. And I have not acted in any disqualifying manner.

IO: Thank you.

Mr. Faraj.

CC (Mr. Faraj): Good morning, sir.

IO: Good morning.

CC (Mr. Faraj): I am an attorney qualified to practice law by the highest court of the State of Illinois, the State of Michigan, and the Appellate Court for the District of Columbia. I have also been previously sworn and qualified and certified under Article 27(b) and sworn under Article 42 of the UCMJ. I have not acted in any manner that would tend to disqualify me.

IO: Thank you, Mr. Faraj.

Major Card, I've been appointed to conduct a formal pretrial investigation to inquire into the truth of the matters set forth in the charges, the form of the charges, and the disposition which should be made of the case in the interest of justice and discipline. This is not a trial. I'm not here to determine your innocence or guilt. It is my duty to evaluate and impartially weigh all of the evidence. I will pursue equally and impartially all matters which tend to exonerate you; all matters which tend to implicate you.

I may recommend that the charge against you be referred to trial by general court-martial, special court-martial, or summary court-martial. I may also recommend that the charges or some of them be dismissed or disposed of at a forum other than trial by court-martial, such as nonjudicial punishment. My recommendations are only advisory in nature and they are not binding on the convening authority, who will make the final decision on the disposition of the charges.

Do you understand that?

ACC: Yes, sir. I understand everything.

IO: Major Goode and Captain Gordon have been appointed as counsel for the government at this investigation. They are not acting as counsel for me, the investigating officer. They are here solely to represent the government. They will not advise me as to what

disposition I will recommend in this case, as that decision rests solely with me. After completing this investigation, I shall recommend a disposition that I deem appropriate for matters disclosed at this proceeding.

Do you understand that?

ACC: Absolutely. Yes, sir.

IO: Counsel, any questions by either side regarding my role, function at this investigation?

GC (Maj Goode): No, sir.

DC (Maj Workman): No, sir.

IO: Major Card, I'm now going to advise you of the rights you have at this investigation. You have the right to be present throughout the presentation of the evidence so long as your conduct is not disruptive. You have the right at the proper time to cross-examine all available witnesses against you; to call witnesses and present any evidence you might desire in your own behalf, either in defense, extenuation or mitigation; to have legal counsel represent you at all times throughout this investigation; to examine -- have your counsel or myself examine available witnesses or evidence requested by you; to make a statement in any form at the proper time or to remain silent; and to refuse to make a statement regarding the offenses of which you are being accused or suspected and that is under investigation. You are advised that any statement you may make may be used against you as evidence in a trial by court-martial or administrative proceeding.

Do you understand those rights, Major Card?

ACC: Absolutely. Yes, sir.

IO: You do have the right to be represented in this investigation by Major Workman and Captain Baehr, your detailed defense counsel. Or you may be represented by military counsel of your own selection provided that that military counsel is reasonably available. Military counsel are provided to you free of charge. You're not entitled to be represented by more than one military lawyer. But if you are represented by military counsel

of your own selection, then you could request that either of your counsel, Captain Baehr or Major Workman, your detailed counsel, continue to represent you and the authority who detailed them would have the sole discretion to either grant or deny that request.

Do you understand that?

ACC: Yes, sir.

IO: In addition to your military counsel, you have the right to be represented by Mr. Faraj or any other civilian counsel of your own selection at no expense to the United States. Civilian counsel may represent you alone or along with your military defense counsel. Should you choose civilian counsel, you would be responsible for those expenses. If you were represented by civilian counsel, then your military counsel could and appear will continue to serve as associate counsel unless you ask or excuse them.

Do you understand those rights to counsel?

ACC: Yes, sir, I do.

IO: Do you have any questions regarding your rights to counsel?

ACC: No, sir.

IO: Whom do you want to be represented? By whom do you want to be represented?

ACC: By my old college buddy, Hatham Faraj.

IO: Okay.

ACC: And Major Adam Workman and Captain Jim Baehr.

IO: Very well. Do you have a copy of the charge sheet in front of you?

ACC: I do, sir.

IO: Okay. The general nature of the charge -- charges in this case, three violations of Article 118, UCMJ. Specification 1 involves one specification of premeditated murder; Specification 2 is one

specification of murder with intent to kill; and Specification 3 represents one specification of murder while engaging in an act inherently dangerous or dangerous to another.

The charges were preferred by Second Lieutenant Sheneman, United States Marine Corps, a person subject to the UCMJ as accuser, and were sworn before an officer authorized to administer oaths. A copy of this charge sheet will be appended to the record as Investigative Exhibit 1.

Do counsel for either side desire that I read the specifications or desire further examination of the charge sheet before we continue?

GC (Maj Goode): No, sir.

DC (Maj Workman): No, sir.

IO: Major Card, I advised you a few minutes ago that you don't have to make any statement regarding the offenses of which you are accused and that any statement you do make may be used against you as evidence either at trial by court-martial or administrative proceeding.

You do have the right to testify under oath, to make an unsworn statement, or to remain silent. If you testify under oath, you may be cross-examined by the government and questioned by me.

If you decide to make an unsworn statement, you may not be cross-examined by the government counsel or questioned by me. You may make an unsworn statement orally or in writing, personally or through your counsel, or you may use a combination of those methods.

If you do make a statement, whatever you say will be considered and weighed as evidence by me the same as the testimony of the other witnesses.

If you decide to exercise your right to remain silent, that can not and will not be held against you in any way.

Do you understand those rights?

ACC: Yes, sir.
Sir, may I ask a question?

IO: Yes.

ACC: Who is Second Lieutenant Sheneman? I noticed that on the charge sheet and when you just mentioned it this morning, I thought, Oh, yeah. I figured he was a middleman in between the actual accuser and --

IO: Yes.

ACC: Right. And he's just the guy that formally wrote the charges out under the direction of someone else.

IO: He's the one that reviews the investigation. He's not an eyewitness to the offense. He's someone who reviews the investigation --

ACC: Got it.

IO: -- ultimately drafts the charges. He's sworn to that -- charges. Either he has -- if you look on the affidavit, he either -- he's a person subject to the UCMJ, either has personal knowledge or has investigated the matters set forth therein. The investigation can be as simple as reviewing all of the statements of various witnesses.

ACC: Certainly, sir. I understand.

IO: Any other questions, Major Card?

ACC: No, sir.

IO: That's fine. If you do, ask them.

ACC: Yes, sir.

IO: Counsel, are we ready to proceed with the investigation?

GC (Maj Goode): Yes, sir.

IO: Defense?

DC (Maj Workman): Yes, sir.

IO: I remind the counsel that they may make objections to the evidence presented here. However, the rules of evidence applicable to courts-martial are generally not applicable at this proceeding. The exceptions to the rules governing privileges and past sexual behavior -- that's not applicable necessarily in this case -- but those would be rules of evidence that are applicable here.

I'm going to be the sole judge of what evidence shall be admitted and considered. Generally, your objections will be noted for the record; however, I may rule on specific objections and you are to proceed accordingly.

Finally, if either side makes an objection that you want me to note in the report of investigation, please at least send me an e-mail preferably within 24 hours after the close of the investigation, and I will ensure that that objection is noted in the report. And you can do it just via e-mail. That's fine.

Counsel for either side have any questions or concerns about the manner in which we're going to proceed?

GC (Maj Goode): No, sir.

DC (Maj Workman): No, sir.

IO: I know the gouge here doesn't call for it, but it would be extremely helpful for me -- obviously you all have been living, breathing, and dealing with this case for quite a bit of time I imagine. This is new to me. I know nothing aside from what I see on the charge sheet. It would be very helpful if you could just take a minute or two and just give me a basic sort of opening statement orientation. That would be very helpful for me, if you desire. You don't have to. But it would be helpful.

GC (Maj Goode): Yes, sir.

Sir, this is a case that occurred back in 7 June 2004 when the accused was in Ramadi. He was leading the Division Jump team, which was General Mattis' PSD. On June 7, 2004, they went out on a route recon without General Mattis. And during that route recon, they were hit by an IED. During the IED explosion, one Marine, Lance Corporal Bohlman, was killed. There was a brief

firefight that occurred afterwards. After that firefight, there was allegedly a wounded Iraqi left on the side of the road. Some witnesses will testify that they saw then Captain Card go out into the field on the side of the road, take out his M9, and shoot him in the head.

There will be a lot of witnesses who will testify here today, sir, that they were on the jump team and they can talk about the events that led up to it. But just for your SA, there is going to be some conflicting testimony that you're going to hear today and tomorrow, and there's going to be some testimony from some witnesses who are going to say that the statements that they gave previously stating that they saw this incident are no longer true. And at the end of the day or at the end of the Article 32, sir, we're going to be asking that you do a report that thoroughly analyzes the state of the evidence and whether or not we can be successful at a trial.

IO: I assume what you mean by successful is whether there's a conviction?

GC (Maj Goode): Yes, sir. And I say that because obviously at an Article 32, there's a very low burden, which is why we would ask that you consider in light of, like, an actual, real world of a trial instead of just simply looking at the low threshold of a 32.

IO: All right. I'm certainly going to do this. Obviously, you know, the 32 standard is fairly low. It's reasonable grounds, which is essentially a probable cause determination. Obviously a military judge was requested for this 32. I intend to go beyond just sort of the are there reasonable grounds analysis. Not that I'm going to sit here and establish guilt or innocence, but I will in my final report offer an opinion as to whether the government would likely convict on these offenses or not.

And frankly, I have no problem recommending to the convening authority even though there may be probable cause if I think that a conviction is highly unlikely and would be nothing more than a colossal waste of time and money. I have no problem putting that in a report.

All right. So as far as I'm concerned, the gloves are off. Everything is fair game at this hearing. And, you know, I'm PCSing in seven weeks so I'm beholden to no one and I'm just going to call it like I see it and do the best I can, okay?

GC (Maj Goode): Yes, sir.

IO: All right. Defense, any opening statement? Anything you want me to consider?

CC (Mr. Faraj): I think Major Goode summarized the state of the evidence as you will hear it. There will be some slight variation of -- may be slight variations. But we do see your role -- you were requested for this for a purpose as a judge. And I just want to re-emphasize that we would also ask that you take a look at this and consider the accused in this case, the gravity of the offenses that he's accused of, and whether going through an entire process just because of probable cause would be worth the time, effort, and harm to the reputation if the government were -- is not able to prevail at a trial.

IO: Counsel, do you anticipate any, I guess, strange turns where witnesses may have to be advised of 31(b) rights? Anything crazy like that?

GC (Maj Goode): Yes, sir. There is one witness who, if he takes the stand, we will be reading him his rights. His name is First Sergeant Beall, sir. I know he spoke with the defense counsel yesterday and --

CC (Mr. Faraj): He did not.

DC (Maj Workman): Not us. A defense counsel.

DC (Capt Baehr): An independent.

GC (Maj Goode): Captain Henderson, sir.

IO: At what point -- obviously you suspect the first sergeant may make a false statement or something. Do you plan on warning the first sergeant before he testifies?

GC (Maj Goode): If he agrees to testify, I plan to ask him preliminary questions and then read him his rights before we get into the meat of his testimony. And the warning would be false official statement for his previous statement. But at this time, he has not yet let me know whether or not he's going to agree to even take the stand.

IO: All right. Very well. The other thing that I will consider -- and, again, maybe it's outside the box a little bit -- normally proffers are not something -- but if we do have witnesses that are either unavailable, I'm not opposed for you making a proffer. And while I might not give it the same weight as an individual standing in front of me saying it, it is something I will consider, okay?

For example, if the first sergeant doesn't testify, I'd be curious for a proffer as to what do you all believe he would probably say under oath. Because I would like to take that into consideration if I can.

DC (Maj Workman): Sir, just one other possible unexpected turn. You may hear some evidence as the 32 proceeds that Major Card shortly before Christmas on December 22, 2004, about 5 weeks after returning from his deployment was in a very, very serious motorcycle accident right here on Basilone Road as he was leaving Camp Horno. He was in a coma for 27 and a half days, suffered some traumatic brain injury and some retrograde amnesia. We've considered the legal aspects of all that and that's something we're continuing to consider. But some evidence may be presented along those lines as well, too, sir.

CC (Mr. Faraj): You're going to obviously ask us if there's a reason to believe there's a mental incompetency --

IO: Yeah. I guess that's the question is has there been a 706 board --

DC (Maj Workman): No, sir, there has not.

IO: -- mental health evaluation?

DC (Maj Workman): No, sir.

CC (Mr. Faraj): There's been -- there's certainly been a lot of medical evaluations. Some neuropsychological evaluations that -- and the government is aware of these. I mean, this was long before any allegations arose. But I think that's a legal issue that we may have in the event that this does go forward. These are legal matters that we may have to grapple with later on.

IO: As you all sit here right now, is there any reason to believe that Major Card, aside from -- I don't know if he recalls the events in question or not -- any reason to question whether he can assist in his defense aside from memory issues?

CC (Mr. Faraj): Well, that -- you know, we always use -- we throw that term around until you get to a case like this where you realize it's a more complex question than it first appears.

The difficulty is he does have retrograde amnesia that affects his ability to remember certain events. And so to the extent that -- you know, you sometimes ask your client whether he can remember an event or do you remember this happening, Major Card -- in fact, cannot assist on some of those matters. He doesn't have complete amnesia, but he has some bits and pieces that sometimes come back through an anchor event. You know, he'll read something and he'll hear something and memories begin to flood back, but those are often suspect.

And I'm telling you this so you can also include that in your report, sir, because I think that is an issue that we will have to grapple with should this go forward. The case law doesn't appear to say that you -- there is mental incompetency, but I think it's a serious issue that we would have to raise and probably research before we can decide on how this affects this case.

IO: Yeah, off the top of my head, just -- can't say it's an issue I've looked at.

Government, I don't know if you've looked at it. Obviously, we have folks who come into court and plead guilty with less than a hundred percent memory.

CC (Mr. Faraj): Right.

IO: And obviously our rules put a very high burden on guilty pleas and establishing factual predicate. And so off the top of my head, I don't believe that the government couldn't proceed to trial, but I don't know.

Government, I don't know if you've looked at that issue and what your research --

GC (Maj Goode): Yes, sir. There's some case law on it. It's something that I think is worth exploring perhaps later on in the 32.

IO: Okay.

CC (Mr. Faraj): The case law appears to side on the side of no incompetency, but it's not black and white. I mean, there are people that have gone to trial for events they didn't remember and guilty pleas are a perfect example. You can -- someone can be presented with circumstantial evidence and say, you know, Yes. Based on that, I believe that I did commit it. But it's not black and white.

IO: As the major sits here right now, my own observations are that he obviously can understand the proceedings. There's no, you know, medical or psychological issues right now.

Is that a fair statement?

DC (Maj Workman): Yes, sir. It's consistent with some type of --

IO: Okay. This is a -- essentially 6- or 7-year injury. There's no psychological effect right now or any questions regarding the accused's sanity --

DC (Maj Workman): Not that I know of. We have the benefit of counsel that's known him since college, so I'll defer to him on that.

IO: Okay. The government has provided the investigating officer -- excuse me -- Investigative Exhibits 1 through 24.

Major Goode, does the government have any additional documentary or real evidence to present?

GC (Maj Goode): No, sir.

IO: Major Goode, would you please list the witnesses the government intends to call? And just before I start, are those consistent with the witness list that you sent me some time last week?

GC (Maj Goode): Yes, sir.

IO: All right. If you would, just list the witnesses that the government intends to call.

GC (Maj Goode): Yes, sir. I'll list them in order. We'll call HMI Slaughter, First Sergeant Cook, Marco Jimenez, Christopher Russell, Gunnery Sergeant Duran, Sergeant Cotton, Major Leach, Timothy Kadrie, First Sergeant Beall, John Stephens, Special Agent Periard -- or as I was, Master Sergeant Periard -- Staff Sergeant, that's P-E-R-I-A-R-D -- Jackie, J-A-C-K-I-E, Phillips; Andrew Tipton; and Special Agent Rick Rendon, R-E-N-D-O-N.

IO: I think I saw -- okay. Periard. I see it.

Okay. And those are all on the list you gave me?

GC (Maj Goode): Yes, sir. And, sir, at this time since I know that they have their witness that is standing by, do you mind if we get him on the phone?

IO: Absolutely. We do have several witnesses I saw from the witness list you sent who will be testifying telephonically including some, appears, in Afghanistan. So let's get those -- that witness on the phone and obviously we'll take the witnesses as we can take them.

Major Goode, who is this witness again?

GC (Maj Goode): This is Gunnery Sergeant Hawks, a defense witness.

IO: Hawks. Okay. Is there a witness statement? I don't see any in here.

GC (Maj Goode): No, sir.

IO: Okay.

GC (Maj Goode): Hey, Gunnery Sergeant Hawks, this is Major Goode calling. Can you hear us okay?

WIT: This is Gunny Hawks.

IO: Get a little closer if you can.

GC (Maj Goode): Gunny Hawks, this is Major Goode calling. Can you hear me okay?

WIT: You're really, really weak right now, ma'am. The last guy I spoke to I could hear him just fine.

GC (Maj Goode): We're calling from the courtroom now. Is this a little better?

WIT: That is much better.

GC (Maj Goode): Okay. All right. Gunny, we're here in the courtroom. We're on the record. Present is myself, Lieutenant Colonel Rubin, who's the military judge; Major Workman, Mr. Faraj, and Captain Baehr, who are the defense counsels; Major Card, who is the accused; Captain Gordon, who is my cocounsel; and Staff Sergeant Myers, who is our court reporter.

Are you currently in a position where you can give some testimony today?

WIT: Yes, ma'am. Good morning.

GC (Maj Goode): Good morning. So do you have any notes in front of you and are you able to testify without being interrupted?

WIT: No, ma'am. I don't have any notes in front of me. And, yes, I am able to testify without being interrupted.

GC (Maj Goode): All right. Good to go.

Gunnery Sergeant James C. Hawks, U.S. Marine Corps, was called as a witness by the defense, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the government:

Q. Gunny, can you please state your full name, spelling your last for the record?

A. Yes, ma'am. It's James Charles Hawks, and the spelling on my last is H-A-W-K-S.

Q. All right. And you're currently in Afghanistan; is that correct?

A. Yes, ma'am.

Q. And what is your billet out there?

A. I'm a team chief for the Joint Prosecution and Exploitation Center headquartered out of Camp Leatherneck, Afghanistan.

Q. All right. Thank you. I'm going to go ahead and turn you over to defense counsel so they can ask you some questions.

A. Yes, ma'am.

Questions by the defense:

Q. Good evening, Gunnery Sergeant?

A. Good evening, sir.

Q. This is Attorney Hatham Faraj. I represent Major Card.

A. Sure.

Q. Sir, what do you do as a team chief for the Joint Prosecution and Exploitation Center?

A. Well, sir, by trade I'm a criminal investigator; CID agent with the Marine Corps. Currently here in Afghanistan, I conduct law enforcement interrogations of captured detainees. I coordinate tactical site exploitation missions and participate in tactical site exploitation missions in the theater of operations, Region Command Southwest Territory.

Q. And, sir, how long have you been in that billet?

A. Since the 6th of May -- I'm sorry the 6th of March, this year.

Q. How long have you been an investigator?

A. I've been an investigator with the Marine Corps since March of 2003.

Q. When did you join the Marine Corps?

A. May 1996, sir.

Q. What MOS did you have between May 1996 and 2003? I'm sorry. Between the time that --

A. My first MOS in the Marine Corps was a third -- I'm sorry, sir?

- Q. Let me restate that question: Between the time you went to MOS school -- your first MOS school and the time you became an investigator in 2003, what was your MOS?
- A. 1371, combat engineer.
- Q. Which units were you stationed with, please?
- A. My first unit of assignment in the Marine Corps in 1996 was the Combat Engineer Company, Combat Assault Battalion, 3d Marine Division. I was then on Marine Embassy Guard for approximately three years in Prague, Czech Republic and Western Turkmenistan. I then lateral moved to military police in August of 2001 and stepped into an on-the-job training evolution as a Marine CID agent in March of 2003.
- Q. Thank you, sir. How old are you?
- A. Thirty-three years old.
- Q. Have you continued on active service in the Marine Corps from the first time you joined until today?
- A. Yes, sir.
- Q. And you joined the Marine Corps in 1996, you said?
- A. Yes, sir.
- Q. What special training besides basic MP training did you undergo before becoming an investigator?
- A. I have attended the U.S. Army Military Police School, the U.S. Army Military Police Investigator's Course. I've attended the U.S. Army Special Agent CID Course. I've attended several other courses pertaining to the investigation of sex crimes, surveillance, protective service, interview and interrogation, computer forensics, leveraging of cellular phone forensics, and several other schools that I've -- that aren't coming to mind right now.
- Q. Very well, sir. Is it fair for me to assume that based on your training and experience that you are qualified to conduct investigations into serious allegations such as sex crimes and violent assaults or murders?
- A. Yes, sir, that's fair.
- Q. Okay. Did you become involved in the investigation of allegations against Major Edward Card?
- A. Yes, sir.

- Q. What was your role in that investigation?
- A. I was approached by Special Agent Carlo[ph] while I was embedded at the Ramadi government center in Downtown Ramadi, January 2009 up until November of 2009. I don't exactly remember what month or day it was that he came to me for assistance. But I remember being contacted from Camp Ramadi and asked to facilitate a meeting between the NCIS special agent and members of the Iraqi police in response to obtaining some hospital examination or treatment records pertaining to a potential victim in this case.
- Q. Sir, what was your billet in Ramadi in 2009?
- A. I was embedded at the Ramadi Government Center with the Iraqi police and I was working as the liaison agent between the Joint Prosecution and Exploitation Center and the Iraqi police as well as some of the Iraqi intelligence services that were headquartered there.
- Q. What type of rapport did you have with the Iraqi police in and around Ramadi?
- A. Overall it was a good rapport. At times dangerous, but overall a good rapport; good working relationship with them. They were -- they appeared to be, in most cases, forthright and open with any requests that we had for them and receptive to assistance.
- Q. What was their level of competency with respect to records keepings, investigations, administrative procedures?
- A. Well, are you asking my opinion on that, sir?
- Q. Yes, I am, based on your experience with them and the rapport you had developed at that time.
- A. They certainly didn't have what you would consider a Western standard of administrative record keeping. They kept a lot of records in -- on paper. There wasn't -- as far as police were concerned -- what you would consider a sophisticated storage of information type thing. They did a lot on paper. And because of that, they had a lot of storage concerns I guess I would say.

- Q. Okay. They did keep records though based on your experience except they were on paper and not electronic; is that correct?
- A. Yes, sir. They did -- they did have some records electronically. But most of their records and a lot of the way that their department functioned, at least in Downtown Ramadi at that time, was done through paper.
- Q. Alright, sir. You were contacted by Agent Carlo to facilitate a meeting with the Iraqi police as you testified a few minutes ago, correct?
- A. Yes, sir.
- Q. All right. Did you coordinate that meeting?
- A. Yes. I made -- one of the lieutenant colonels that was in charge of the criminal division for the Iraqi police in Ramadi -- whose name I can't remember -- I made him available to Special Agent Carlo. I received Special Agent Carlo on the day the meeting took place out at our compound. And I think I attended to some other business once I made that meeting take place. I may have waited in the hall for a portion of it as I was, you know, doing other things on different agendas. But I did make that meeting happen, yes, sir.
- Q. Did you come to find out the substance or the purpose of the meeting?
- A. I understood it was a death investigation and an allegation of a law of armed conflict violation. I didn't really know all of the details, nor did I ask. I just was there to facilitate the interview, and I had other cases that I had, you know, responsibility and other responsibilities for.
- Q. Okay. So is it your testimony that you're not aware of the substance of the meeting or you are?
- A. I can't recall if I was present during the entire meeting or if I had stepped out at a certain point to -- you know, to either answer a call from, you know, the Command Operations Center that was there in the headquarters or to meet with another contact or source that I had down there. I just can't recall that far back.
- Q. Very well. Did you know what --
- A. -- the entire substance of that meeting.

Q. Do you know what Agent Carlo sought from that meeting?
A. I believe Agent Carlo was seeking hospital treatment records or any type of examination by hospital personnel that -- or police response to said examination of someone that could have been or would have been shot in and around the time frame of his case.

Q. And do you know if the lieutenant colonel -- and I believe the name is Dubage[ph], but you can correct me if that's incorrect. Does that name sound familiar?
A. It doesn't, sir.

Q. Duwage[ph] perhaps?
A. That name does not sound familiar to me.

Q. That's fine. Do you know if the lieutenant colonel you assisted -- you had assist Agent Carlo did, in fact, assist Agent Carlo?
A. Did, in fact, what, sir?

Q. Did he assist Agent Carlo in getting that information?
A. I seem to remember Agent Carlo coming away from that meeting without complaints, saying that -- you know, I think the guy's assisting me to the extent possible. But, again, I don't know the end result details of what Agent Carlo came away with or what he may have obtained at a later time.

Q. So do you have any awareness of whether a death certificate, treatment records, records of an autopsy, or anything that would indicate a death on 7 June 2004?
A. I don't, sir. It's not to say that he didn't obtain them, but I don't have any direct knowledge of it nor was I present when he did obtain them or not obtain them. I don't know the end result of his endeavor.

Q. Do you remember giving a statement to Agent Carlo?
A. I'm not sure if I gave him a statement or if I attended a meeting with him. I can't recall, sir.

Q. Do you have any recollection of a conversation where you may have related that hundreds of records, perhaps as many as 400 records, were checked at the hospital and the results came away negative? Do you have any -- does that statement refresh your recollection of any conversation similar to that?
A. That does sound familiar. And now that you mention that, I may have been present in the meeting or may

have -- after Carlo had left, I may have gone back at a subsequent time a few days later and spoke to that Iraqi police official and said, Hey, you know, the business that my partner was here for the other day, what's the results of that? That does sound plausible. And that Iraqi police colonel may have told me here are the results of that -- you know, your inquiry. And then I would have reported that back to Carlo probably by phone, because I can only remember him coming out -- outside the wire out to where we were on the one occasion.

Q. Very well. Is it fair to say that the results were negative as to any request for records about a deceased Iraqi male shot in the head?

A. Yes, sir, that is fair to say.

Q. And is it fair to say that had it been positive, you probably would have a better memory than you have right now?

A. Yes, sir.

Q. Right? I mean, if you had a positive result, it would probably stand out more than just a negative result?

A. That's absolutely fair to say, sir.

Q. Very well, Gunnery Sergeant. I don't have any more questions for you, but I do have -- well, let me -- before I let you go, are you going to be -- how long will you be in Afghanistan?

A. I'll be here for just a year, sir. I just got here in March so I've got about 11 months to go maybe. Maybe 10 if I'm lucky.

Q. Very well. Very well. Thank you very much and be safe out there.

A. Okay, sir.

IO: Any questions?

GC (Maj Goode): No, sir.

IO: Any warning do you want for the witness?

GC (Maj Goode): No, sir.

CC (Mr. Faraj): Defense does not.

IO: Okay. All right. We might have lost him.

GC (Maj Goode): Gunny, you still there?

WIT: Yes, ma'am.

GC (Maj Goode): All right. Thanks for your testimony. Really appreciate it. Be safe out there.

WIT: Okay, ma'am.

[The witness was excused and the telephonic connection was terminated.]

IO: All right. Trial counsel, you prepared to call --

CC (Mr. Faraj): Before we call our next witness, may we take a short comfort break?

IO: Absolutely. That's a good idea.

Major Goode, are your witnesses racked and stacked I guess by importance or availability?

GC (Maj Goode): A little bit of both, sir.

IO: Okay. And again, a little bit I guess unconventional, but what the heck. It's not a court-martial. If you could, at least identify to me the witnesses, I guess, that you believe -- and obviously I'll hear their testimony. If you would just identify to me before they come in to testify the witnesses that you believe are sort of a critical government witness.

GC (Maj Goode): Okay. Yes, sir.

IO: Again, that would be helpful to me. And I'll figure it out fairly quickly by their testimony. But -- or right now, who do you believe -- just looking at the witnesses, who do you believe are the, you know, main government witnesses that support the allegations?

GC (Maj Goode): I would say Marco Jimenez, First Sergeant Cook, Jackie Phillips -- who is not here, which is why -- I would call Jackie Phillips first. He was the reporter.

IO: Okay.

GC (Maj Goode): He's not here yet, so that's why I'm calling him tomorrow. I would say those are the main ones, sir.

IO: Okay. Thank you. I mean, every witness is important, but I'm just trying to get a sense of, from the government's perspective, who are the -- you know, the linchpins for lack of a better word, perhaps, of the case.

All right. Thank you. Let's take five or ten minutes.

[The Article 32 investigation recessed at 0944, 19 April 2011.]

[The Article 32 investigation was called to order at 0953, 19 April 2011.]

IO: The investigation is called to order.

All right. Mr. Faraj.

CC (Mr. Faraj): Your Honor, we're objecting to -- well, based on R.C.M. 405, we're objecting to IO exhibits -- or the -- they're not IO exhibits yet. The proposed IO Exhibits 3, 4, 6, 7 -- is going to be a relevance objection -- 8, 9, 10 and 11, 12, 13, 14, 15, 16, 17 and 18 -- which go together -- 19, 20, 21 and 24.

The basis for our objection is that these are statements by witnesses who are either available or -- are here and available or can be obtained by the government and there hasn't been an unavailability determination by the IO.

IO: All right. Trial counsel, I'm assuming some of these witnesses are going to be called.

GC (Maj Goode): Yes, sir.

IO: All right. What I'll do is we're going to hold off on any objections. I'm not going to consider these matters --

CC (Mr. Faraj): Very well.

IO: It's sort of -- I've got these exhibits in my hand. I haven't formally admitted the exhibits and I won't read the exhibits.

CC (Mr. Faraj): Very well.

IO: Obviously the witnesses will either be called or there will be some availability issues, alright? But at least what this will allow me to do is when the witness is called, I've got their statement. And I'm sure part of the examination is going to involve their statement, okay?

GC (Maj Goode): Yes, sir.

IO: So the objection is that these witnesses will either be testifying -- there hasn't been an availability determination made and to put them in front of me right now for my consideration is premature.

CC (Mr. Faraj): Yes.

IO: Okay. I'm not going to consider them. I've got them just for sort of economy here, so you don't have to keep running exhibits back and forth. I've got them. They're not formally admitted yet and we'll take that up when the witnesses testify or aren't available or whatever the case may be.

GC (Maj Goode): Yes, sir.

IO: All right. You ready to go?

GC (Maj Goode): Yes, sir. We'll be calling --

IO: So this is HM1 Slaughter?

GC (Maj Goode): Yes, sir.

DC (Maj Workman): Sir, just one point for clarification. So as the witness testifies -- say for example, Slaughter. You have Slaughter's statement there. Would you be considering Slaughter's statement in conjunction with his testimony?

IO: I won't be. But I'm assuming during the testimony, trial counsel will clarify.

And, Major Goode, I'm assuming that's what you're going to do. You're going to say, Hey, Slaughter, you provided a statement. Is this your statement? Is that your signature? You gave it to NCIS.

GC (Maj Goode): Yes, sir.

IO: Is there anything in here different, true, false?
You're sort of going to be laying the foundation for
that statement during the testimony?

GC (Maj Goode): Yes, sir.

IO: Okay.

CC (Mr. Faraj): Yeah. Well, I'm glad you clarified that. We
don't think that that brings in the statement. So we
might want to handle that now. R.C.M. 405 is pretty
clear. A statement is an alternative to testimony.
They can certainly try to impeach using a prior
consistent -- prior inconsistent, but I don't think it
comes in for the substance if the witness is available.
R.C.M. 405 is pretty clear on that, and I can refer you
to the specific provision under that rule.

GC (Maj Goode): Well, sir, I believe he's talking about 405(g)(4)
which addresses statements being offered as alternatives
to testimony. These statements aren't being offered as
alternatives --

IO: Right. I mean, ultimately what you could do -- and I
really hope you don't because then it would be a
colossal waste of time -- is lead --

GC (Maj Goode): Yes, sir.

IO: -- and say this is your statement. They can lay the
foundation for the statement. If they're here to
testify, the statement is going to come in. I guess
ultimately, the trial counsel, through their
questioning, could say, And then you told special agent
this. And then you told special agent that. And then
you told special agent this.

So if the witness is up there, you can give him the
statement, take a look at it. They can say it's all
true. It's all false. This is different. This is the
same. But ultimately, the government can, with each
witness coming in, lead them through that statement one
way or another. So I'm going to consider the statements
and I'd ask that you with each witness -- if you don't
do it, I'll do it -- I want to talk to them about their
statement.

GC (Maj Goode): Yes, sir.

IO: But I'm going to consider their statement. It's alternative to statement. The government's not using it as an alternative. They're using it in conjunction with their testimony.

CC (Mr. Faraj): Well, I don't see anything under R.C.M. 405 -- and I guess you can overrule this. But I don't see anything under R.C.M. 405 that permits that. It's a specific -- I mean, the rule is pretty specific. Statements cannot come in over defense's objection if the witness is available. And it doesn't say in conjunction or alternative -- in conjunction or to support or anything else. If it's -- you know, these are the rights of the accused. An unsworn statement simply doesn't come in whether the witness is available or not. Sworn statements may come in if the witness is not reasonably available. If the witness is available, they don't come in over defense's objection.

GC (Maj Goode): And again, sir, 405(g)(4) addresses alternatives to testimony. We will not be introducing these statements as an alternative to these individual's testimony, because they will, in fact, be testifying.

IO: Let me read it real quick.

All right. I'm going to allow and consider the written statements. I agree that this is not being offered as an alternative to testimony. Again, what the government could do is with each witness and say, You gave a sworn statement and you first told the investigator my name is Joe Smith, correct? You then told him -- they could have him testify and question him directly from that statement.

CC (Mr. Faraj): Certainly.

IO: I don't want them to do that because it's going to waste everyone's time going line by line through a statement saying you told that to the investigator. And you told the investigator you're 32 years old. You told the investigator that you were in Iraq on these dates. You told the investigator -- they could question each witness from the contents of that statement, line by line, as to what they told the investigator. And the witness could say yes, yes, yes, yes. And that's going to take a tremendous amount of time. And they could do that.

So I will -- I will allow the government to offer those statements. Frankly, I'm more concerned about the actual in-court testimony than the statements.

GC (Maj Goode): Yes, sir.

IO: At trial -- well, this is a 32. Depending on what they say, it could be used substantively. The statements could not be used substantively, NCIS statement --

CC (Mr. Faraj): Could I ask you then, sir, to put on the record under which -- what are they? If they're not statements, then I presume they're evidence. It has to be one or the other under 405.

IO: I view them as evidence -- documentary evidence in conjunction with testimony not under four -- whatever it is -- (g). I don't view it as an alternate to testimony. I view it as in addition to testimony, but not as an alternate to testimony.

CC (Mr. Faraj): I guess -- are we on the record? All right. Well, my objection is that their statements -- they are not evidence. Evidence is normally reports -- forensic reports perhaps, scene reconstruction. These are statements and my position is they should not be -- they should not be considered whatsoever as any sort of -- for the substance of the statements under 405. They can certainly be used to impeach as a prior consistent statement. And the reason I say that, it's rare that defense counsel make this kind of objection because we know it's going to come out.

But the reason I say that and I would ask that you not consider these -- if you're going to overrule me -- until you hear the evidence that comes in. Because you're going to find that these statements are highly dubious and suspect as far as what is in them. And that's why we are making such a strong objection to any consideration of them. That you listen to the witnesses and then you'll understand why we are objecting to them being part of your investigation whatsoever.

IO: I mean, we can't -- we can't ignore the NCIS statements. I mean, it's got to be part of my analysis that goes into the case. If their testimony is completely different, so be it. Obviously that creates a problem as the government approaches this case.

So I'm going to admit the statements. I'm going to read the statements. I don't know what weight I'll give the statements. Obviously, if someone comes and testifies saying that statement is completely false, that's got to weigh into my equation. But I will admit them; I'll consider them.

Again, it's hard to consider them substantively if the individual in front of me tells me that's not true. I mean, I can't consider that substantively and I think -- I don't think that works to the advantage of the government, per se, because I've got a witness saying something under oath that's different than he previously said under oath. That's an issue.

So, Mr. Faraj, if you want that objection noted, just shoot me an e-mail. I understand where you're going with it. I do believe it's not an alternative. It's in conjunction with the testimony. It's the 800-pound gorilla that we can't get away from. I've got to see the statement. I've got to hear from them what they believe is true, false, why different. It all goes into the equation of my analysis of this case. So if you want me to note that objection, I'm happy to do it. I will consider it and it's part of my analysis.

CC (Mr. Faraj): The last thing I want to say is based on that analysis, 405 would be meaningless with reference to statements. There shouldn't be any commentary on it, because it could always be considered, then, in conjunction with live testimony. That is very clear.

IO: I've always -- every 32 I've ever done, I've incorporated that. As a trial counsel, I've handed the statements. As defense counsel, I've gone through the statements. And ultimately, it would not be -- it would be -- it would not be inappropriate for the government counsel to take that statement and say you met with the investigator on this date and you told them (a). Yes or no? You told them (b).

CC (Mr. Faraj): Certainly.

IO: And go through (a) to -- you know, (aaa) times 55. And go each line through the statement. That would be an acceptable course of action. I've done that before, but what I'm saying it's a colossal waste of time for the government to question that individual on each line in

their statement saying that's what you told them. Yes. And then you told them (b). Yes. And then you told them (c). And then you told them (zz). And then you told them (zzz). And go through (a) through (z).

So with that in mind, for everyone's sake and to streamline this investigation a little bit, I'm going to allow them to briefly -- or however long they need to question a witness. And they give a statement and pick out the inconsistencies. But I want to hear what their testimony is going to be, obviously. But a statement is a part of that, okay?

GC (Capt Gordon): Sir, is this a good enough vantage point for you?

IO: Yeah. If I can't see it, I'll come down.

Are you going to have the witness step up there or how are you going to do it?

GC (Capt Gordon): Yes, sir. I believe several of the witnesses are probably going to make reference to this.

IO: All right. If I can't see it too well, I'll step into a better spot.

GC (Capt Gordon): Aye, sir.

IO: No problems.

All right. You ready to call HM1 Slaughter?

GC (Maj Goode): Yes, sir.

IO: All right. You can proceed.

Hospitalman 1 Andrew R. Slaughter, U.S. Navy, was called as a witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the government:

Q. HM1, can you please state your full name and rank, spelling your name for the court reporter?

A. HM1 Andrew Richard Slaughter. A-N-D-R-E-W, R-I-C-H-A-R-D, S-L-A-U-G-H-T-E-R.

Q. Where are you currently stationed?
A. 4th Recon, Delta Company, in Albuquerque, New Mexico.

Q. What do you do there?
A. I run the medical department for a reserve reconnaissance unit.

Q. Approximately how long have you spent with the Marines?
A. About eight years in my almost 11-year career.

Q. And what were some of those times that you spent with Marines?
A. I was at 3d FSSG in Okinawa, Japan. I was at 1st Marine Division. And now I'm here with 4th Recon, Delta Company.

Q. When you were with 1st Marine Division, did you have an opportunity to deploy?
A. Yes.

Q. How many times?
A. Twice.

Q. What was your first deployment?
A. I was with the 15th MEU when we -- the initial invasion into Iraq.

Q. And your second?
A. I was with General Mattis' jump team.

Q. Okay. I want to talk to you about that deployment.
A. Okay.

Q. When did that deployment start?
A. The end of February 2004.

Q. And what did you do there?
A. I was the medical -- I was the corpsman for a platoon, so my responsibilities were just ensuring their medical readiness for the platoon and then obviously tending to injuries for my Marines.

Q. And you were assigned to the Division Jump team; is that correct?
A. Yes, ma'am.

- Q. What was the Division Jump team?
A. The Division Jump team -- our primary purpose was to facilitate the command and control for General Mattis and the division. So wherever he needed to go, we pretty much took him there and ensured that he got there safely and back safely.
- Q. So essentially you were, like, his PSD?
A. Yes, ma'am.
- Q. And your duties as a member of the team were what?
A. First and foremost, I was the platoon corpsman. So, as stated earlier, any sort of medical issues that would come up -- be it sick call issues or be it combat related trauma or injuries -- I would take care of them to the best of my ability.
- And then secondary, I was also -- considered myself a rifleman too, so I would carry an M16, hold security, and try to act as a force multiplier for the platoon.
- Q. And while you were on the Division Jump, this is where you had the opportunity to meet then Captain Card, correct?
A. Yes, ma'am.
- Q. And what was his role?
A. Major Card, he was the CG's aide. So he would get the schedule together, plan out the commanding general's day or week. And then he would also coordinate -- if we had to go somewhere, he would coordinate the convoys and everything else.
- Q. What kind of a leader was he?
A. He was a good leader. He was intense. Very focused and driven on the goals that he had set in front of him.
- Q. Now, let's talk now about 7 June 2004. I realize this was a long time ago, but this was the day that Lance Corporal Bohlman died.
A. Yes.
- Q. Do you remember going out on a convoy that day?
A. Yes, I do.

Q. What was the purpose of the convoy?
A. The purpose was to gain a more intuitive feel of Ramadi. We've always taken the same routes to and from the various places we had to go to -- mainly the governor's house -- you know, we took Route Michigan.

And Major Card, from my understanding, felt that we needed to identify some more routes so we could better randomize our procedures, so we're not always taking the exact same route in and out.

Q. What time of day did you leave?
A. We left in the early evening.

Q. Was this unusual?
A. It was unusual for us, because the majority of our convoys occurred during the daytime. But I don't think it was unusual for units to be leaving during that time of day.

Q. How many vehicles did you take out?
A. We took out four vehicles.

Q. What types of vehicles?
A. We took out our lead LAV-25, a HMMWV, the C-square, and then our lead LAV-25.

Q. Which vehicle were you in?
A. I was in the HMMWV.

Q. Who else was in that vehicle?
A. Corporal Abdelgawad[ph] was the driver, Sergeant Duran sat next to me, and then Major Card was the A-driver.

Q. And where in the convoy -- what order were you?
A. I was second vehicle.

Q. Second vehicle?
A. Yes, ma'am.

Q. Where did you go first?
A. We first left Blue Diamond and we headed around the city to combat outpost.

Q. How far of a drive is that?
A. About 20 minutes.

- Q. When you got to combat outpost, did you stay there very long?
- A. We stayed there for maybe 10, 15 minutes. Major Card had some business to attend to, and then he wanted to talk to one of the officers at combat outpost to sort of find an alternate route back to Blue Diamond other than just going through Route Michigan.
- Q. But were you there during that conversation?
- A. I was off to the side a little bit for that conversation.
- Q. And what was the ultimate result of that conversation? Which route did you take?
- A. We took what was called the "Two Tits."
- Q. And why was it called that?
- A. Because when it's on a map, it looked like two tits, ma'am.
- Q. So essentially it was like a road that had two -- I guess two humps and it kind of went around, I guess, the back side of Ramadi; is that right?
- A. Yes. It was connected to Route Michigan and there was basically two humps on it. And you could go either way. You can get to Route Michigan from it or you could go behind the City of Ramadi.
- Q. Had you been down that route before?
- A. No.
- Q. Was there any disgruntlement among some of the Marines on the team for taking that route?
- A. There was some disgruntlement among members of the team that we were going out on this mission. I can't remember if there was any specific resentment towards Major Card at the time for selecting this particular route.
- Q. What was the resentment with regards to the mission in general?
- A. At that point in our tour, we had already been through three separate attacks and we did not want to -- we were sort of getting ready to depart. And I think everybody's primary focus was getting home alive. And we wanted to minimize how much time we spent outside of the wire.

Q. Just the week before you had lost a Marine; is that right?

A. Yes.

Q. How many other Marines did you lose?

A. To that point, we had medevaced home probably eight or nine -- nine guys. I think closer to eight.

Q. As you left combat outpost and headed out, what were the lighting conditions like? Approximately what time was it?

A. It would be equivalent to about 1800 time right now. The sun was still up. Had probably a good, maybe 20, 30 minutes of decent sunlight left when we left.

Q. In the moments leading up to the blast, did you notice anything unusual?

A. Nothing really stuck out in my mind as unusual or something that would precipitate the event that was going to occur.

Q. Were their people out?

A. There was an old man out on the side of the road and that was the only person I remember seeing.

Q. What about cars on the road?

A. I can't tell you because of my vantage point. When we sat in the vehicle as we're driving along the road, I sat like this and I looked out at the road. And I looked out into the field, so I couldn't see if there was cars coming by or anything else.

Q. All right. So for the record, when you were in the HMMWV, you sat kind of to the side with your, like, rifle pointed down out of the window?

A. Yes, ma'am.

Q. And what was the purpose of that?

A. The purpose of that was to provide security to increase situational awareness for everybody in the vehicle, to present ourselves as a hard target to insurgents, and then we always kept our rifles down low per General Mattis' guidance. We were to be a friend to everybody, but then at the same time, have a plan to kill anybody. That way we could sort of win over the hearts and minds of the Iraqis while we were there. But if something were to happen, we would be able to react.

- Q. All right. Let's talk about the blast. What do you remember about it?
- A. It was very large. I remember my vehicle rocking. There was a lot of smoke. It just looked like somebody had tied a huge bundle of 4th of July fireworks together and then just set it off. It was pretty big.
- Q. It hit the first vehicle, correct?
- A. Yes, ma'am.
- Q. Approximately how far away were you from the first vehicle?
- A. We were about a 20-foot dispersion.
- Q. And that was an LAV?
- A. Yes, it was.
- Q. In the immediate moments after the IED went off, what did you guys do?
- A. Our vehicle halted and then at the same time, we still stayed focus on the terrain around us.
- Q. And what could you see in the terrain?
- A. At that time, approximately three insurgents came out of the grass as they were ambushing us.
- Q. And what did you do?
- A. Captain Card told us to engage fire and I dialed in on one of the insurgents and opened up fire.

GC (Maj Goode): Sir, at this time, do you mind if I ask him to step down?

IO: Yes, you can step down.

Questions by the government (continued):

- Q. All right. HM1, can you come over here to this blowup that we have?
- A. Yes, ma'am.
- Q. This is a picture, like a Google Earth Map picture of the area. Does this pretty much fairly summarize or look like where the incident occurred?
- A. Yes, ma'am.

GC (Maj Goode): And using this pretty much diagram, kind of -- if you can walk the military judge through kind of where everybody was, where the blast was.

IO: Yeah. IO.

GC (Maj Goode): The IO. Yes, sir.

Where everybody was and what was going on.

WIT: Sure. This was our lead LAV-25 and here is sort of like the blast zone. We're in this vehicle here.

GC (Maj Goode): Which is Vehicle 2?

WIT: Which is Vehicle 2.

IO: You're with Captain Card?

WIT: Yes, sir.

And this is the C-square. Sergeant Gutierrez was the vehicle commander for that one. And then back here is the rear LAV-25 with now First Sergeant Hyman as the vehicle commander for that one.

Questions by the government (continued):

Q. Now you stated that you -- as soon as the IED went off, and that was with Vehicle 1?

A. Yes.

Q. You saw what you believe to be insurgents to your right; is that right?

A. Yes, ma'am.

Q. And so where on the map would that be?

A. If this is -- this little white area right here would be the sidewalk, then as soon as it starts to turn into a more brownish color, the insurgents were lying right there in the grass and they just sort of popped up.

Q. How high was the grass?

A. High enough to cover the ankles on your boots.

IO: All right. You're looking at the spot between Vehicle 1 and Vehicle 2 just to the right on the diagram or right above on the diagram?

WIT: Yes, sir.

GC (Maj Goode): As far as the terrain goes, was it a flat field?
Was there a drop-off?

WIT: There was a drop-off that went into the flat field.

GC (Maj Goode): How steep was the drop-off?

WIT: It would probably be about a good 5 to 6 feet before it
leveled out into a flat field.

IO: Let me just interrupt. I'm sorry.

GC (Maj Goode): Yes, sir.

IO: You're talking about the drop-off right here?

WIT: Yes, sir.

IO: This is elevated and this is lower? It's lower?

WIT: Yes, sir.

Questions by the government (continued):

Q. All right. So HM1, you said this white line on the
diagram is the sidewalk?

A. Yes, it is, ma'am.

Q. If someone was to walk -- like take a step off the
sidewalk into the field, would they be stepping down?

A. They'd be -- like, if this -- my foot was on the
sidewalk, this would be -- my leg would be the dirt.

Q. All right. So about, like, a foot down?

A. Yes, ma'am.

Q. Okay. Now you stated that as soon as the blast came
off, you looked to your right to this field and you saw
some insurgents. Approximately how many did you see?

A. About two to three insurgents, ma'am.

- Q. What was the lighting conditions like especially with regards to the smoke at that time?
- A. The lighting was still good. The smoke definitely decreased our visibility. It was about -- I'd say maybe about 25 percent visibility. But the insurgents were close enough to us that we could actually see them come out of the grass.
- Q. Were you able to tell if they were armed?
- A. I do believe they were armed.

DC (Capt Baehr): I'm sorry. I didn't hear that last part.

WIT: I do believe they were armed.

Questions by the government (continued):

- Q. When you engaged them, did you engage them from your vehicle?
- A. Yes, ma'am.
- Q. Were you aware of what anyone from the other vehicles were doing at that time?
- A. No.
- Q. Approximately how long did this engagement last?
- A. It was very brief. Maybe 5 to 10 seconds.
- Q. And what was the result?
- A. The insurgents fell back into the grass.
- Q. Now, if a man were lying down in that field in the grass, would you be able to see him from the road?
- A. No.
- Q. After the men fell down into the grass, did you get out of the vehicles?
- A. Yes, we did.
- Q. And where did you go?
- A. We ran up to the lead LAV-25.
- Q. When you went up to that -- the lead LAV, which is marked as Vehicle 1 on the diagram, what did you see?
- A. We saw extensive damage to the hull of the LAV-25 and we immediately opened up the doors, because we had no comm with the vehicle. The explosion was so powerful that it had knocked all the communication out of the vehicle

beforehand, so we had no comm between Vehicle 2 and Vehicle 1. So our primary concern was just to open up the hatches and the rear.

- Q. When you opened up the hatches, what was the conditions in there?
- A. It was pretty gruesome. Lance Corporal Logan was lying in the back. He was one of the scouts. Both of his legs were pretty severely damaged. And Lance Corporal Bohlman was picked up -- he was the right scout. And he was picked up and lifted. And he was in the left scout position. And then -- I mean, the whole right side of the vehicle was destroyed. The viewing block was pushed out from its holding, its casing.
- Q. And I assume at this time you rendered aid?
- A. Yes.
- Q. While you were assisting these Marines, what was the security posture like?
- A. It was very high. It was pretty intense. That was one of my concerns. I do remember directing one of the Marines to ensure that they cover this area.
- Q. And that's the area to the left of Vehicle 1 on the diagram?
- A. Yes, ma'am.
- Q. What was in this area? It looks like there's buildings there.
- A. Buildings. Just sort of a residential area. And there's always a tendency for Marines to want to sort of shift their focus toward the action or the anticipated action is going to come from. So I just -- trying to ensure that all angles get covered.
- Q. Now at this time, was anyone firing at you still?
- A. No, not that I recall.
- Q. While you are -- approximately how long did it take for you to assist these Marines that were injured?
- A. Well, we took the two Marines out and then I examined Bohlman. Took the two Marines out, laid them on the ground, and as we were treating them, this other IP vehicle had also gotten hit. So I had given some supplies to our interpreter, Corporal Abdelgawad, told him to go treat the -- assist the IPs.

Q. Okay. And you're referring to the vehicle marked "IP vehicle down"? So this vehicle --

A. Yes, ma'am.

Q. -- was also hit by the IED blast; is that --

A. Yes. This -- the entire time to initially get them treated and to a condition where I could just monitor them was approximately 10 to maybe 15 minutes.

Q. Some time around this point -- you can have a seat. I'll call you back up when we need you.

A. Okay.

Q. Did you receive any other hostile action?

A. Yes. Engagement of second vehicle -- the back vehicle there. There was a road behind the field and there was a house there and another vehicle came at a very high rate of speed down that road.

Q. Did you guys engage the vehicle?

A. Yes, we did.

Q. Did you yourself engage the vehicle?

A. I did.

Q. Explain how that went down.

A. We saw the vehicle coming, Major Card said open up on that vehicle and stop. So I pulled out my M9 and I fired off at the vehicle, because all the other Marines were essentially on line on the sidewalk and then just firing at the vehicle.

Q. And was the vehicle disabled?

A. Yes.

Q. Any other action?

A. No other action.

Q. All right. After that disablement of the vehicle, what was everyone's attitudes like? Had people started to relax?

A. No. We were still very much in the red zone as far as situational awareness went, and we were still very much looking forward to the QRF arriving.

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

A. Probably about 30 minutes would be my best estimation.

Q. And in that intervening time before they arrived, did anything else significant happen?

A. No, not that I can recall.

Q. How did you spend that time?

A. Just monitoring Lance Corporal Logan, making sure all the Marines that were injured were stable. I had had a feeling that Lance Corporal Logan had more insidious injuries than he had just presented and I was ensuring that he wouldn't compensate and go into shock or something like that. So my main focus of effort was to just -- caring for Lance Corporal Logan.

Q. And do you recall at what point during these events it became dark?

A. The QRF probably arrived and after the QRF arrived -- the QRF arrived, it was starting to get dark. At that time -- when we engaged the second vehicle, it was still light out. We were still treating the casualties. And then after the QRF -- when the QRF arrived, it had turned dark -- it was dark at that time.

Q. All right. At what point do you remember after treating the wounded Marines and right before the QRF arrived, do you recall seeing any injured Iraqis in the field to the right of the road?

A. No, I do not.

Q. Do you recall seeing Major Card go into the field on the side of the road and shoot anyone?

A. No.

Q. Okay. HM1 Slaughter, back in March 6, 2009, you gave a statement to Special Agent Periard. Do you remember that statement?

A. Yes, I do.

GC (Maj Goode): May I approach, sir?

IO: Yes, you may.

Questions by the government (continued):

Q. Okay. HM1, I'm going to hand you your statement. Is that the statement that you recall doing with HM1 --

A. Yes, it is.

Q. -- or I mean, Special Agent Periard?

A. Yes, it is.

Q. Now in that statement, you -- pretty much the beginnings of that statement are very consistent with what you testified here today.

A. Yes.

Q. However, also in that statement you say that at one point before the QRF arrive, you saw Major Card go into the field and shoot an unarmed, wounded male. Can you please describe -- or explain the inconsistencies?

A. Yes. When I originally gave this statement on the 6th of March, 2009, I believed it to be then 100 percent true and honest to what I believe. However, after much intense introspection and another interview with Special Agent Periard and Colonel Sullivan, it became sort of apparent to me that I do believe a lot of the statements in regards to Major Card shooting the Iraqi and stuff was just a fabrication of my mind. I think that Special Agent Periard planted seeds in my mind and that's where the inconsistencies come from in regards to my statement.

And I don't believe that -- in regards to Major Card shooting the Iraqi, I can't sit here and say with a hundred percent confidence that that's the truth in my mind because I honestly believe that currently right now that's not what happened.

Q. Your current memory right now today --

A. Yes.

Q. -- what, if anything, do you recall from between when you treated the wounded and when the QRF arrived?

A. I just remember looking down at Lance Corporal Logan and just talking to him and trying to keep him -- keep him going and that's -- I mean, that's pretty much it. Because then, when the QRF arrived, was at the same time our medevac bird arrived too.

Q. When you did your interview with Special Agent Periard, where was it conducted?

A. In Albuquerque, New Mexico.

Q. What type of facility?
A. It was a police station and this would be a place where they would take victims of child molestation or rape victims to just conduct the initial interviews.

Q. So small interview room?
A. Yes. Small, dark.

Q. How long was your interview?
A. Three to four hours, approximately.

Q. And what was it about that interview that leads you to believe that he suggested things to you that you don't necessarily remember?
A. A lot of the -- there was a lot of leading questions in that interview. Sort of there would be a question and then I would say I can't remember it. And then he would sort of lead on into that question a little bit more. And then I would -- apparently at that time, I thought I had a new memory from that incident would awaken in my mind, I guess would be a good way to say it.

Q. When you signed that statement -- because you had an opportunity, right, to go through the statement?
A. Yes, ma'am.

Q. Make sure all of it was true, initial the statement? When you signed that statement, what did you believe?
A. I believed at that time that this had actually happened and that this memory was -- had just -- I was sort of shocked and amazed at myself that I had never had thought of this incident until then. And that I was just sort of numb with just emotions. Just -- really just some shock and awe that this had actually occurred, and that I hadn't thought about this until then. And I was just sort of, like, Well, this is really weird. How could I have, you know, not thought about this incident until then? But I believed it then to be 100 percent the truth.

Q. When did this belief change?
A. Changed -- it started to -- I started to question it significantly after I had my second interview with Special Agent Periard and Colonel Sullivan when Colonel Sullivan started asking me more questions and the details of the shooting with Major Card.

Q. Now, is it possible -- I mean, this statement that you gave was a couple years ago. So it was --

A. Yes.

Q. Your memory was fresher than it would be today?

A. Yes.

Q. Is it possible that you have forgotten some things that you were able to remember earlier?

A. Quite possible.

Q. And, again, when you signed that statement, you signed it swearing that it was the truth because at that time you believed it to be true?

A. Yes. 100 percent.

Q. Okay. And I want to go back to that day. Now, you stated at some point that QRF arrived.

A. Yes.

Q. And do you remember what was going on when they came?

A. I remember primarily we were loading the casualties into the medevac bird.

Q. And in that period, like right before they showed up and when they showed up, what was the threat posture like? Were you still being engaged? Were you still taking fire?

A. We were not being engaged -- excuse me -- but we were still in the red. We were still very much aware of our surroundings and everybody was still a threat in our mind, in our eyes.

Q. When you got back to Blue Diamond, did any of you talk about what happened that day?

A. Um-hm.

Q. What did you talk about?

A. I think our primary concern was just on Lance Corporal Bohlman, and I think we were all saddened by his loss. And we were just -- was just sort of still in shock. I mean, this incident had just occurred, like, two hours ago. We were still jacked up on adrenaline and we saw the long night ahead of us trying to get our priorities of work done and everything else so we can be ready to depart the next day.

Q. The next day or shortly thereafter when Major Card was -- left the Division Jump; is that correct?
A. Yes.

Q. Do you know why?
A. I do not know why.

Q. Did any of the Marines find it strange?
A. I don't recall any of the Marines saying anything strange about why he left or -- I mean, there might have been some chatter about it, but there's nothing that specifically sticks out in my mind.

Q. Until you were interviewed by Special Agent Periard, had anybody talked to you or had you discussed with anybody the possibility of Major Card shooting an unarmed Iraqi during that incident?
A. No.

GC (Maj Goode): All right. Sir, I have no further questions.

IO: Defense counsel.

CC (Mr. Faraj): Sir, I'm just going to do it from counsel's table if that's okay, sir?

IO: That's fine.

CROSS-EXAMINATION

Questions by the defense:

Q. HM1 Slaughter, I'm going to begin with basically the last topic that you were questioned about. As far as you know, then Captain Card worked directly for General Mattis -- Major General Mattis, correct?
A. Yes, sir.

Q. And so whatever reason that he left the jump platoon, Major General Mattis would of known about that?
A. Yes, sir.

Q. So if it was because of something that Major Card did, something Major Card didn't do, some misconduct Major Card committed, Major General Mattis, having made the decision based on what you know of him at the time, would be very familiar with that topic?
A. Yes.

Q. And you know Major General Mattis -- you knew General Mattis well at that time?

A. Yes, sir.

Q. You spoke to him in person?

A. Yes, sir.

Q. And you used to go into his office and he'd stand and welcome you and he talked to you?

A. Yes, sir.

Q. And he'd asked if you were taking care of the Marines?

A. Yes, sir.

Q. And you had a good relationship with him?

A. Yes, sir.

Q. So you understood -- and you also understood the relationship he had with his then aide and then later jump CP -- platoon commander?

A. Yes, sir.

Q. Correct?

A. Yes.

Q. Now, on the day you were contacted by Agent Periard to give an interview.

A. Yes.

Q. Okay. What were you told the interview was going to be about?

A. It was going to be an archive review interview. We were just going to go over sort of what happened while I was on the jump team. Nothing really specific. Just sort of to -- my initial thoughts was that they were just going to establish a baseline of what happened because General Mattis was getting high up into the rank structure of the Marine Corps. And in order to protect him, that we were just going to do this archive investigation.

Q. Okay. Were those words specifically said to you or is that what sort of came to be represented to you based on a conversation?

A. It's what came to be -- that's my memory of what I recall and that was what I thought we were going in to do the interview for. I can't recall if those specific words were used.

Q. That's the impression you were left with?
A. Yes, sir.

Q. Okay. And that, of course, was not true?
A. Yes.

Q. Did -- when you were contacted by Agent Periard, who did he tell you he worked for?
A. He told me he was working with NCIS and that was pretty much --

Q. And you know NCIS to be a law enforcement agency?
A. Yes.

Q. And he directed you to the time period of when you were on the jump CP?
A. Yes.

Q. Okay. At that moment on that day, what, if any, thoughts did you have about any incidents that law enforcement would be interested in during any period of your service on the jump CP?
A. Do you understand that question?
Yes. There was no specific incident that stuck out in my mind on, like, Oh, they want to talk about this specific incident. Nothing like that ever occurred in my mind.

Q. Okay. Just to be clear, for example, if I steal this computer, it doesn't belong to me and cops call me a couple weeks later, say we want to talk to you, I might assume that they want to talk to me about the stolen computer.
A. Yes.

Q. Right?
A. Yes.

Q. That was my point. And that is -- when they contacted you -- when law enforcement contacted you and referred you to that time period when you were on jump CP, nothing was triggered in your mind that they may be interested in something that was criminal in nature?
A. Yes, that's absolutely correct.

Q. Okay. And when you sat down with Agent Periard and you began to speak --

A. Yes.

Q. -- and he -- you then understood what he was interested in?

A. Um-hm.

Q. And did you come to understand what he was interested in during the interview?

A. Yes. We sat down during the interview and he started to talk immediately about this incident in question. And at that time, nothing in my head sparked why would we talk about this. There was no sort of unusual thing that sparked in my head, Hey, why are we talking about this.

Q. Okay. So as you -- as you sat there and now you understood it wasn't just an archive investigation, that it was more direct -- it was more about some sort of misconduct, even then you did not have anything in your mind that sort of came to life or became alert as to, Okay. I know what they're talking about?

A. To the contrary, I was actually curious to find out what exactly they were talking about.

Q. Okay. You've been in combat on numerous occasions?

A. Yes.

Q. Okay. I would like you to describe for me with as many adjectives as you can what it's like to be -- to have been hit by an IED -- did you like Bohlman?

A. Yes.

Q. Did you like him a lot?

A. Yes. He was a great guy. I mean, he was just an all-around great guy. Very friendly.

Q. Okay. So here's what I'm getting at, okay? And this is a record, so I need you to be as expressive as possible.

A. Yes, sir.

Q. You're on this mission, you're in a combat zone, you get hit by an IED, and what is it -- how do you -- how is it -- tactically describe to me -- get an IED and then you take small arms fire. Do you know what that's called?

A. Ambush.

Q. There's a complex ambush. Does that term make sense to you?

A. Yes.

Q. You've heard that before?

A. Yeah.

Q. Okay. Does that fairly describe what was going on?

A. Yes.

Q. Okay. So tell me what's going on in your mind -- emotions. What happens to time? What happens to your memory of, you know, when you get hit? You see a good friend of yours or a person you like is killed. Other Marines are wounded. You're responsible for saving their lives. There's chaos. You're waiting for people. Would you describe what's going on there?

A. It's just like a -- it's the biggest adrenaline dump in your life. You know at that time, there was just this feeling of dread that came over us because we couldn't hear the comm between our vehicle and the lead LAV-25. So my initial thought was that everybody in that vehicle had been killed, because we've always been able to establish comms with an injured vehicle at that time.

But it's just -- it's -- I can't describe the adrenaline rush. There's not enough adjectives to sort of describe it. The only thing is -- I mean, it's almost like whatever you absolutely hate to do, if you have to do it, then that's -- that is a little bit of what the adrenaline rush is like at that time. I think everything in relation to how your mind interprets space and time. I think a lot of things, they begin to slow down and you think certain tasks or you think certain actions are taking a lot longer than they actually are. And that day, it just seemed like forever before we went up to the vehicle.

Q. Now you said the QRF took 30 minutes? Are you sure that it took 30 minutes or could it have been --

A. No. It could have been any -- I mean --

Q. Less time? More time?

A. Thirty minutes is what it felt like to me. But it could have been less time, more time easily.

Q. Okay. Now, you remember events. You just don't remember the time very well it sounds like?

A. Yes.

Q. You remember events happening. Based on your memory of what was going on that day and the things that you remember, do you have an opinion as to whether you would of remembered Major Card actually shooting somebody?

A. I do believe Major Card shooting somebody would have stuck out in your mind.

Q. Okay. You believe that it would of stuck out in your mind if he shot somebody?

A. Yes, sir.

Q. In fact -- or he didn't just shoot somebody, if he had executed somebody?

A. Yes, sir.

Q. Would you have remembered that?

A. I'm about 95 percent sure I would remember that.

Q. Again, based on the things that you remember and other events happening that day?

A. Yes, sir.

Q. Okay. Now, the change in memory that occurred after March 2009 when you gave your statement, okay? Between the time you gave your statement and the change in memory, had you ever been contacted by anyone in the defense?

A. No.

Q. Had you ever been contacted by Major Card about this incident?

A. No.

Q. In fact, I think you just saw Major Card recently when we began to do these interviews?

A. Yesterday was the first time I've seen Major Card in five, six, seven years.

Q. What I'm trying to get to is did anyone on this team or anyone at all try to influence you to get you to change your story?

A. No. There was no outside influence. Nobody on the defense counsel talked to me. In fact, I was e-mailing between a Marine on the jump and myself and as soon as

he started asking about this investigation, I just halted all communication with him. Because I don't want to -- my view is nobody's ever going to approach me and tell me that I didn't talk enough about a case. Major Goode is never going to call me up on the phone and say, Hey, you didn't talk enough about the Major Card case to anybody. So I should just keep my mouth shut until I meet with whoever I'm supposed to and know that they're supposed to talk to me about it.

Q. Very well. And Major Card and you don't have -- never had -- what type of relationship did you have with Major Card?

A. Professional. I think as a corpsman, I enjoyed a little more freedom on who I could sort of be professionally associated with. I spent a lot of time up at the CP in the jump, and I talked to Major Card quite a bit about the incidents that happened, because obviously he was concerned about what was going on with his Marines at the time.

Q. My point is: You never had a personal relationship?

A. No.

Q. I mean, you weren't buddies?

A. No.

Q. All right. I want you to describe -- you described a little bit of his demeanor or how he is. Would you say more about that?

A. Sure.

Q. Was he very approachable? Was he a friendly guy?

A. He was very approachable. If you had something going on, if you had an issue and he had a bunch of work to do, I always had the feeling that he would sort of stop whatever work he had to do to talk to you, to take care of the issues. Very organized, very task organized. I remember little signs being placed around the CP, like, main focus of effort is FitReps. And then he had the white board in the back and he had a list of at least 20 different things that had to get done. And he would just, okay, this item is done. Line it out. Just very organized. Very driven to do the right thing.

- Q. Did you -- did he ever give you any briefings before you went out? Are you familiar with something called five paragraph orders?
- A. Yes. We would get our five paragraph order prior to the departure on the mission. And it would just go through what's going on, current intel analysis, what had happened in the last 24 hours of where we were going, what was sort of the whole spiel basically on when we were leaving.
- Q. When he talked to you about things called administration and logistics --
- A. Um-hm.
- Q. -- do you recall him covering ROEs?
- A. Yes.
- Q. Or what you would do in the events and how you would respond and something called positive ID and things of that nature?
- A. I can't recall any specific time that Major Card briefed us on ROE. We had a lot of ROE briefs when we got there. We had to carry our ROE card with us. Every now and then, per General Mattis' discretion, he would sort of change our ROE posture to a more aggressive one if he thought it was fit. Like, when we -- after we lost Staff Sergeant Molina Bautista[ph] on the drive back to Ramadi, I remember General Mattis changing our ROE posture. But I don't ever remember any specific ROE briefs in a convoy or five paragraph orders that we received prior to us departing.
- Q. Very well. Let me ask it this way: Is Major Card the kind of person, based on what you knew of him, that would of wanted you to follow the ROEs as they were -- as you had been briefed on them before or after?
- A. Yes.
- Q. And why do you say that?
- A. Just from his demeanor and from his level of organization. His -- he just always seemed to -- this is the right thing that you need to know. We need to go through this process. We need to do this. We need to do this. We need to do this.

Q. Do you have an opinion on whether Major Card had bought into General Mattis' view on how Marines should be behaving in Iraq and I think he had a statement that said no better friend, no worse enemy and how you had to win the hearts and minds. Do you have an opinion on or any knowledge as to whether Major Card had subscribed to that point of view?

A. I think 100 percent absolutely. Every Marine in 1st Marine Division sort of prescribed to that view, because General Mattis was very adamant about it. He briefed us prior to our deployment about this is the view, this is what we're going to take. It was a commonsense approach to the insurgency that we were dealing with in Iraq. So there's no reason for a sensible individual, a sensible Marine or Sailor to deviate from General Mattis' guidance.

Q. Okay. I want to be a little bit more specific. You said every Marine. I really -- I want you to just tell me based on what you know of Major Card -- and maybe you don't -- but based on your relationship with Major Card, whether you have an opinion, okay? You may not.

A. Major Card would 100 percent follow the guidance no better friend, no worse enemy from General Mattis.

Q. And, again, comment on the idea of winning hearts and minds. You wouldn't want to do something that would destroy the trust of the Iraqi people. Do you know -- do you have an opinion as to whether Major Card would want to follow that?

A. When we departed that evening, I remember we took teddy bears and soccer balls with us. And as we were driving through the towns, we would go out and we would hand teddy bears and soccer balls out to people. So there's a perfect example of Major Card trying to simultaneously win the hearts and minds of the people.

Q. Okay. And so based on what you know of Major Card or Major Card's character -- I know he wasn't in the jump CP for very long, but you believe that he would not want to do something inconsistent from winning hearts and minds? Kind of a leading question, but --

A. True. He would -- I believe that from what I know of Major Card and my personal opinion in reference to that question, his actions would be congruent with winning hearts and minds of the Iraqi people.

Q. Okay. And congruent means what? I'm sorry.
A. In line with --

Q. Okay. I'm not trying to trick you. I just --
A. No worries.

Q. Sometimes I get confused on words of congruent and
tangent and -- I'm not very good with math. So it's
consistent with.
A. [The witness nodded his head.]

Q. Very well.

Now, you described the scene at the IED blast site and
after. I'm going to -- we've got up there the grid
coordinates for the IED blast and we've drawn out a
line. What is that called in geometry?
A. Parabola.

Q. Thank you -- to represent the road -- the route -- help
me out.
A. The Two Tits.

Q. Is there a -- there's a name for this road?
A. Well, the MSR is 00. That line running horizontally
would be MSR Michigan and then there was no -- we never
really got an official name for the --

Q. Okay.
A. -- the other two roads.

Q. Well, the exhibit I'm referring to has some grid numbers
on it and that's -- we pulled that, for your
information, from a 1 to 50,000 map and we'll be able to
provide that to the IO tomorrow. We just don't have
the -- so you'll have to take my word for it that this
is as close to representation to where it happened.

What I would like you to do, HM1 Slaughter, is please
get up and using the overlay, to the best of your
abilities, place the vehicles -- be careful.
A. I'm sorry.

Q. Here's what I want you to do. A vehicle is going to be represented -- an LAV is going to be represented by a square with two wheels, okay? And an LA -- I'm sorry, a HMMWV is going to be represented by a square with two wheels. An LAV is going to have four wheels, okay? Just sort of rectangular.

All right. And then give me an arrow at the front for orientation and do that --

A. Okay.

Q. -- where they were. For the IED blast, just put a little "x" or a mark. Mark it with an "a" and just put "'a' equals IED blast."

A. Okay.

Q. Okay. Now, for -- do you remember where Sergeant Jackie Phillips was located?

A. He was --

Q. Before you put anything on, do you remember where he was located?

A. Sergeant Phillips at the time was in the lead LAV-25.

Q. Okay. After the blast, where was he? Do you remember where he was located after the blast?

A. He was positioned on the road in front of the lead LAV-25, directly off of it with a machine gun basically looking directly at the cars.

Q. Okay. So for this point, I want you to put a dot and an arrow toward -- the dot is going to represent Sergeant Jackie Phillips and an arrow as to where you believe his machine gun was oriented.

A. This is immediately after the blast?

Q. Immediately after the blast.

A. Okay.

Q. Now, Sergeant Jackie Phillips was in Vehicle 1?

A. Yes.

Q. And Vehicle 1 as we're looking at this overlay is the first vehicle -- as we're looking at it on the left, which would be an LAV-25?

A. Yes.

Q. Okay. Do you remember the kind of weapon that Sergeant Jackie Phillips had?

A. He took the machine gun off the vehicle and laid it on the ground as a 240 Golf.

Q. Very good. So up here on top we're going to make a key. You know what a key is?

A. Yes.

Q. Okay. So under the one -- or over the one with the four wheels, just put LAV-25.

A. [The witness did as directed.]

Q. The HMMWV, just go ahead and put H-M-M-W-V.

A. [The witness did as directed.]

Q. Okay. And then the symbol that we placed for Sergeant Jackie Phillips, go ahead and put that up here and just put Sergeant Phillips next to it.

A. Okay.

Q. How long was Sergeant Jackie Phillips in that position?

A. He was in it for awhile because I remember him telling me that I think his elbows and knees were sore from lying on the hard asphalt for a long time.

Q. Okay. Let me ask it this way: Did he move from that position at some point after the IED blast, if you can recall?

A. I can't say with any certainty on whether or not he moved from that position after -- I mean he obviously --

Q. It's okay if you don't recall.

A. I --

Q. Not a problem.

A. So if the blast is -- let's call the blast "b."
Um-hm.

Q. Okay. So go ahead and put a "b" up here for the key.

A. You want me to use "a"?

Q. Go ahead just put -- oh, well we put "a." Yeah. Let's put "a" then.

A. [The witness did as directed.]

Q. Okay. And then from "a" plus how many minutes -- when was the last time you saw Sergeant Phillips in that position? How long would you say he was there?

A. He was there almost until the Hercules showed up to pick up the lead LAV-25.

Q. So let's put "'a' until Hercules" since we don't have a time.

A. [The witness did as directed.]

Q. And Hercules is the recovery vehicle?

A. Yes, sir.

Q. Okay. So -- okay. Did he engage from that position?

A. Yes, sir.

Q. Do you recall what he engaged?

A. He engaged the car that was driving down.

Q. Okay. Please place the vehicle where you think you saw it and if you remember where the road is, you may draw that as well.

A. Okay.

Q. Okay. Label that road for me if you remember what it was.

A. I don't remember.

Q. Was it a dirt road? Hardball?

A. Dirt road.

Q. Okay.

A. The car. And then as the car was coming along, that's when we engaged it.

Q. Okay. Just so we don't make a mistake, this is not a HMMWV, right?

A. No. Do you want me to --

Q. Just put a little thing on it, so we can distinguish it from the HMMWVs. Just go ahead and put that up here so we know what that is. Tell me what it is -- this is a civilian vehicle?

A. Yes.

Q. All right. Do you recall the occupants of that vehicle?

A. No.

Q. It was occupied, however, right?
A. It had to be if it was driving that fast.

Q. Someone was driving?
A. Yes, sir.

Q. Okay. Was it engaged?
A. It was.

Q. And who was it engaged by?
A. Everybody on the jump. 90 percent of the people that were out there. There was two or three guys that were basically covering our six when we engaged the vehicle.

Q. Okay. Did Sergeant Jackie Phillips engage that vehicle?
A. Yes.

Q. With his 240 Golf?
A. Yes.

Q. Okay. And that's a machine gun that fires at a fairly rapid rate?
A. Yes.

Q. All right. Did he engage any other vehicles?
A. He tried to re-engage another vehicle that night to basically kill the headlights on it, because the vehicle headlights were on. And I remember him saying that he couldn't see shit so he put out the lights.

Q. Okay. Did -- do you know if anyone ID'd that vehicle as having any hostiles in it?
A. No.

Q. Okay. So it was engaged, but we didn't have positive ID on it?
A. It was engaged at that point, yes.

Q. Okay. Do you -- did you then know or have then discovered if there was any occupants in that second vehicle?
A. I have no idea.

Q. Okay. Did Sergeant Jackie Phillips -- where was that second vehicle, please?
A. I remember this vehicle and then I remember another Iraqi police vehicle over here, but I don't remember the second vehicle.

Q. The vehicle with the -- with the lights, you don't remember?
A. The vehicle with the lights was that initial vehicle that had driven down this road.

Q. Got it. So that's this one.
A. So this road -- yeah. And then when it stopped, it still had its lights on --

Q. And he engaged it again?
A. Yeah. And then he engaged it.

Q. Okay. Did he engage any other vehicles?
A. I don't recall.

Q. Okay. You said something about an Iraqi police vehicle?
A. There was an Iraqi police vehicle over here, and this was the other vehicle that was -- they had received casualties from the IED blast.

Q. Okay. Do you know if that was engaged?
A. It was not engaged.

Q. Okay. Was anyone else engaged by Sergeant Phillips during the period that he was in his firing position?
A. I don't recall.

Q. Okay. Did he engage anyone from his LAV-25 immediately after the blast before dismounting?
A. No. I mean --

Q. Not to your recollection maybe?
A. I can't recall. And I can say with some -- there was nothing -- there was no signs of life coming from that vehicle. There was no gunfire. There was no -- the turret didn't move. The scouts weren't moving. It just sort of became like a lifeless tomb before we went up to the vehicle. So saying that, I think we were so intent to see if there was any signs of activity or any signs of life from that vehicle, so it's hard to exactly remember if one of the members in the vehicle was engaged.

Q. Very well. During the period that the -- immediately after the blast, did the unit engage anyone besides what you've already described?
A. No, not that I recall.

Q. Did you remember engaging the insurgents on the side of the road?
A. I do remember engaging the insurgents on the side of the road.

Q. Okay.
A. And I remember engaging the second vehicle.

Q. Where was the second vehicle and who was it engaged by?
A. This is -- I think we're getting confused. I'm referencing the second vehicle from the initial diagram, which was the same vehicle that we're talking about here that was driving down this road.

Q. When you say "second vehicle," what -- where's the first vehicle?
A. I'm saying second vehicle because this -- and we can just -- it's just attached as the second vehicle.

Q. Okay. Forget this for a minute.
A. Yes.

Q. The first vehicle that is engaged is this one that we have on this?
A. Yes. The first and only vehicle that I remember our team engaging is that vehicle.

Q. Okay. So when we talk about first and second vehicle, you're referring not to the vehicles being engaged --
A. To the labeling of --

Q. -- but the labeling on this thing?
A. Yes.

Q. Now, you didn't put this thing together?
A. No.

Q. Okay. You did put this together?
A. Yes.

Q. And from what you remember, that's the only vehicle that was engaged?
A. Yes.

Q. And you remember engaging some insurgents immediately after the blast on the side of the road?
A. Yes.

Q. Okay. I'm not going to ask you to draw that.

A. Was anyone else engaged?
Not that I recall.

Q. Very well. Please put your name on the bottom of this right -- not too far down because I need to cut it. But right about there. Just put HMI Slaughter.

A. [The witness did as directed.]

Q. Let me make sure I've got everything covered.

A. Here put a -- "blast 'a' until Hercules" -- "'a' until Hercules, position of Sergeant Phillips."
Okay.

Q. You can just go to the next line.

A. Okay. Okay. I think it'll make enough sense.

Q. All right. Thank you very much. You may resume your seat.

A. [The witness did as directed.]

Q. As you sit here today, do you believe a crime was committed on June 7, 2004?

A. No.

Q. Do you believe any of the rules of engagement were violated by any of the Marines, including Major Card, on June 7, 2004?

A. No.

Q. Do you understand what the rules of engagement were at that time?

A. Yes.

Q. And you understand that murdering somebody who is a noncombatant -- killing somebody who is not resisting or is wounded and can no longer resist would be a crime. You understand that?

A. Yes.

Q. You were briefed on that?

A. Yes.

Q. Okay. Based on that, again, the question, do you believe as you sit here today and searching your memory for June 7, 2004, that anyone committed any misconduct on June 7, 2004?

A. Nobody committed any misconduct on June 7, 2004.

Q. And just to be clear, although you have -- you knew Major Card, there is no relationship between you two?

A. Correct.

Q. All right. And I believe you had a mentor in the division at that time, a command master chief?

A. Yes.

Q. Right?

A. Yes.

Q. Do you remember his name?

A. Command Master Chief Carter.

Q. Okay. HM1 Slaughter, you are -- we're seven years later. How old were you then?

A. I would be 22.

Q. Is it fair to say you're not -- you were not then the -- as wise as you are today?

A. Yes.

Q. As experienced as you are today?

A. Yes.

Q. And you often sought mentoring with the command master chief?

A. Yes.

Q. Correct?

A. Correct.

Q. Based on what you knew of yourself then, if you had seen some sort of misconduct, is there someone that you could have gone to besides a Marine?

A. Yes.

Q. And who would that person have been?

A. Probably Command Master Chief Carter.

Q. And was he the kind of person that would have listened to you and taken action?

A. Yes, he was very approachable.

Q. Is there any reason -- do you have any opinion as you think about, you know, at that time to believe that if you told Command Master Chief something about misconduct, that he would have betrayed your confidence or wouldn't of acted on it or you would have been in trouble for it?

A. He would of definitely acted on it.

DC (Maj Workman): HM1 Slaughter --

CC (Mr. Faraj): Is it alright if we go back and forth?

IO: Yeah, that's fine. Go.

Questions by the defense (Maj Workman):

Q. Just a couple questions. Do you remember some specific acts that Major Card was involved in after the IED blast, specifically with illumination?

A. Yeah. I remember him calling the rounds out. I always forget how it is. Spot over. Spot out. Splash over. Splash out. I remember asking him what does that mean. What do those -- what do you have to call when they drop the order -- some illumination rounds out.

Q. How long after the IED blast was that taking place?

A. That was way -- at that point when we were calling illumination rounds, the QRF had come and left and we were just basically holding security. Our sort of security posture would be yellow, and we were essentially waiting for the Hercules vehicle to come and pick up our LAV, so we could go back to Blue Diamond.

Q. So some of the QRF had arrived but not all of the QRF or at least not the Hercules?

A. The QRF had arrived and departed and the illumination rounds were being called in at that point when I asked him that and the security posture was decreased. And we were essentially waiting for the Hercules vehicle.

Q. Okay. And you were curious about the illumination and then the manner in which he was calling for it?

A. Yes. It was just personal curiosity.

Q. Okay. And you actually approached him?

A. Yes.

Q. And you asked him how do you do that or something like that?

A. Yeah. Like, what is -- just why do you have to do it? What is spot over, spot out, splash over, splash out? What does it mean? Why do you have to do that when they call for illumination rounds?

Q. Okay. And you felt comfortable going to Major Card and asking him those questions?

A. Yes, absolutely.

Q. And did he take a moment to explain what he was doing?

A. Yes.

Q. Okay. And was that normal for you to approach him like that if you were curious about a tactical thing that he was doing?

A. Yes.

IO: Gents, any additional?

CC (Mr. Faraj): That's it, Your Honor. Sir, that's it.

IO: Trial counsel, additional questions?

REDIRECT EXAMINATION

Questions by the government:

Q. HM1 Slaughter, do you recall seeing any bodies that --

A. I do.

Q. -- other than Lance Corporal Bohlman?

A. Yes.

Q. Where did you see these bodies?

A. I remember seeing one on the sidewalk and then the other one was I do believe on the payment or on the sidewalk.

Q. And, again, I'm going to -- I'm not going to go through the trouble of clipping it on. I'm just going to hold this up. Where on this diagram did you see the bodies?

A. I remember seeing the body -- it was -- the diagram is a little misleading because when I remember the body, I was on top of the C-square, but I believe the C-square

had moved up into sort of our position. But it was generally in this area.

Q. So in the vicinity of the IED blast?

A. Yes.

Q. And you said you saw two bodies?

A. Yes.

Q. What was the state of the bodies?

A. They were dead.

Q. How were they --

A. They looked like wax figurines. There's no color or tone in their skin. Just -- I mean, they just looked gone. Completely dead.

Q. Could you see their gunshot wounds?

A. Yes.

Q. And where were you able to see wounds on them?

A. One had a wound in his head and the other one had a C-pattern going up his chest, his center mass.

Q. The individual who had a wound in his head.

A. Yes.

Q. How big was the wound?

A. I would say it was approximately this big.

Q. So about maybe silver dollar sized.

A. Yes, ma'am.

Q. In the top of his forehead?

A. Yes.

Q. Do you have any memory of how those two bodies got to the side of the road?

A. No.

Q. You said at one point you were with the C-square and you were at the C-square when you saw those bodies?

A. Yes.

Q. At what point of the evening was this? Was this after the QRF arrived?

A. This was after the QRF arrived and I believe we were just waiting for the Hercules vehicle to come up.

- Q. Okay. So then in your recollection, it would have been some time between when you treated the wounded Marines and then when you moved to the C-square after the QRF arrived, that those bodies were somehow moved to the side of the road?
- A. Yes.
- Q. Do you have any -- what do you think happened to those bodies? Whose bodies were they?
- A. They were the Iraqi insurgents.
- Q. Who would of brought them to the side of the road?
- A. Probably some of the Marines in the jump platoon.
- Q. And why would that be done?
- A. I have no idea. Just part of the whole -- if you look at the culture of the Middle East, they're very -- the way they treat their dead is very sacred. So even trying to leave a good impression of the dead, it would be respectful to at least place them on the side of the road instead of just in the ditches.
- Q. Of the body that had a bullet wound in his forehead, what was he wearing?
- A. He had just a traditional Arab garb, like a white colorish dashiki on.
- Q. Do you recall seeing any weapons on or around his body?
- A. No.
- Q. The nature of that garment, would it be possible to conceal a weapon without being able to see it?
- A. Yes.
- Q. How so?
- A. The garment was very -- it's one of those -- they're big and they're very spacious for the user to allow a lot of air to circulate in there so they can stay cool on the 130-degree days.
- Q. Your memory with regards to that moment between -- or those moments between when you were treating Logan and when the QRF arrived, do you -- can you say today that you have a good memory about that period or you just don't recall what happened during that period?
- A. I just recall snippets, bits and pieces of that period.

Q. Did you have eyes on Corporal Phillips the whole time you were out there?

A. No.

Q. When you -- well, you were just -- when you were talking to Major Workman, he was talking to you about how at one point in the evening, Major Card was calling for illum and you were chatting with him about -- you were curious about what the call signs were?

A. Yes.

Q. Is it safe to say in that situation at that time in the night, things had been -- were pretty much relaxed?

A. Yes.

Q. And when you were at the C-square when you saw those two bodies, it was the same? The Marines were relaxed, smoking cigarettes?

A. Yes.

Q. I'm going to switch gears here when you talked to Special Agent Periard.

A. Yes.

Q. And during that three-hour interview. How specifically did -- do you feel he suggested facts to you that you don't believe now are true?

A. Just the leading questions and just the way that he presented them. And I just -- after thinking a lot about the memories, that sort of supposedly resurfaced that day, I just don't feel like they're true anymore.

Q. All right. What I would like you to do is just be a little bit more specific.

A. Yes.

Q. All right. Right now, you're Special Agent Periard.

A. Yep.

Q. How would you ask the question?

A. Did you hear any sort of rustling in the grass? And I would sit there and try to think back to that day and be like, you know, I'm not really hearing -- I'm like, I can't just hear any rustling in the grass.

And then he'd be like, all right. Really, really think back to that day. Are you sure you can hear -- maybe there was some sort of movement in the grass, some sort

of sound in the grass. And then after thinking about it for a while, I'd be like maybe there was. And then all of a sudden this supposed memory would emerge. I think there was. I definitely think I heard some rustling in the grass.

Q. And you -- when it got to the part where he would talk to you about your recollections of Major Card shooting an unarmed Iraqi in the grass, how were those questions presented to you?

A. They were presented, Do you remember Major Card doing anything? Did he do anything specific? Did he shoot anybody? Very -- those were the style of questions that he asked. I don't remember -- I remember the rustling in the grass question very specifically, but the other questions in that interview, I don't really recall that well.

Q. Do you still have your statement up there with you?

A. I do.

Q. So going through this statement, it's your testimony today that the majority of this statement is true, except for the paragraph where you say that -- in fact, I kind of want to go through some of these things in the paragraph and tell me which ones are true and which aren't to your recollection.

A. Yes.

Q. Okay. You say you recall talking to Sergeant Gutierrez and Gunny Beall at the C-square. Do you remember that?

A. Yes, I do.

Q. You say that you saw Corporal Tipton and Sergeant Duran with you as well. You remember that?

A. Yes.

Q. And that it was while you were at the C-square that you heard the rustling down in the grass in the field on the right-hand side of the road?

A. The rustling's false.

Q. Okay. And then following that, you had stated in your statement that that was when you saw Captain Card walk by, say this guy's not going to set off any IEDs, walk to the Iraqi, and then pull out his M9 and shoot him?

A. That's false too.

- Q. Now you also stated that you saw Sergeant Duran and Corporal Tipton move his body up to the sidewalk. Is that a true memory in your testimony?
- A. False.
- Q. And so you're saying today that you remember seeing the bodies on the side of the road, but you don't remember how they got there?
- A. Correct, ma'am.
- Q. When you did this interview with Special Agent Periard and at the end of the interview when you sign it and you swore it and you said it was true and you stated that you believed at that time that that was true?
- A. Yes, ma'am.
- Q. So nothing about what happened at the interview did you reject out of hand as being impossible. At the end of the day, you actually believed it was true?
- A. Yes.
- GC (Maj Goode): I have no further questions.
- IO: Defense counsel.
- CC (Mr. Faraj): I have some follow-up, Your Honor.

RECROSS-EXAMINATION

Questions by the defense:

- Q. You were asked the question about the rustling in the grass.
- A. Yes.
- Q. There was an LAV-25 still running, right?
- A. I believe -- I can't recall.
- Q. I'm sorry. The C-square was still running? You guys don't turn off your vehicles?
- A. No, we don't usually.
- Q. Right? You don't turn off your vehicles and --
- A. We're not too green conscious out there. So, no, the C-square was still on.

Q. Well, there's a tactical reason why you don't turn them off.
A. Yeah.

Q. Because sometimes they don't start back up again, right?
A. Yes. Correct.

Q. So you don't turn them off?
A. Yes.

Q. Okay. They're pretty loud?
A. Yes.

Q. So if you're standing by a vehicle, you're not going to hear a rustling in the grass?
A. Probably not.

Q. Okay. But if -- you know, you agree that there was -- you heard a rustling in the grass when it was suggested to you by Periard?
A. Yes.

Q. Do you know what the -- what stippling is?
A. No.

Q. Do you know -- well, let me back up. Have you seen people shot with small caliber weapons?
A. Yes.

Q. Like a 5.56 is a small caliber weapon. Do you agree with that?
A. Yes.

Q. And a 9 mil is sort of small but not as small as a 5.56?
A. Yes.

Q. Okay. And you know -- you're familiar with a 7.62 round from the 240 Golf?
A. Yes.

Q. Right?
A. Yes.

Q. And the high velocity from that weapon. Do you have an opinion as to whether the bullet wound on the head of the man that you saw in the man dress was a small caliber wound or more like a machine gun wound?

A. I can't really -- I think it would be more of a machine gun wound just with -- like the larger caliber --

Q. Using your fingers, if you can recollect, I know it's been a long time. If you can recollect, I don't want you to make something up. Show us using your fingers or use perhaps coins as an example -- like a dime, nickel, quarter. If you can recollect the size of the hole in the head?

A. Maybe about this big.

Q. Would you say that's about a quarter -- would you show it to the IO, please?

A. About that big, sir.

IO: Somewhere between a quarter and maybe a half-dollar size?

Questions by the defense (continued):

Q. And that's the entry wound?

A. Yes, sir.

Q. You can tell the difference between an entry and an exit wound?

A. Yes.

Q. And that appeared to be an entry wound in the head?

A. Yes, sir.

Q. All right. Now, we've been here, we began talking to you at about 1030. We've been here about 50 minutes. You may not have looked at your watch.

A. Yes. Sure.

Q. Okay. It's 1120 right now. And you were able to tell us just about everything that happened that day, right?

A. Yes.

Q. How long was the interview Periard?

A. It was about -- my recollection was three to four hours.

Q. All right. So were you able to relate -- is there anything that we missed talking about here today that you think is necessary?

A. No.

Q. We've covered just about everything in your statement including what was false and what wasn't true and gone back and forth.

A. Yes.

Q. We drew diagrams.

A. Yes.

Q. Did you draw diagrams with Periard?

A. No.

CC (Mr. Faraj): Okay. All right. I don't have any more questions, sir.

IO: Trial counsel, any additional questions?

GC (Maj Goode): No, sir.

IO: HM1 Slaughter, let me just ask a few questions.

WIT: Yes, sir.

EXAMINATION BY THE INVESTIGATING OFFICER

Questions by the investigating officer:

Q. I just want to make sure I'm capturing your testimony. Is your testimony today that then Captain Card did not shoot an injured Iraqi or is your testimony today that I don't remember that?

A. My testimony today is I don't remember Captain Card -- Major Card shooting an injured Iraqi.

Q. Your testimony --

A. I mean, it's --

Q. Your testimony as well is that you believe you would have recalled that had that occurred?

A. I would have recalled that, yes, sir.

Q. How would you describe to me the tenor of the interview with Special Agent Periard? Was it aggressive and threatening? Was it calm and friendly? How would you describe it?

A. The tone was that Major Card was already guilty of the crime and we were -- I was sort of there to confirm the story. And that if my story or if what I said was out of line or didn't match up with anybody else's statement, that I would be eaten up by the prosecution.

Q. And that's your interpretation or is that what Special Agent Periard said?

A. That's my interpretation. He did say -- he did make a reference to the prosecution. I don't recall the exact words or phrases that he made it. But it was definitely -- and then he definitely had a tone of disrespect towards Major Card, sir.

Q. Do you ever feel -- did you ever feel threatened in any way that you were going to get in trouble in any way?

A. No.

Q. Did it ever get agitated or, you know, heated words?

A. No, sir.

Q. It was --

A. Excuse me.

Q. It was calm?

A. Yes, sir.

Q. Do you believe you were manipulated?

A. I do believe I was manipulated.

Q. When did you stop believing in the truthfulness of those aspects of your statement?

A. After our second interview with Special Agent Periard and Colonel Sullivan and when Colonel Sullivan was asking me some specific details about the night.

Q. Approximately how much time elapsed between that time and March 6, 2009?

A. About a year. It was in August of 2010 that I had the additional interview with Colonel Sullivan.

Q. Was Colonel Sullivan -- who was he at that time? Was he --

A. He was -- from my understanding, he was the prosecutor at that time, sir.

Q. So it was during that second interview when you started having significant doubts about the accuracy of that portion of your statement about Captain Card shooting someone?

A. Yes, sir.

Q. Bodies being dragged, rustling, that type of thing?

A. Yes, sir.

Q. At any time between March 6th and that point, did you relive this interview and question what you had said in that statement?

A. I had thought -- I didn't really relive the interview, but I had thought a lot about that incident that night. Just trying to remember more details about it and just --

IO: Counsel, any additional questions in light of mine?

Major Goode?

GC (Maj Goode): No, sir.

IO: Defense counsel?

CC (Mr. Faraj): A brief follow-up, Your Honor.

RECROSS-EXAMINATION

Questions by the defense:

Q. I forgot to ask you something that you'd shared before and I think you were just asked about it by the investigating officer and that is the statement that Agent Periard made to you about any contradiction between what you say and what the other witnesses say.

To the best of your ability, what did he say? Do you recall what he said?

A. Something like, Just so you know, if you say -- or if you don't say what's in the others' statements or if your story doesn't match up, then, you know, if this goes to trial, the prosecution will eat you up on the

stand. That's the best that I can -- I can't give you verbatim of what he said.

Q. That's fine. I'm going to try to restate it based on what I wrote yesterday. If your story's different than what other people have said, the prosecution is going to eat you up on the stand?

A. Yes.

Q. Words to that effect, maybe not verbatim?

A. But that was the effect of the message.

Q. Okay. And how did that make you feel?

A. I was nervous and curious on what was -- what the whole point of this interview was. What actually had happened. What was --

Q. And you and I went back and forth on a bunch of how the questions went, so I'm going to go through that a little bit with you right now.

A. Yes.

Q. Okay. You would be -- you would get asked the question.

A. Yes.

Q. For example, remember -- do you remember Major Card doing anything that night out of the ordinary. And you would say?

A. I don't -- can't recall him doing anything outside of the ordinary.

Q. And then he would come back with, Well, you remember him walking out with a pistol in his hand, don't you? Or words to that effect?

A. Something like that.

Q. Or you remember him pointing a gun at an Iraqi and shooting him, don't you?

A. He never said anything that explicit. But it was -- it was questions to that effect. Very leading questions.

Q. So he'd ask you an open-ended question, you wouldn't recollect, he'd fill in facts, and then you would adopt them as, Okay, that's what happened, correct?

A. Yes.

Q. And that's after he told you that if your story's different --

A. Yes.

CC (Mr. Faraj): -- you'd get eaten up?

All right. I don't have any more questions.

IO: Trial counsel?

GC (Maj Goode): No, sir.

IO: In the next, I don't know, three to six months, do you have anything that's going to take you out of the Albuquerque area?

WIT: I'll be transferring to San Diego in July, sir.

IO: To a military unit in San Diego?

WIT: Yes, sir.

IO: Do you know if that unit -- if you're likely to deploy or be out of the --

WIT: I'll be in IDC school, sir, for approximately 54 weeks.

IO: Where's the school at?

WIT: It's in San Diego.

IO: All right. So you'll be a student at the IDC school?

WIT: Yes, sir.

IO: Okay. And when does that start?

WIT: July 27 is my class begin date.

IO: I'm going to give you an Instruction which is basically don't discuss your testimony here with anyone except for the trial counsel, the defense counsel. If anyone attempts to talk to you about your testimony today, please stop them and notify, frankly, either Major Goode or any one of the defense counsel.

WIT: Yes, sir.

IO: Please don't talk with them. Just say I've been instructed not to discuss my testimony.

Do you understand that?

WIT: Yes, sir.

IO: All right. Thank you very much. You're excused. Thank you.

[The witness was warned, excused, and departed the courtroom.]

CC (Mr. Faraj): We'd like to get the overlay marked as Investigative Exhibit 3 and get it to --

IO: Yeah. We're going to get it -- just as a place setter so we're not overlapping, we'll make that 25.

CC (Mr. Faraj): Got it.

IO: Just so we're not double marking. Just make that one 25.

Major Goode, I don't know if you want your photograph or your exhibit or not.

GC (Capt Gordon): Sir, it's actually Investigative Exhibit 5.

IO: Oh, it is? Okay.

GC (Maj Goode): Yes, sir.

IO: Okay. It's five. I got you.

CC (Mr. Faraj): I actually have an objection to them using that just because of the vehicles. I don't have a problem with the diagram, but if there's something without the vehicles in the notes because it tends to be leading and confuses the witnesses.

GC (Maj Goode): And all --

CC (Mr. Faraj): I mean, it's not -- I mean, they moved it around. So --

GC (Maj Goode): Well, what I'll do is I'll be more clear when they're on the stand to say what part of it is in line with the diagram [inaudible].

IO: All right. What I'll use is IE-5 is sort of a basic orientation. It's a Google. It shows me the road. Obviously it's up to the witnesses where the vehicles were. Where everything was located. So I'll consider it. It gives me a basic orientation.

So that's going to be 25.

What's the best way to -- map overlay of --

CC (Mr. Faraj): I labeled it as "Slaughter overlay."

IO: Slaughter overlay.

Okay. Major Goode, how do you want to proceed? Do you want to take an early break? I'm assuming your next witness or witnesses will be lengthy. Do we want to take a --

GC (Maj Goode): The first sergeant will probably take about the same. Maybe 45, 50 minutes. I wouldn't mind pressing, doing one more, and then taking a break for lunch.

IO: All right. Let's take a five-minute health and comfort break. We'll bring it in. We'll do one more witness and break from there.

[The Article 32 investigation recessed at 1129, 19 April 2011.]

[The Article 32 investigation was called to order at 1135, 19 April 2011.]

IO: The investigation is called back to order.

GC (Capt Gordon): Sir, the government calls First Sergeant Cook to the stand.

First Sergeant Eric Cook, U.S. Marine Corps, was called as a witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the government:

Q. Can you please state your name and spell your last?

A. My name is First Sergeant Eric Cook. Last name spelled is C-O-O-K.

Q. And what's your current rank and service?
A. I'm a first sergeant in the United States Marine Corps, sir.

Q. And your current billet and duty station?
A. I'm the I&I First Sergeant in Lexington, Kentucky.

Q. How long have you been there?
A. I arrived there February 15th.

Q. When did you join the Marine Corps?
A. August 1, 1994.

Q. And can you give a brief wave top of your career thus far?
A. Yes, sir. I went to boot camp, SOI out here. Flew from here, went to the East Coast, checked into 2/2. Did four years there as an infantryman. Left there, went to I&I duty in Columbus, Ohio; three years. From there, I checked into 5th Marines. I did three years in 5th Marines. When I left 5th Marines, I went to Infantry Training Battalion as the company gunny and then as an instructor at unit leaders. And then I got selected for first sergeant; went to 3/1. I was there for three years from 2008 to 2011 earlier this year. And then checked into I&I duty, sir.

Q. So what was your MOS before you became a first sergeant?
A. I was 0369, sir.

Q. And now, how many deployments have you been on?
A. Six, sir.

Q. And one of your deployments was around the time frame of 7 June 2004?
A. Yes, sir, I was deployed then.

Q. And who were you with?
A. I was with 2d Battalion, 4th Marines, sir.

Q. Okay. What was your job out there?
A. I was a MAP platoon commander, sir.

Q. So what did that encompass?
A. It's a Mobile Assault Platoon. We had up-armored HMMWVs, heavy machine gun vehicles, tow vehicles. And I was a platoon commander for that unit, sir.

Q. And on occasion, you would respond to incidents?
A. Yes, sir. Two weeks out of every five, I was on some form of QRF for the company, sir, that acted as the QRF for the battalion.

Q. Around 7 June -- or 7 June 2004, was that one of those such times --
A. Yes, sir.

Q. -- you were part of QRF?
A. Yes, sir, I was on QRF.

Q. What was your -- what was your role on that evening?
A. That night I was on night QRF, so from 1800 till 0600. From platoon -- was the platoon that would get called if something happened to someone in the battalion or in the battalion AO. As the platoon commander, I would sit in the COC and wait for a call. However that be, if the "3" calls us or if my company commander would task me to go out. And I was sitting there and my Marines would be on a strip alert of about, you know, two to five minutes to get outside the gate. The trucks were set up on the road. The Marines were awake and alert. They weren't wearing their gear, but they were ready to go at a moment's notice, sir.

Q. And what was the breakdown of those QRF units? I know you were a platoon commander for one.
A. Yes, sir.

Q. How many other units were there?
A. We had five platoons, sir. The way it worked was we were all set up pretty well the same. They broke down the heavy machine gun platoon and the dragon platoon. And they made five pretty well equal units in the company. There was a -- so with that, there was a five platoon rotation. One week you would be -- from Sunday to Sunday, you would be on guard all day, every day for seven days. And then the other four platoons would rotate. Two would be on day shift, two would be on night shift. And those shifts, it was 0800 to 1800 and then 1800 to 0600. The two-day platoons, one would be on QRF. The other one would be taskable. Being in weapons company, that taskable platoon would always get tasked with taking the colonel around, taking the "3" around, setting an ambush if we didn't have any other taskers. That's what the taskable would do.

So in the day time, one QRF, one taskable, and the same thing for the night platoon, sir.

Q. So on 7 June 2004, what exactly was your -- was your -- I guess your time frame that you were working?

A. My platoon was night QRF, sir.

Q. And you said that was 1800 to --

A. To 0600, sir.

Q. 0600? And when did you -- when did you receive the call for the incident in question today?

A. Sir, I don't remember what time it was. I know that -- in sitting in there, I had heard that someone had been hit. And then I was waiting for the call from the "3" because that's generally who tasks us as a battalion asset. And then I got the call to go out there; that they had been hit by an IED; that they had casualty; and that there was some shooting going on, sir.

Q. And who did you understand it to be, the unit involved?

A. The Blue Diamond Jump, sir.

Q. So what did you do after you received the call?

A. I -- as soon as something happened, I sent a runner to my platoon, told them to get their gear on, get ready to get on the truck -- or get on the trucks, that we're probably going to be going out because that's generally the way it worked. And then I waited, I got the call, and then I walked out. I talked to my squad leaders and told them where we were going, the route that we were going, and a snapshot of what had happened to that point as I knew it, sir.

Q. And so, as you responded, what did you encounter?

A. As I responded, I went down Michigan. You can't really see it there where the road kind of comes down at the bottom, runs down to Route Michigan maybe about -- I don't know 800 meters to the south right at Sinops[ph] Mosque. Right at Sinops Mosque, I took that left to go Route No Name to head into that area, because I knew they were right around that checkpoint.

GC (Capt Gordon): If you wouldn't mind, sir, I'd like to have the witness come --

IO: Yeah. Absolutely.

Please, First Sergeant, get down.

GC (Capt Gordon): And just for the record, we're using a blown-up version of Investigative Exhibit 5.

Questions by the government (continued):

Q. All right. So you mentioned you were traveling -- from south, you were traveling north --

A. Yes, sir.

Q. -- right? On Michigan? And that's --

A. Route Michigan's right here. It goes west to east. And then you got Sinops Mosque. I took a left at Sinops Mosque to head up -- this is Route No Name right here that runs into the checkpoint and past the checkpoint. I came up from the south.

Just to the south of the dot here was a vehicle in the middle of the road. While I was there, I stopped in the middle of the road. I was having problems trying to get contact with the unit that was out there, the Blue Diamond Jump. And I was calling -- I was calling my company and, like, Hey, I don't know if I got the wrong frequency or what, but I can't get ahold of them. There's a vehicle in the road. They would always hit first responders with VBIEDs and I couldn't get around it.

So at that point, someone stepped in that I believed to be the Blue Diamond Jump is who I understood that to be that said that vehicle's been defeated. There's -- I forgot exactly how it was -- exactly how it was phrased, but it was nothing to worry about. So at that time, I drove around that, sir, and then pulled into this vicinity right here.

Q. Okay. And now, what did you -- what'd you see when you pulled into that area?

A. When I pulled in, there were a lot of vehicles. You know, as you can see on here, vehicle facing south. This vehicle facing to the north. Had a couple of vehicles here that aren't on here facing kind of up No Name but off to the side of the road. There was a vehicle in the field facing to the west. There was a lume up, already a lume. I would say probably in this area by the intersection with Nova and then there were also Cobras in the air, sir.

Q. All right. So do you believe -- well, first of all, just the -- the overhead map itself, disregarding any of the labels on it, do you believe this to be an accurate representation of the scene that you arrived on? Is this the scene that you arrived on?

A. Yes, sir. That's the checkpoint. Yes, sir.

Q. All right. Now, as far as the vehicles that are listed, do you -- do you see that as being accurate or do you see the vehicles as being in different locations?

A. Pretty close, sir. It doesn't show the IP vehicle here. The car -- does show an IP vehicle here which I believe was the truck and it was a little farther up. It looks like -- there's the wall right here. It was kind of sitting -- it had tucked in kind of behind that wall when it had ran off the road. There was another vehicle with two elderly gentlemen and two children in it. Right behind him, maybe -- he had pulled to a stop, maybe a foot off that guy's bumper. And then there were -- there was a vehicle here and then another vehicle here off the road, sir.

Q. What about these two vehicles? Were those there or do you believe those were actually somewhere in here?

A. No. I believe that this one was here. I do not remember that one. I know for sure that there was a vehicle there. It had one headlight on when I showed up. It was a black Sedan facing to the south, sir.

GC (Capt Gordon): Sir, how much clarification do you want for the record on this?

IO: You can have some clarification. Not to the same extent you would at trial perhaps. But just indicate, you know, top vehicle -- just the best you can without getting too exhaustive.

GC (Capt Gordon): Yes, sir.

IO: Continue on.

GC (Capt Gordon): First Sergeant's identified the vehicle that we've already talked about with the headlight. That's the one marked "engagement sight of second vehicle."

Questions by the government (continued):

Q. And that appears to be accurate?

A. Yes, sir.

Q. And then "disabled first vehicle," you believe that to actually be in the field, a little to the right?

A. Yeah. I don't remember this vehicle being on the road, sir. There was a dark green and silver Mitsubishi Navara facing to the west about right here, sir.

Q. And that was, in fact, the disabled vehicle?

A. Yes, sir. I don't know if it would run, but it was sitting in the field, doors open, so it had ended there I believe at the time, sir.

Q. And then the IP -- or the vehicle marked "IP vehicle," you believe that to be a couple inches to the northeast?

A. Yes, sir. And then with another vehicle right behind that. Yes, sir.

Q. Okay. So you arrived on the scene and you saw -- after you saw the vehicles, what was your first action?

A. I didn't know. I came in and it seemed like something had happened. You know, they had said that there was some shots fired. I heard that in the COC, sir. And then when I came up and I seen that they had Cobras up and they had a lume up, I thought that this thing was, you know -- was pretty bad off.

Also something else that I had seen, sir. I failed to mention that was -- there was a unit that had been there just prior to me getting there, who I believe took the casualty. I believe it was a unit from Golf Company. And they -- I kind of seen the back of the vehicles. I knew somebody had just left as I pulled up, but I didn't see them but I knew that somebody was leaving. I heard it on the radio as well.

Q. Okay. And so please continue on with what you were saying with your first actions upon arriving at the scene.

A. Yes, sir. So I got there. Having worked in this area quite a bit, I knew that -- from what I had known, that this area down here was probably the worst area. It was very shot up area. A lot of bad guys had launched a lot of attacks on us before. Nothing big. A couple pop shots here and there. But generally we do it down on

Michigan. They're setting IEDs and the trigger man would be there.

- Q. Just hold on. The area that First Sergeant was just referring to is southeast of what's shown on the map?
- A. So at that point, I pulled my trucks up, I stepped out of the vehicle, and I told -- I stepped out of the vehicle at the HMMWV -- it was parked about right there. And then what I did at that point was I told Sergeant Escavel[ph], who was my platoon sergeant, to get the vehicles set up on this side of the road mainly because there's LAVs here. I didn't expect anyone to come across the field towards an LAV, and I thought that the pop shots, if there were to be any, would be coming from the south to southeast based on my earlier assessment.
- Q. And what did you see as far as evidence of hostiles when you arrived on the scene?
- A. As far as hostiles, sir? I didn't see any hostiles when I showed up. The shooting was over except for a couple of single shots from a 240 which came a bit after I had talked to Major Card. He was shooting at this vehicle right here off of one of the LAVs.
- Q. Those were friendly shots?
- A. They were 100 percent friendly shots. Single shots out of a 240.

GC (Capt Gordon): What --

CC (Mr. Faraj): What was the question? They were friendly shots? Was that the question?

GC (Capt Gordon): Shots from friendly forces.

CC (Mr. Faraj): Got it. Got it.

Questions by the government (continued):

- Q. Okay. So once you arrived on the scene, did you at some point have a conversation with Major Card?
- A. I did, sir. I pulled up, told Sergeant Escavel to get the truck set up. And then at that time, like every other time, I would walk up to the commander on scene and make liaison with him to tell him what I brought to the fight and see what he needs. At that point, I walked up to Major Card. He was by the HMMWV. And there was basically two things that came out of that

conversation. The first thing was he said that they had got shot at. They got hit by an IED followed by an ambush. He said he came out of his vehicle and that he shot an individual who was coming at him. I said, Roger that. You know, good to go.

And then he said -- the second thing was they had taken fire from kind of this alleyway and then a highrise that was, kind of just to the north of this area right here -- a highrise right there. And I asked him specifically, Sir, you know, you didn't shoot at that, right? And he said why. And I said because that's the hospital here in Ramadi. And then he turned around and walked away. He didn't answer. I mean, I didn't really take much out of that. He just walked away from me. And that's kind of where that broke and then I made sure that my guys were set in, sir.

Q. Okay. Let's back up just a little bit.

A. Yes, sir.

Q. Explain exactly what Major Card said about how that engagement with him and the dead Iraqi or insurgent, whatever, had occurred.

A. Yes, sir. Yes, sir. He said that they got hit by an IED. As soon as the vehicle stopped, he came out, and there was a guy coming at him and that he shot him, sir. That was exactly -- to the best of my memory, that's what he said.

Q. All right. So which vehicle were you standing next to when you were having this conversation?

A. I was standing next to the HMMWV, which I think it was a bit more up here.

Q. Okay.

A. So I was standing about right here, sir.

Q. Where was Major Card?

A. Right there, pretty close to his HMMWV, sir. I mean, within a couple feet away from the door there.

DC (Maj Workman): Let the record reflect when he said he thought the HMMWV was a little bit more up here, he pointed to the indication on the map that says "IED blast."

IO: Thank you.

GC (Capt Gordon): That would actually be about the point -- the pinpoint for Vehicle 1, Phillips, LAV-25.

Questions by the government (continued):

Q. Where was -- did you see the Iraqi who had been shot?

A. Yes, sir.

Q. Where was he?

A. He was laying -- I don't know if that's intended to be him, but that's about where he was at. He was laying with his feet facing to the north, northwest laying on his back, facing the sky, obviously, with his head towards the road right there on the sidewalk, sir.

Q. So he was close to the conversation that you were having with Major Card?

A. Pretty close, sir. I think -- you know, like I said, maybe a little bit -- maybe, I don't know, 20 feet. Something like that. Maybe a bit more than that.

Q. And at that point he was on the road? He wasn't in the field?

A. No, sir. He was laying on the sidewalk.

Q. Now, so just to clarify, Major Card said that that Iraqi had exited the vehicle and --

A. And came at him, sir.

Q. Came at him?

A. Yes, sir.

Q. And Major Card shot him and shot him in the head and killed him?

A. He said he shot him, sir.

Q. Shot him?

A. Yes, sir.

Q. All right. And, again, so what happened after that initial conversation you had with Major Card?

A. Kind of started looking around, I believe at that point, to kind of see -- you know, get my own feel for what happened. I knew there was a lot of brass. It looked like they had shot quite a bit, so, you know, just making sure that we were set up to make sure that nobody was coming or if they did, that we were ready.

And then the second thing that I did was right after I spoke with him is when those shots were coming off the LAV at that vehicle. I asked what they were doing. They said that one headlight was already out, so they were shooting the other headlight out because it was washing out their nob's.

So at that point, I realized that they hadn't been to the vehicles, so then I launched my dismounted Marines to kind of check the area. You know, they went over, turned the headlights off and started searching vehicles, sir.

- Q. What did you guys find upon searching the area?
A. Nothing, sir. We found some individuals who had been shot, sir. But no rifles, no casings, no rounds, no initiating devices, sir.
- Q. You said you saw casings?
A. I saw casings by the friendly vehicles, sir. Like, right -- you know, by the LAV, the HMMWVs.
- Q. What indication did you see that there was any enemy other than the IED blast?
A. I didn't see any, sir.
- Q. And did your team look for -- look for bullet holes in the walls behind the LAVs or --
A. Yeah --
- Q. Did they look at the LAVs themselves? What did they do?
A. You know, we looked everywhere, sir. What I would of -- I was trying to get a feel for where the fires came from. He said up this alley and then the area over by the hospital. But it was very hard to get a feel because it looked like they had fired at pretty well the four points of the compass. And I didn't see any directed fire into one area. You know, if they would have been down this alley, personally I would have expected to see maybe holes at that edge of the wall. But I didn't see anything like that where there had been concentrated fire into one area, sir.
- Q. And was this area in here, this field area, was this searched by your team?
A. It was, sir.

Q. And was there -- was there any sign of enemy approach, enemy ambush in there?

A. No, sir. I mean, we had a pretty good view on it. But the Marines walked through it. But you have a pretty good -- you get a pretty good look at it, because the road is actually raised a couple of feet. I mean, there's a slope down that you can actually walk down it or drive down it into the field, but you could see over the whole field pretty easily.

Q. And how long did it take for you to respond to the scene once called?

A. I would say we probably got there in about 15 minutes, sir, because we had to go through Downtown.

Q. Now, going back to the deceased Iraqi that you saw.

A. Yes, sir.

Q. What was he wearing?

A. I believe it was a white -- what's the thing called? A dashiki. Man dress, sir. I've always heard them called man dresses.

Q. What weapons or any other devices did you view on this person?

A. Nothing, sir. I didn't see anything.

Q. Did you look?

A. I didn't look under him, sir. I mean, I looked at him. I didn't go up and study him, but I certainly looked at him. And I mean, it didn't look like he was trying to hide anything or had been trying to hide anything under his man dress. I mean, there was no bulges or anything like that.

Q. Okay. First Sergeant, if you want to go back and have a seat. I think we're done with the map.

A. Yes, sir.

Q. Did any -- anyone in the team give you any indication that that person had a weapon at some point or tried to draw a weapon?

A. No, sir.

Q. Major Card didn't?

A. No, sir.

Q. So what did you do after you -- after your team examined the area?

A. Well, they were checking the area. And while they were checking the area, I got one of the corporals. A Marine by the name of Corporal Reeves came over and got me and told me that they had found an individual who was still alive but who had been shot. He had been shot in the groin and in the -- I believe, the right shin bone in front of his leg there.

So I went over and he was laying down right there where it says Vehicle 2, Captain Card HMMWV. You can see some bushes. He was kind of laying on the slope from the road right by where those bushes are, and he was just laying there. And I came up to him and I took my glove off, because Corporal Reeves had checked his pulse and said that he had a pulse. I checked him and I didn't feel anything. And I asked him and I said, you know, Are you sure? Because I don't feel like -- I think that this guy is dead. And he said, No, you know, Staff Sergeant, I promise you. I feel it. Like, okay.

So at that point, you know, he's wearing just a t-shirt, so I sternum rubbed him. And, you know, just rubbed my knuckles right on the sternum to see if he was going -- if he was going to move around. As soon as I did that, he came alive. He stood up and he was yelling. I got my linguist over there. As soon as he got up, I put my weapon behind my back, put my hands in the air. Like, Hey, you know, calm down. Calm down. Got the linguist there. Like, Hey, tell this guy to calm down. And he was -- he was pretty scared.

At that point the linguist kind of calmed him down. We got him to sit down. And then at that point, their corpsman was standing on the road and I looked at him, right at him -- I seen that he was walking around with his unit one on and a medical bag. And I said, Hey, Doc, you got to get down here. You got to help this guy. And he said, Staff Sergeant, I don't work on Iraqis. So at that point I kind of got a feel for something and I didn't feel very comfortable. So I got my corpsman over there who had been working on someone else and started patching him up. And then that's about where we were at, sir.

- Q. What happened after that?
- A. Moving around. I was trying to get a better feel for how many casualties there were, sir, because there had been a lot of vehicles that had taken both, I believe, shrapnel from the vehicles and then also they had been shot at; some a lot more than others. But there were casualties in a lot of the vehicles, so I wanted to get a good feel for how many casualties there were, sir.
- Q. Did that about wrap up the extent of your business there?
- A. Until -- well, the next thing that would have happened while I was doing that was then second platoon showed up, sir, from my company with Lieutenant Stephens and Staff Sergeant Coleman at the time. Because they had to bring out the tank retriever, sir, to take that LAV.
- Q. You said First Lieutenant Stephens was the commander of that unit?
- A. Yes, sir. It was 2d Platoon. It was First Lieutenant Stephens at the time and then Staff Sergeant Coleman was the platoon sergeant, sir.
- Q. And what happened after they came out as far as your unit?
- A. Yes, sir. We were just holding security. Lieutenant Stephens came over and asked me what I thought had happened, because he had -- he had some feelings he said. And I said, you know, when I get back, I'm going to talk to the company commander.
- Coleman was kind of walking around a little angry, because after they got hit by the IED, no one had made any attempt to clean anything up which I understand completely. It's not the first thing you want to do when you have a casualty, but at some point you got to pick up your supplies and get them off the vehicles. And then I think that's pretty well it until we got back, sir.
- Q. When you're a part of the QRF, how often did you respond to incidents like this?
- A. A lot, sir.
- Q. Was this an uncommon occurrence?
- A. No, sir.

Q. An IED blast like this in particular.
A. Absolutely not, sir. I would say my platoon -- I didn't count, but I would say that we probably got hit by about 20, sir. Just -- I think that's a pretty good guess.

Q. Based on -- based on your experience back in 2004 during this time frame -- you already discussed that there were casualties. You discussed the vehicles. Now how do you -- how do you analyze that? The fact that there were casualties and there were vehicles that got hit but they weren't -- that those -- I said casualties. Wounded -- wounded Iraqis. That they weren't killed in the context of the IED blast. I know it may sound like a complicated question.

A. Yes, sir.

Q. But do you understand what I'm saying?

A. Yes, sir. I do completely. Up to that point I had been in Ramadi since February. And the TTPs that I had seen and all the TTPs that I had heard were generally there were two kinds of trigger men For IEDs. The first kind was the guy that we've seen 95 percent of the time. He was the guy who didn't want to be around it and he wanted to blow the thing up and do as much damage as he could to coalition forces.

The other guy is that guy you see 5 percent of the time or that we'd seen 5 percent of the time who would come at you with a vehicle borne IED or with some kind of vest on who would blow himself up while he's trying to damage or kill coalition forces. It was very particular -- very weird in this case, because some of those vehicles that had wounded Iraqis or dead Iraqis in them looked like they had taken shrapnel from the IED. So I was very -- initially I was confused because I had not seen that. And even after that, I didn't see it; where someone was in the blast area and kicked it off if that did, in fact, happen, sir.

Q. So it was unusual that if they were going to -- if any of those -- or any of those Iraqis were the trigger men, it would be weird for them to put themselves in that position. Either they would of killed themselves in the blast or they would have been far enough away that they wouldn't of gotten hit at all?

A. Most definitely, sir. Most definitely. Very awkward. Very.

Q. So given that and together with your -- your team's analysis of the area, what's your opinion of the engagement and the hostile intent that existed?

A. I think that based on the fact that they kind of fired in every direction, coupled with the fact -- and this is just me -- but coupled with the fact of the Doc's attitude towards Iraqis. And then at one point I asked a Marine and said, you know, kind of what's going on. Like, you guys seem like you're pretty keyed up. And they made mention of something that happened to Staff Sergeant Molina, how he had passed away, and that they were kind of angry at that point.

So if you put those together, I think that they got hit by an IED, that they were pretty keyed up, and at some point I think that they engaged people they didn't need to engage, sir. I don't think that there was any direct fire. I think there was an IED and I think that they thought that they had seen something and lit up cars around them, sir.

Q. If there was, in fact, an engagement with hostiles, what would you have expected to see when you arrived on the scene?

A. As I said earlier, sir, holes in walls; fires directed in one direction; somebody who could give me a more -- a bit of a more direct area, specific area, you know, instead of that general direction. We -- we swept all the cars. We also swept the alley.

From the experience that I had up to that point, whenever we would get shot at from compounds or around compounds, generally they would shoot us from behind the compounds down an alley and we would find brass, because they're not going to stop and -- or they never stopped and picked up their brass up to that point. So I would of expected to find brass and we didn't find one piece of brass outside of, you know, the road and that area where the vehicles were, sir.

Q. So what enemy weapons did you find, if any?

A. None, sir.

Q. What enemy weapons did any of the members of the division jump team tell you they found?

A. Well, they didn't tell me they found any, sir.

Q. And you say you arrived approximately 15 minutes after the blast?

A. I believe so, sir.

Q. Did it appear that any members of the jump team had actually gone out into the field or into the alley or anything to collect up weapons?

A. It didn't look like it, sir, no.

Q. And rules of engagement were something commonly taught back then?

A. Yes, sir.

GC (Capt Gordon): When did you receive training on that?

CC (Mr. Faraj): This is -- this is absolutely not relevant unless they can connect it to the jump CP. This is a different unit. 2/4 is not the jump CP.

IO: Yeah. I agree, Captain Gordon. We're getting a little far outside the box.

Questions by the government (continued):

Q. Do you think escalation of force is something that is commonly known?

A. Yes, sir. And then we got the CFLIK[ph] classes in Kuwait, sir.

Q. What would be the proper escalation of force to be used on a -- I'm going to give you a scenario --

A. Yes, sir.

Q. -- on an Iraqi who was wounded who may or may not have a weapon in his man dress and you are in a position above him, he's on the ground, and he's moving? What would be your proper escalation of force?

A. I think personally, sir, the first thing that I would do is take into account what his injury is. You know, if he's really injured or, you know, if he's kind of winged. Either way though, I wouldn't -- I would close with him slowly, keeping an eye on his hands to make sure that he wasn't trying to pull a weapon.

And then at any time, sir, if he pulled a weapon and he pointed it at me, then I would engage him. Up until that point, then I would not have engaged him. I would have closed that distance, tried to disarm him if he had

it slung across his back, however, that is if he had a weapon. And then we would of moved to take care of him as far as, you know, doc doing his thing with the first aid, sir.

Q. With the clothes that you described the Iraqi wearing, the one in question, would you have been able to -- would you have potentially been able to see if he, in fact, had a weapon on his person?

A. I believe so, sir. I mean, he was wearing a man dress. From when I was there, certainly. I mean, he was laying on his back. You know, we do noncontact searches all the time where you make them pull their clothes tight and you look for bulges. I didn't see any bulges in what -- in his attire, sir.

Q. So that would be another -- another effort in the escalation of force? You would make them show their person by pulling their clothes tight to them?

A. Yes, sir. Maybe not if he's wounded. I don't know if I would of did it there to be completely honest with you. We did it many times going through checkpoints and things like that.

But if the guy is already wounded like that gentlemen was -- or he was dead -- I would of been watching his hands. I wouldn't of wanted him to touch anything in the event that if I thought that he was a combatant, that's a good way for him to kick something off. I wouldn't of wanted him touching. I would have just had him -- I would of had him -- watched his hands, sir.

Q. When would you -- when would you feel that deadly force -- given this scenario that I presented -- when would you feel that deadly force was necessary?

A. Whenever he points a weapon at me, sir. If I have reason to believe that he has a suicide vest on, you know, that's a weapon. If I'm close to him then if I think that he's got something in his hand they could -- they could kick that thing off, then that -- I believe deadly force would be authorized at that point, sir.

Q. And you'd want to see that?

A. Yes, sir.

Q. You recall making a statement to NCIS?

A. Yes, sir.

Q. Back in 17 December 2009?

A. Yes, sir.

Q. How was your memory back then?

A. Pretty good, sir. To be completely honest, I think that -- what worries more about my memory in this situation is the fact that I remember what happened. The timeline might not be perfect, you know, but the things that happened happened. I may have seen this prior to seeing that, but at the end of the day what I seen I seen, sir.

Q. So the statement that you made, do you believe it to be true and accurate?

A. Yes, sir.

Q. Would you adopt -- would you adopt this statement as part of your testimony?

A. Yes, sir.

GC (Capt Gordon): Sir, I don't have any further questions.

IO: Defense counsel, any cross-examination?

DC (Capt Baehr): Yes, sir.

CROSS-EXAMINATION

Questions by the defense:

Q. First Sergeant Cook, hey, there. I'm Captain Baehr. I'm one of the defense counsel in the case.

A. Good afternoon, sir.

Q. Thanks for coming in. During the course of this -- of our discussion, we can kind of go through your testimony and your statement. I'd like it, if you could, maybe draw for me. I know this has a whole lot of stuff on it, which isn't, you know, your description of what happened. And I think it would be better for us if we could just kind of get a fresh map drawn up by you.

A. Okay, sir.

Q. So wait right now. But as this goes along, I'll ask you to draw certain elements as you remember them. And I understand you've also produced already a map for NCIS; is that correct?

A. Yes, I did that too, sir.

- Q. So this is going to be an overlay and these are the grid coordinates. Do you think you'd be able to draw a map based on this background?
- A. I think so, sir.
- Q. Okay. If you need to add some roads, if you need to add some things, it's your drawing. Not mine.
- At any rate, I'd like to first begin by talking about this case. This case has been working its way through the system for awhile. When was the first time you heard about this investigation?
- A. The investigation by NCIS, sir?
- Q. Exactly.
- A. A couple of days before I did my statement, sir. I don't remember the date.
- Q. Okay. And so on your statement the date is the 17th of December, 2009. A couple of days before that, you spoke with somebody?
- A. I would say a couple days. Yes, sir.
- Q. Okay. Actually it says on here, "I spoke to Special Agent Antoine on Friday 11 December '09."
- A. Alright, sir.
- Q. Do you remember what happened in that original discussion at all or what kind of was covered?
- A. He told me that there was going to be an investigation based on the events that had happened and then he asked me if I remembered it. And I wrote a statement that night and I told him then that I did. And he asked if I still had it. So it took a couple of days, because I went home and -- you know, through the years I've gotten different external hard drives and thumb drives and I checked everything that I had and I didn't have it, sir. So then that's when he wanted me to come in and do another statement, sir.
- Q. Okay. Great. And we'll talk about that statement that you produced afterwards and some of kind of what happened afterwards --
- A. Yes, sir.

Q. -- as it falls chronologically.

But you spoke to Special Agent Antoine that night -- or the 11th of December about that?

A. Yes, sir.

Q. When he -- when he first told you about this, what -- how did the conversation go? The phone rings, you pick up, what does he say?

A. He said that he would like for me to come over here to NCIS, sir, to speak with him because I was stationed right here in Horno, sir.

Q. And did he -- what did he say that it was concerning?

A. You know, sir, I don't remember. I don't know that he told me.

Q. Do you remember what you felt or thought when you got that call? I mean, it's pretty uncommon to get a call from NCIS.

A. Yeah. I really had no idea to be honest with you. I don't remember him telling me what it was about. So I don't know what I felt, sir.

Q. Now, you know -- have you interacted with NCIS ever before this?

A. Sure. Yes, sir. I believe I've actually interacted with the same officer, sir.

Q. Okay. And -- but when they called this time, nothing in particular went through your mind as like they're calling about this particular circumstance or anything?

A. I didn't think that they were calling about this, sir, because it had been so long. I didn't think. I thought it had dropped off the radar. Actually I thought that it had been whatever happened, happened years ago. So I didn't think that anything would be coming up about this specifically, sir. I never put that together.

Q. Okay. At what point did you finally -- did he finally clarify, Hey, this is what we're talking about? Was that a couple days later? Or was that --

A. No. When I went in to speak with him, sir -- because he called me that day and I went in to speak with him --

Q. I see.

A. -- then.

Q. So he calls you on the 11th?
A. Yes, sir.

Q. And then later on maybe that day in the afternoon, you go in and talk to him?
A. Yes, sir.

Q. And how long did you talk to him that time?
A. I don't remember off the top of my head, sir. A little while. I would say probably maybe an hour. That's a guess though, sir.

Q. And where were you at that point? What were you doing in the Marine Corps? You were here at Horno, you said?
A. Yes, sir. I was the First Sergeant for Kilo Company, 3/1.

Q. Okay. You spoke with him for maybe about an hour at that point, and did he go into any details about what they were looking in to or what --
A. Yes, sir.

Q. What did he exactly say?
A. He said that there was an investigation to events that happened this night based on I guess a command investigation from a statement that had been made by another Marine that made it to someone. And then they called NCIS and NCIS started the investigation, sir.

Q. And did they say what that statement of that one Marine was or what that Marine had said or the basic nature of the allegation?
A. He told me kind of how it came up. He didn't necessarily tell me what happened, sir.

Q. How did it come up?
A. He said that there was a sergeant down at LAV Training Company who was there that night who was having problems sleeping. So he went to see a psychiatrist. You know, maybe I got some PTSD issues. I want to talk to someone. The psychiatrist says, Well, what is it? He tells him what it is. And then that Marine -- and the psychiatrist said, Well, you need to tell somebody. You know, if that's what you've seen, you need to tell someone. And from what I understand that devil dog did tell someone. I don't know who. But then NCIS got involved, sir.

Q. Did you know who that Marine was, that sergeant?
A. No.

Q. And do you know who they told or anything like that?
A. I had heard and it would of had to been him. I thought that he said he e-mailed the Commandant, which I don't know how you do that.

Q. And did -- did you get any detail on what he had told that psychiatrist that the psychiatrist said you got to report that?
A. He said that -- that there had been some civilian casualties, some people who had been killed unnecessarily.

Q. Was it by a -- did they say at that point it was by a particular person? Or was it by the whole unit?
A. I don't think he said, sir, and I don't remember asking.

Q. All right. And so this is -- this is all in your introductory conversation concerning the case?
A. Yes, sir.

Q. During the introductory conversation, did you go through kind of this is what I remember happening and the kinds of things you talk about in your statement bit by bit?
A. Sure.

Q. And then at the end of it, you ended up saying, Hey, I think I might have the file back home on my -- the report I wrote up about it?
A. He brought that up, sir. I kind of gave him a snapshot and then he said, Well, go home -- I believe those are two separate weeks. He said go home over the weekend and see if you can find this thing. Because I knew that -- I had mentioned to him that I had a couple of thumb drives in storage. I had just came back from deployment, so I was kind of inflexed with kind of what was going on. And he said go home, see if you can find it, and then let me know.

Q. Okay. A couple days later on the 17th of the December you went back to the same NCIS building; is that right?
A. Yes, sir.

Q. And did you meet with -- you met again with Special Agent Antoine?
A. Yes, sir.

Q. During that period, you actually -- he actually wrote out this statement?

A. I did it, sir. I sat there --

Q. You sat there, you typed it out --

A. Yes, sir.

Q. -- and then signed off on it?

A. Yes, sir.

Q. Okay. So the first conversation was on the phone. The second conversation is when you go into the NCIS building on the 11th.

A. I apologize, sir. He called me on the phone and then I came down to NCIS, and then I went back to NCIS. So both the first day and the second time I went was the NCIS building, sir.

Q. Okay. Check. After that meeting on that day in December, that 17th of December, when was the next time you talked about this case?

A. It probably would have been a couple of days later. Nothing in depth. But as soon as I knew that NCIS was investigating and that I was coming over to NCIS, I went and told my sergeant major that there was a chance that there may be a court case. There may be something going on. But I had to go into NCIS, just to keep him in the loop of kind of what was going on.

Q. And who was your Sergeant Major at the time?

A. Sergeant Major Samuels, sir.

Q. After that did you end up talking to -- when was the next time you talked to somebody about this case who was involved with either the prosecution, the defense, or NCIS about the case?

A. I believe it would have been when I got a call from Legal Team Delta, sir.

Q. And when did that -- when would that have occurred?

A. Last week I believe.

Q. So between the 17th of December and the time you talked to Legal Team Echo -- or Legal Team Delta, excuse me, you hadn't spoken with other folks in the legal realm about this particular case?

A. No, sir, not that I remember. No.

Q. Had you talked to other folks about this in your daily life? Hey, this is -- weird things are happening or there's an investigation or anyone you knew from the unit back then?

A. I seen now Gunnery Sergeant Coleman a bit after that. He mentioned it. We were just kind of reminiscing. We didn't really talk about it too much. But he said that he -- that, you know -- he's like, Hey, remember that stuff that we'd seen. Didn't really talk about it much. I spoke with my battalion commander about it not long after I spoke with the sergeant major kind of generically. No specifics. Just because the sergeant major had told the Colonel that I was going to be -- you know, there's a possibility that this was going to happen so the Colonel kind of wanted to know -- not in depth. Just, you know, when was this. Okay. What units. Okay. Good to go. You know, that's about it, sir.

Q. And who was the battalion commander?

A. Colonel Watson, sir.

Q. Colonel Watson?

A. Lieutenant Colonel Watson.

Q. When you talked to Gunnery Sergeant Coleman, did you -- did he talk about kind of the investigators and what they'd asked him and things like that as well?

A. No. No, sir.

Q. All right. I'm going to go back a little bit to the events of that night?

A. Yes, sir.

Q. Way back when. Now you were in a combat leadership position as the QRF leader in that evening?

A. Yes, sir.

Q. The platoons -- there were a couple of platoons. There's MAP-1, there's MAP-2, there's MAP-3, there's Rainmaker, and there's Sledgehammer.

A. Yes, sir.

Q. And you were Sledgehammer?

A. I was, sir.

Q. The other responding unit from the QRF, was that Rainmaker or which other one was it?

A. It was MAP-2, sir.

Q. MAP-2. Check.

A. You mentioned that your night shift started at 1800? Yes, sir.

Q. Was that pretty religious?

A. Religious, sir.

Q. And did you come early? Did you come later? Was it pretty much 1800?

A. Well, if I could back up, sir.

Q. Sure.

A. The time always started at 1800. But with that said, there's times where maybe that taskable stayed out till 2200 if they were taking the Colonel. There's times where if the next QRF was having problems, the truck went down, then that first QRF would stay on a little bit longer. But the times were always supposed to be 1800 to 0600, sir.

Q. So to the best of your memory, you came on duty that night at 1800?

A. I believe so, sir.

Q. How quickly after you came on duty that night did you hear about the IED or did you hear the IED? Did you actually, physically, audibly hear the IED from your position?

A. No, sir.

Q. Because you were at Hurricane Point?

A. Yes, sir.

Q. All right. And how far is Hurricane Point from the ultimate site?

A. I would say probably about 3 clicks. I think we were located at the 3/9. I believe that that is pretty close to the 4/2. So about 3 clicks, sir.

Q. How long would you say you were at work before -- that night on that shift before you heard about this?

A. Sir, I really don't remember.

Q. You talked about coming up to the scene and Hurricane Point's way out here and you end up coming down here like coming down --

A. Pretty well straight shot, sir. Hurricane Point and Michigan come straight across.

Q. All right. And so you came straight across.

A. Yes, sir.

Q. And then you were approaching from the south.

A. South to north. Yes, sir.

Q. And you said that the first thing that you saw was the vehicle that was disabled in the middle of the road; is that correct?

A. That's correct, sir.

Q. As you were approaching the site?

A. Yes, sir.

Q. What thoughts were going through your mind as you saw that vehicle in the road?

A. Up to that point, sir, one of the big TTPs that the insurgents would use against us as Weapons Company is they would hit someone with an IED or maybe take a couple pop shots at them knowing that we were probably going to respond because the "3" love to use us.

So what they would always do is they would always hit first responders. They would put vehicles on the side of the road or in the road. They would, you know, take hastily made IEDs and throw them out there because they knew generally there's certain ways we had to come. And they would try to hit us whenever we were coming to scenes like that, sir.

Q. As you were heading to the scene that night, did you take any fire?

A. No, sir.

Q. Did you take any small arms fire, anything like that?

A. Absolutely not, sir.

- Q. Just to describe the scene in Ramadi at the time, how would you describe the general threat level? How would you describe -- how many IEDs were you responding to on a regular basis? What was life like in Ramadi at that time?
- A. It was pretty hectic. I mean, we were certainly busy. A lot of IEDs. A lot of shooting. Not so much at Weapons Company. They would hit us a bit and usually move away. But the companies certainly got into some pretty decedent fights, sir. I would say we probably responded to IEDs maybe three times a week, sir.
- Q. Three times a week?
- A. Probably, sir.
- Q. And during those responses to IEDs, would you -- would you take fire? Would you encounter ambushes, other things like that while you were there? Personal experiences.
- A. Usually not direct fire ambushes, sir. Usually if we encountered something, it would be a VBIED because it's easy, it's quick, and it's got a lot of bang for the buck.
- Q. And would the VBIEDs be suicide IEDs or would they be --
- A. No.
- Q. -- they would just leave the vehicle?
- A. I've only seen one VBIED and he tried to drive into the convoy, sir. They were all get out and however they armed it, I don't know.
- Q. So that particular one was a suicide? Did you say he tried to drive into the convoy?
- A. Yeah. A different one. Yes, sir.
- Q. Okay.
- A. Sure.
- Q. The sense, though, of threat that evening, you were -- were you primed for threat that evening? Were you -- when you were going out that evening, were you ready for anything that could of happened?
- A. Well, sure. I was ready. I thought -- you know, I had heard they were taking fire. I heard fire was happening. When I got there, I did not expect fire. And that's based on the fact that those guys weren't going to stand and fight with LAVs. You know, did they

take pop shots? I don't know. That's for somebody else to decide. But I thought for sure 15 minutes, you know, LAVs were there. Whether one was damaged or not. The Golf Company element had come to take away the casualty. I thought for sure that there would be no firing going on.

Q. Okay. Had you -- you talked about pop shots. When you'd gone out on missions in Ramadi at that time, would you take pop shots as a convoy or did that not happen to you?

A. Sometimes. We didn't do a lot of convoys, per se. We did more fighting from vehicles, which is, I know, semantics a bit. But they didn't shoot at us a lot. You know, we would drive by. They would shoot from the other side of the road where we couldn't get across the road because of the big medians. And then by the time we got over there, they were gone. So very -- you know, three or four shots and then run and you wouldn't see them.

Q. When was the first time that you heard which particular unit had gotten that IED?

A. In the COC, sir.

Q. You're still in the COC? And what went through your mind when you thought of the Division Jump?

A. I thought that General Mattis was there, sir.

Q. You thought General Mattis was there?

A. Yes, sir.

Q. When did you find out he wasn't there?

A. When I got on scene, I realized that he wasn't there.

Q. What was the relationship between your unit and the Division Jump in terms of their impressions of the Division Jump, things like that?

A. I don't know that -- I had never worked with the Division Jump and nobody had said anything about them either way. I don't know that they had ever worked with them, sir.

Q. So there was no kind of reputation about the jump?

A. No, I really don't think so, sir.

Q. Well, did you have any personal impressions about the jump before heading there that night?

A. No, I never worked with the jump, sir.

Q. Check. When you approached and you saw that car in the middle of the road, I'm not sure if it's going to -- would you be able to draw it on that map?

A. I can, sir.

Q. Okay. Why don't you do that if you would. Thank you, First Sergeant.

A. Yes, sir. So this is No Name right here, sir, I'm guessing.

Q. Right.

A. And then where -- is this going to be --

Q. So there's another road that kind of heads up this way.

A. Okay. So I don't --

Q. Here's the Sharpie.

A. Yes, sir.

Q. If you need to make adjustments, feel free to do so.

A. Okay, sir. Now this is canted a little bit, but you can still kind of get the gist of it.

Q. Right.

A. So, if this is -- I don't know who I need to show.

So if this is the checkpoint right here --

Q. And would you write in what checkpoint it was.

A. I don't remember, sir.

Q. I believe it was --

A. 314? 341?

Q. 341, I believe. Let's find out. I'll find it. But in the mean time, maybe draw where you think the -- yes. 341. If you need to look at this -- do you need to look at this at all or at your statement?

A. No. This is the vehicle. Yeah. It might be -- I would say from 341 -- and these grid lines, sir, I don't know on a map, so it might not be perfect to be honest with you.

Q. That's fine.
A. I would say probably about 250 meters.

Q. Okay.
A. Right there, sir.

Q. Okay. And let's indicate that in some unique way so that we can -- what did we label it over here? You labeled it Number 1 over here. White Sedan 1.
A. [The witness did as directed.]

Q. Okay. All right. So you're approaching the site at that night, you see that car in the middle of the road, you think it might be a VBIED.
A. Yes, sir.

Q. Because you've been experiencing those TTPs recently?
A. Yes, sir.

Q. What would you say was the situation in terms of lighting at that point?
A. I could see up here. There was some overhead lights. You know, street lights. But there was really nothing down here. Which was further complicated because there was a building right next to the vehicle. You know, two-story building, pretty dark area. I couldn't really make anything out in that vehicle. As I was coming up on it, there were no lights on there, sir.

Q. Okay. At that point you called the jump and determined if that vehicle is a threat and they said to you --
A. I was trying to call the jump, sir. I was having problems. I don't know if I had the wrong frequency. I had two radios in my vehicles. I had put that one down. I was calling my company to make sure I had the right frequency. And then they came on and said that that vehicle was not a threat. It had been defeated.

Q. Okay. And when you passed that vehicle, you were able to -- were you able to observe what kind of damage the vehicle had sustained?
A. Yes, sir. The windshield had been shot up pretty good, sir.

Q. And were there folks inside the vehicle as well?
A. Yes, sir.

Q. And to your memory, were they shot with machine gun fire or what had that vehicle been shot with?

A. I don't really know, sir. I mean, there was a lot of holes in the windshield that would probably lead me to say machine gun, but I don't know.

Q. Okay. In your statement I believe you mentioned it was -- that you thought that it was machine gun fire because of -- what I think was machine gun fire. There were many holes in the hood and the windshield.

A. Yes, sir.

Q. Did you later -- what kind of machine gun? Would it have been a 240 Golf?

A. I would guess, sir. I mean, they might have had SAWs. I don't know, sir.

Q. Okay. So let's continue walking down the road. You proceed up to -- and what is the next thing that you see?

A. I can kind of see past this vehicle -- or I can't see past this vehicle to the lights and I see the LAVs up here and I see some of the vehicles as I come in. And then I see -- and then I see some of the other vehicles in the area, the civilian vehicles inside the LAVs and the HMMWVs, sir.

Q. And could you just draw some of the other civilian vehicles that you observed that evening?

A. [The witness did as directed.]

Q. And those are other civilian vehicles?

A. Yes, sir.

Q. And were those the vehicles that Corporal Reeves went to look into or did you look inside those vehicles?

A. I looked in these, sir. Generally, most of the vehicles were here. I didn't -- I didn't push out all the way to some of the vehicles, just because I wanted to be kind of closer to the action. So I looked in these specifically.

Q. All right. Well, let's -- let's number each of the civilian vehicles.

A. Okay, sir.

Q. And then just write somewhere on the map, maybe in the upper right-hand corner what that vehicle was.

A. [The witness did as directed.]

Q. So like Vehicle 1 is a white Sedan or something to that effect.

A. Sir, I'm trying to remember what this one is. I know there was a vehicle there, but I don't remember what it was, sir.

Q. No problem.

All right. So what I'll do is I'd like to talk to kind of what was going on in each of those vehicles, what you observed the damage to the vehicle, who was inside, and things of that nature. But before we do that, I want to just chronologically get the next paragraph in of your statement which is that you arrived there and you saw that the combat power was pointed in a certain direction.

A. Yes, sir.

Q. You decided to point your troops in a different one.

A. Yes, sir.

Q. Tell us about that. What you saw and thought when you first got there.

A. Well, as I said a minute ago, when I rolled up, this is all kind of an open field and the LAVs are sitting here. And this is higher ground than what that field's in. It's a couple feet shorter, sir. So the LAVs were kind of here and everybody was facing this direction.

Q. Okay. Would you just briefly draw where the LAVs are positioned?

A. [The witness did as directed.]

You want the HMMWV on there too, sir?

Q. Yes. The vehicles in the convoy, essentially.

Actually -- okay. We're going to -- we're having a couple maps drawn and we want to make sure we use consistent symbols. So for those LAVs -- I don't know if we -- we've already put the number there -- but just put two wheels underneath to indicate. I know it's not the military symbol, but just put the two wheels underneath there.

A. Two under the LAV, sir?

Q. Under the LAVs just so we know where the LAVs are.

A. And then what do you want under the HMMWVs, sir?

Q. Let's -- why don't you just put -- why don't you just -- let me see what you did for the HMMWVs.

A. I could do three for LAVs.

Q. Okay. Do three for the LAVs and do two for the HMMWVs?

A. You want me to write them up at the top, sir?

Q. I think that we know what those are for now.

A. Yes, sir.

Q. All right. So at this point, you arrive there, you sense the threat, where do you position your vehicles?

A. Generally in the same area, but facing to the south, southeast, right along kind of the south side of the road here, sir.

Q. And what vehicles are you in at that point?

A. Up-armor HMMWV, sir.

Q. All right. So let's -- let's position those on the map where those are located with the two wheels underneath.

A. Yes, sir. Could I use that, sir? The map.

Q. Okay. It's better if you do it from memory, First Sergeant, if that's possible. If it's not possible, if you don't remember it, then let's -- we'll just -- don't make stuff up. But do you not have a memory of where those were positioned?

A. I mean, I do. They were to the south side of this road facing southeast. The guns are facing southeast.

Q. Okay.

A. But as far as, you know, if this particular, exact, I don't remember.

Q. Okay. And why were you positioning the vehicles in that position?

A. Because I thought that if there was a threat that was going to come, it wouldn't be pop shots because I didn't expect anybody to try to close with us. It just doesn't make sense. And if I thought that those pop shots were going to come, they were going to come from the area to the southeast that all the Marines call the apocalyptic area where it just looked -- it was really rough. A lot of those buildings had been bombed out and a lot of bad stuff came out of that area.

Q. Did insurgents hang out in those area -- in those buildings or those areas?

A. We had got shot at from those areas before, sir.

Q. That specific area?

A. Yeah. But it's a bit away. It's probably 1500, maybe 2000 meters away. They would shoot at us down. Make sure they didn't hit us with IEDs out of there, sir.

Q. Had you been on this road before?

A. Yeah. I wouldn't say hundreds of times, but dozens of times, sir.

Q. Okay. And was this a road that people regularly took at times to move around the AO?

A. Yes, sir. At one point -- and I don't remember if it was before or after -- but they told us we had to stay on Michigan. I don't remember if this was before or after.

Q. Okay. At this point in your statement, you started discussing the civilian vehicles in the area.

A. Yes, sir.

Q. You talked about a dark colored Sedan just to the north of checkpoint 341.

A. Yes, sir.

Q. That was stopped facing south.

A. Yes, sir.

Q. Two vehicles on the south side of Route No Name, right at the curve?

A. Yes, sir.

Q. And are those all represented there?
A. Yes, sir.

Q. Okay. And one was a white Sedan that was empty that had been traveling around the corner. The occupants were two older Iraqi males. Do you remember those males?
A. I do, sir.

Q. What did you see inside that vehicle?
A. I seen there were two older man, 60ish; and two children, who were probably -- two boys who were probably five.

Q. Were they still in the vehicle or were they off to the side?
A. They were off -- kind of not reflected here. You can kind of see it here. There was a wall that hugged right up to the road.

Q. I see.
A. And both the Toyota Hilux truck and the white vehicle had pulled kind of right behind that wall and then those two older gentlemen and the kids had got out and were sitting up against the wall on their own, just sitting there.

Q. Check. And then you also say that there was a -- there was a vehicle just to the south of Route No Name that was a white Iraqi police truck?
A. Yeah. That's this one, sir. Number 5.

Q. Okay. And what did you see inside that vehicle?
A. There was a guy who had been shot through the windshield. He got shot in the head, the driver. And then the passenger had some shrapnel blast -- I don't know. Something. It cut up his neck pretty good, sir, the passenger.

Q. And the passenger -- was the passenger still alive?
A. He was, sir.

Q. And the driver was not still alive?
A. He was not alive, sir.

Q. Did it -- did you -- could you tell what kind of caliber weapon had shot the driver there?
A. I don't know specifically. I'm not a ballistics guy, but he --

- Q. It was your impression that at least one of those passengers had been hit by shrapnel from the IED?
- A. I think that the vehicle was, sir. I mean, there's a hole in the windshield in front of the driver. I mean, it's possible that that could of came off an IED, but I think that would have been more of a shape charge and I don't think they used those at this point. I took it, sir, that the guy in that Hilux had got shot through the windshield but there were a couple holes in the vehicle here and there that I took to be shrapnel.
- Q. Okay. You also talk about the north side of the road having a two-tone SUV?
- A. Yes, sir.
- Q. Is that Vehicle 3?
- A. Yes, sir.
- Q. Okay. And what did you observe in Vehicle 3?
- A. Both doors were open. I believe that that is where the gentleman came out of who was on the concrete on the sidewalk. And the gentleman who was laying in the bushes that I spoke about earlier -- or by the bushes right there, I believe that that's the vehicle he came out of as well, sir. Both doors open, pointed this direction. Looks like they had been maybe following the LAVs and then ran off the road.
- Q. Was there damage to the vehicle? What was the situation with the vehicle?
- A. Same thing. It looked like there may have been a bit of shrapnel. It's kind of hard to tell. I mean, some of those vehicles are beat up. But nothing -- you know, the fender wasn't blown off. But there were a couple holes here and there. But, I mean, it was still drivable, sir.
- Q. Had that vehicle been engaged by machine gun fire?
- A. No, I don't think so, sir.
- Q. But you didn't see anyone inside the vehicle?
- A. There was no one inside the vehicle, sir.

Q. All right. Your assessment that those folks who were up by the sidewalk was -- what was that based on? The fact that there was no one inside the vehicle?

A. Based on the fact that that guy was the closest to that vehicle, the guy who was on the sidewalk. And that the other gentleman said he came out of that vehicle.

Q. By the time you reached the site, how many minutes had passed since the IED had exploded? Was it --

A. From the time I got the call it was about 15 minutes. I don't know how long before. I don't know, sir.

Q. At the very least 15 minutes?

A. At the least, sure.

Q. You talked about the man who had been shot in the chest and the face lying on the sidewalk.

A. Yes, sir.

Q. How many men were there on the sidewalk?

A. That's the same man, sir. The man who I believe came out of Vehicle Number 3.

Q. Okay. So why don't you just draw a stick figure where that gentleman was.

A. [The witness did as directed.]

Q. Was there another gentleman near him?

A. There was the other gentleman who was in the vehicle with him, sir. He said he came out of that vehicle. Yes, sir.

IO: First Sergeant, let me just clarify. Is that the one who you rubbed on his chest and he came to life?

WIT: The second one, yes, sir.

IO: He said he had come out of that vehicle?

WIT: Yes, sir.

IO: Got you.

Questions by the defense (continued):

- Q. At what point did you finally meet up with the convoy commander?
- A. Very early on, sir. I mean, I passed the vehicle, passed to Sergeant Escavel to get the vehicle set up facing -- with the guns facing to the southeast and get some security out. And then I jumped out and went to speak with --
- Q. And where was he located?
- A. He was right there by the HMMWV, sir.
- Q. Right next to the HMMWV?
- A. Yes, sir.
- Q. Did you -- had you already previously met Major Card, then Captain Card?
- A. Never, sir.
- Q. Okay. You never interacted with him before this?
- A. No, sir.
- Q. You said that he said to you that there was a man who was closing with him who he ended up shooting?
- A. Yes, sir.
- Q. And you -- originally in your testimony, you said after that, Good to go. Understood. Because you thought that he would have been -- why'd you think good to go at that point?
- A. Well, sir, I mean -- I don't mean to sound callous, but if you're in a fight and the guy's closing with you and you kill him, you know, if he's coming to hurt you then it is what it is.
- Q. It sounded like you responded to quite a few IEDs. Were you ever in any circumstances where you were actually in a unit that got hit with an IED?
- A. Yes, sir.
- Q. And after those, did anyone ever approach or -- well, what kind of immediately happened in the immediate aftermath? What was your feeling right after that IED exploded? How many times were you targeted with an IED?
- A. Plus or minus two, sir; probably about 20.

Q. Plus -- could you clarify?
A. Yeah. Between 18, 22. Something like that, sir. I mean, 20's my estimate. That's a guess.

Q. Got it. So you have personally been in --
A. My unit, sir.

Q. Your unit?
A. Yes.

Q. Okay. And you personally have been part of how many times when an IED is found?
A. On my particular vehicle?

Q. Maybe not your vehicle, but maybe like a vehicle that's right next to yours. Personally witnessing an IED explosion.
A. Twenty, sir. That's from my platoon, the guys that I went with every day. About 20. My particular vehicle, probably about six, sir.

Q. And what goes through your mind immediately after?
A. For me it was, you know, two things: Number one, guns up because that's what we always do. If you get hit, you know, your eyeball deflates, you don't get hit with shrapnel. And then as soon as the IED goes off, you get up, guns up, make sure that nobody is trying to close with you.

Q. If somebody was trying to close with you right after, what would you have done? Have you ever been in circumstances where somebody did try and close with you after? Maybe a complex ambush or anything like that?
A. No, sir.

Q. Okay. I guess I didn't allow you to answer the question. What would you do in that circumstance?
A. As soon as we get hit and a guy's coming at me, same thing as always, looking at his hands. You know, if he's right on top of me -- what we always did -- and this is just my unit in particular -- is show, shout, shoot.

You know, if a guy is closing with me and I see his hands and he doesn't have anything on him and I don't think that he's much of a threat and tell him to stop. If he doesn't stop, I'm going to throw him to the ground. If he -- you know, if he continues to come, he

presents a threat to me -- meaning a weapon or some kind of initiating device -- then I'm going to shoot him.

Q. You then talk about a man or a Marine who was trying to shoot out some headlights of a vehicle.

A. Yes, sir.

Q. Which vehicle was he trying to shoot the headlights of?

A. This one, sir. I believe it was -- looking back -- as I was looking at it, it was facing to the south, so it would have been its left, vehicle on my right side. I believe that that was the headlight that was on. And he was shooting single shot not long after I got there. I asked him what he was doing and he said that he was trying to shoot the other headlight out because the nobs -- the light was washing out his nob, sir.

Q. Did you ever find out who that Marine was?

A. I never asked, sir.

DC (Maj Workman): I think the witness indicated what's been marked as Vehicle Number 2 right there.

Questions by the defense (continued):

Q. You talked about Major Card saying that they had taken some fire from the northwesterly direction.

A. Yes, sir.

Q. And you talked about noting that the hospital was up there. Where was the hospital located?

A. If I had to guess, I would say this is -- whoever drew this, this is really messed up here, sir. It's much more like this, so I would say --

IO: First Sergeant, why don't you put like a north arrow --

WIT: Yes, sir.

IO: -- something at the bottom so if you need to reorient it a little bit.

WIT: Yes, sir.

IO: There you go. Thank you.

WIT: So with that said, sir, I would say probably right in this area. This is Route Nova. This road ties into it from 314 and then I would say --

Questions by the defense (continued):

Q. Was the hospital the highest building in the vicinity?

A. Highest building in Ramadi, sir.

Q. And did the Marines use the hospital as an observation post at some point?

A. To the best of my memory, I do not think we did then. We did, I think, for I believe the first three months and then the -- the Marines from Fox Company did and then the battalion got kicked off the roof, sir, because it was a hospital.

Q. After that you talked about Corporal Reeves -- Corporal Jason Reeves going through -- around the vehicles and doing a sweep for certain devices. Your knowledge you testified to for that, was that things that Corporal Reeves told you or did you also conduct the sweep with him personally?

A. No, no. He did that, sir.

Q. Okay.

A. He and the other dismounts. There were a couple other Marines.

Q. A little bit later on you then talked about the situation where you found the injured Iraqi you gave the sternum rub to; he woke up. And you said that the corpsman from the unit basically wasn't going to treat him. Do you know who that corpsman was?

A. No. Obviously it would be easy, because the corpsman was here. But I couldn't of picked him out of a crowd prior to today.

Q. So was it the individual who was here or you wouldn't -- you're not really sure if it was that person?

A. I don't know. I seen a guy on the road. I was, like I said, three or four feet below him. I looked up, I seen a guy with the corpsman bag, and then that's -- I spoke with him. And, sir, I couldn't of picked him out.

Q. Did you know that it was the -- there were a couple of units on the site by this point.

A. It was us and them, sir.

Q. Were there also -- what about the combat outpost
Marines? Were they still --
A. They were gone, sir.

Q. They had already left? And what about -- and then right
after -- shortly after that, another unit came?
Stephens came?
A. Yes, sir. MAP-2.

Q. Okay. Did you ever get more information about the
Marines as to -- you said at one point you said they'd
recently taken a casualty just maybe shortly before?
A. Yes, sir.

Q. Did you hear who the casualty had been?
A. Staff Sergeant Molina.

Q. Did you know Staff Sergeant Molina?
A. Never met him. Never heard his name before, sir.

Q. And did you know the circumstances of his death?
A. They told me the circumstances. He was I believe up on
Route Mobile headed one way. I don't know if it was
east or west. Mobile is a pretty wide open area. He
was going whichever way and in the opposite lane someone
had put an IED on the guardrail. And that IED was ball
bearings. And he was up, standing in the vehicle, and
got hit in the face with it, sir. That was what I got.

Q. Did you get the sense that those Marines believed that
there were threats out there, that there was a sense of
threat in Ramadi at that time? Obviously you weren't
there when the IED went off --
A. Sure.

Q. -- or directly thereafter.
A. I think so, sir.

Q. Did they tell you that they'd faced prior attacks, an
IED attacks or anything like that?
A. I didn't really talk -- not this night, right, sir?
Like prior?

Q. Prior.
A. Yeah. I never spoke with them about that, sir.

- Q. When you're talking about the man who was lying on the concrete which is what you kind of go into next, you talk about the fact that he had been shot in the face and the chest. Could you describe the injuries that you observed?
- A. When I say shot in the chest, I didn't take his man dress off. What I seen was -- I mean, the guy had, you know, a decent amount of blood, chest area. Laying on his back, so he had blood all over his chest. And then he had been shot in the face centrally located pretty well.
- Q. Where would you say? Like above the nose? Where would you say?
- A. I would say top of the T-box probably. Right -- you know, just -- and even with that, I mean, there was a bit of damage that always happens when you shoot someone in the face. So nose, eyes. That's about all I could get because, you know, his face was a bit --
- Q. And it looked like the entrance wound was on the front?
- A. That's what it looked like, yes, sir.
- Q. And the exit wound was in the back?
- A. He was laying on his back, sir. I mean, there was a lot of blood and his head was a bit deformed in the back. You know, sure.
- Q. Did you know what -- how large was the entrance wound?
- A. I couldn't tell, sir.
- Q. Could you tell what kind of caliber --
- A. Well, it's small arms. That's about all I could tell you. I mean, I don't think it was -- it would have been 7.62. I think it would of had to be, you know, probably 5.56. Because 7.62 from what I noted, really tore some guys heads up pretty bad.
- Q. There was also a lot of -- there was an injury to center mass. There's some blood in the --
- A. Sure. Yes, sir. It looked like he -- you know, he had been bleeding a bit because he had, I mean, quite a bit of blood. I mean, it was just red, you know.
- Q. Right. And was there a pool of blood under his head and under his back?
- A. Under his head, sir.

- Q. Under his head. That pool of blood, did it look like there was a trail from the pool of blood or did it look like he was shot and fallen in that site?
- A. I didn't see a trail, sir. I didn't see a trail.
- Q. Did you see brain matter out of the back of his head or anything of that nature?
- A. No, sir. I seen a flap. It was probably just skin I would think. But, I mean, there was some -- it was a bit deformed. I mean, he had a flap at least hanging that I could see on the side, sir.
- Q. Was he still bleeding when you saw him? I mean, was the pool growing?
- A. I don't think so. I don't think so, sir.
- Q. If he had been shot elsewhere and then moved to that location, kind of dragged, would there have been -- would there have been a trail in your impression based on the amount of blood that was back there?
- A. Probably, sir.
- Q. At that point in your statement you talk about the young Iraqi boys and your decision to help get them out of the scene.
- A. Yes, sir.
- Q. What were you thinking in regards to that? Why don't you draw where the Iraqi boys were and actually draw in the wall a little bit, if you could.
- A. I might have to go over the top of the LAVs a little bit, sir.
- Q. Okay.
- A. About like that. I don't know how far up it went, sir. I know that there was a road here. I think it went to maybe the corner of the road. And then they were sitting, you know, right there, hanging out right at the edge of the wall, sir. On the inside of the wall.
- Q. Right after that, you point out in your statement that MAP-2 arrived.
- A. Yes, sir.
- Q. And you spoke with Lieutenant Stephens.
- A. Yes, sir.

- Q. Who else arrived with Lieutenant Stephens?
A. His platoon, sir. Now Gunny Coleman. You know, the rest of the platoon, sir.
- Q. Did you -- what was your relationship with MAP-2?
A. We're all, you know, staff NCOs, officers, same company. Pretty tight, sir.
- Q. Okay. And so what did you tell Lieutenant Stephens when he first comes up?
A. Lieutenant Stephens came up to me initially -- or he was the first one to speak. And he's like -- and his exact words, you know, kind of what the hell's going on. And I said, Hey, you know, these guys took a casualty, kind of updated him on the situation. I believe at that point that Golf Company had taken the casualty away. That they had a LAV that was down. That's why second came out there was to bring the tank retriever, the Hercules. And then I told him where my guys were at that point, sir.
- Q. You mentioned that Staff Sergeant Coleman then began correcting some of the jump Marines because he sensed that they weren't collecting the supplies. What was it that they weren't collecting?
A. There was just -- I don't remember exactly what it was, sir. Just there was stuff that had been on the vehicle I'm sure strapped down, whatever it was, that had been blown off. I can't think of exactly what it was, but there was some stuff in the road in that area. You know, there was a couple POLs that had whatever had happened, you know, some stuff leaking on the road. But then there was other stuff. Like I think that I remember a cooler. I'm not trying to make anything up, but I think that that's one of the things. But little things like that. Just stuff in the road. Kind of stuff that we need to police up because we're going to see it later.
- Q. At that point, the Hercules arrived. Did you -- and what unit came with the Hercules?
A. MAP-2, sir.
- Q. MAP-2. The Hercules actually came with MAP-2?
A. It has to, sir.

Q. Got it. And then when you got back to Hurricane Point, you say in your statement that you talked to your company commander.

A. Yes, sir.

Q. Who was your company commander at the time?

A. Now Major Wiler[ph], sir. He was a captain at the time. Wiler.

Q. Wiler?

A. Yes, sir.

Q. Okay. And what time did that conversation take place?

A. I don't know, sir.

Q. Is it --

A. I mean, I was out there for a little while. When I got back, probably within the first 10 or 15 minutes after I got back.

Q. Did he approach you? Did you approach him?

A. I approached him, sir.

Q. Did you go to his office or where were you?

A. Well, we all slept in the same place and we all worked in the COC, sir.

Q. And what did -- did you -- did he ask you kind of what happened? Or how did the conversation go?

A. Well -- pardon me, sir. I didn't mean to cut you off. He would always ask whenever you would come back, Hey, how'd it go? Duh, duh, duh, duh. And he's like, hey, how'd it go. And then I kind of layed it out to him that I had seen some stuff that I didn't feel comfortable with. Kind of what I had seen. And he said that I need to go talk to the Battalion XO.

Q. Who was the Battalion XO?

A. Major Wiley, sir.

Q. Major Wiley?

A. Major Wiley. So I went and spoke with Major Wiley and then he told me to write a statement, sir.

Q. How long was your statement?

A. I would say the first one, maybe a page and a half probably, sir.

- Q. And you mention here that you say -- I left out what I thought had happened and only put in the facts as I had seen it?
- A. Yes, sir.
- Q. What does that mean?
- A. That means that -- sir, I was a staff sergeant. And I don't -- even now, I don't preclude to judge anyone. So I put in what I seen, timelines, events, and let people draw their own conclusion instead of the staff sergeant drawing his conclusion on what I think happened, sir.
- Q. You talked in your statement about how the next morning you received a PowerPoint.
- A. Yes, sir.
- Q. Did you know -- what was the PowerPoint presentation?
- A. Initially -- we get a lot of PowerPoints, sir, all the time. Even now, I still get them. I got on the computer. There was a PowerPoint. I kind of clicked through it. I didn't really pay attention to it. I go to chow. The S-3 Alpha said great PowerPoint. I get done at chow, I go back, and I check it out now. Because he thought that I had made that PowerPoint. So I start clicking through it and it was events from this night that had got sent out from whoever.
- Q. Did you know who sent it out?
- A. I would -- no. I didn't know. I would guess that it's division, sir. I mean, it would only make sense.
- Q. Did you -- do you still have a copy of that PowerPoint? Or were --
- A. No, I don't.
- Q. -- you able to search for it at all?
- A. I didn't have a .pst, sir, and we left our computers in Iraq.
- Q. Was the PowerPoint essentially a report of what happened that night from the perspective of somebody?
- A. Yes, sir.

Q. How did you feel when you looked at the PowerPoint?
A. I was a bit confused because there's things that -- I didn't agree with, you know, the guys saying that they were going to come across the field, that the enemy was here. I didn't see any enemy. I wasn't pointing fingers. It's just different than what I had seen when I was there, sir.

Q. You then rewrote your statement?
A. I did, sir.

Q. And who did you give your statement to after that?
A. The next morning -- I'm sorry. That morning, I get a phone call and the battalion commander wanted to see me. And the battalion commander told me that he wanted me to rewrite my statement and put in there my opinion of exactly what I thought. You know, being a guy who had been a platoon commander for the last how many ever months since February in that environment. He wanted me to write exactly as I did but also put in what I think happened, you know, with regards to how they reacted to what kind of IED. Was it a complex ambush. Whatever -- whatever I think happened, he wanted me to put in there and put my own opinion, sir.

Q. And what was your opinion?
A. My opinion was that they got hit by an IED and that -- probably a big IED. They thought something was happening. But being the guys with the biggest sticks, I don't think they waited until somebody swung their little stick first. And I think that they went way too fast on the escalation of force and just kind of turned loose, sir.

Q. Did you think that the unit committed a crime that evening --
A. Yes, sir.

Q. -- or did you think they just overreacted?
A. I thought at that point that someone had committed a crime, sir.

Q. You thought that at that point?
A. Yes, sir.

Q. And did you reflect that in your -- in the report that you wrote?
A. Absolutely, sir.

Q. And who received the report?
A. I gave it to Major Wiley, sir, and he sent it to division. Or he said he was going to send it to division.

Q. Okay. Would you agree with me that situations in the battlefield are chaotic?
A. Sure. Yes, sir.

Q. Would you agree with me that there's a certain fog of war?
A. Certainly agree. Yes, sir.

Q. And would you agree that sometimes you can sense a threat? Maybe it's there, maybe it's not. But you can sense it when you're there in the field at that time?
A. To a certain degree, sir.

Q. Have you ever been in situations -- would you agree that sometimes Marines might make mistakes when they sense that there's a threat?
A. Sure. I mean, mistakes are always made, sir.

Q. But that the sense of threat could still be there underlying it?
A. Yeah. I guess, sir.

Q. Okay. Why don't you sit down, First Sergeant.
A. Yes, sir.

[The defense counsel conferred.]

Q. Alright, First Sergeant.
A. Yes, sir.

Q. First off, I want to focus you a little bit on the rules of engagement at the time, as you understood them at the time.
A. Yes, sir.

Q. What kind of training did you -- we've talked about this before, but did you receive a PowerPoint at the time that talked through some different scenarios that you might encounter out in the field?
A. I don't remember if I got a PowerPoint, sir. I know that we got training back here up at Mateo and then we got training once we were in Kuwait. The CFLIK. The commander -- the theater commander gave classes, sir,

and then a lawyer also right after to echo -- a little more -- not scenario based, but a little more specific guidance maybe.

Q. Do you remember who that -- who the lawyer was?

A. I don't know, sir.

Q. Would you agree that during this time frame in Iraq, it was a pretty fluid battle environment in the sense that the enemy was adopting new TTPs fairly regularly?

A. Sure. [inaudible]

Q. Do you know when the vehicle borne IEDs began to be used by the Iraqis?

A. I don't know, sir. I mean, it was prior to this, but I don't know.

Q. Okay. And you mentioned you've been on six different deployments. How many of those were in Iraq?

A. I only have one in Iraq, sir.

Q. And during -- that was during this time frame?

A. Yes, sir.

Q. You've talked a little bit about kind of what you saw at the scene and how you got kind of a bad feeling about it. What were the specific things that you saw that you -- that didn't sit well with you?

A. The corpsman thing bothered me, because there was a climate thing. I wouldn't expect that. I mean that's not what corpsman do. When I first came up on the scene, something that I'd seen that did not make sense to me as an infantryman was that they had Cobras and they had already a lume up at the same time. Which to me made absolutely no sense because that Cobra's going to be flying on nods and he's not going to be able to see anything because there's a lume in the air. So you kind of go with one or the other and they had both up pretty fairly close to each other.

Q. Would you say then -- were those decisions being made by the convoy commander or being made by somebody else?

A. I don't know. I know how we ran it, sir, but I don't know how.

- Q. So would you say that roughly you felt like the tactical decisions that were being made on the site there, the battle decisions that were being made were not the decisions that you would of made?
- A. Absolutely, sir.
- Q. And how did that make you feel?
- A. Indifferent. I mean, I didn't -- it --
- Q. Did it bother you what they were doing?
- A. No. Absolutely not, sir. I mean, it didn't bother me. Because everybody does everything different in the infantry. It didn't bother me, no, sir.
- Q. Is there a presumption in the Marine Corps that the -- that the small unit leader, the commander, needs to have the flexibility, the freedom to make decisions he needs to as the threats arise?
- A. Sure. Man on the ground. Yes, sir.
- Q. So specifically the things that kind of sat wrong with you were the corpsman situation, the Cobras, and the already a lume. Were there other things as well?
- A. The staff NCO thing. That kind of bothered me if we're talking about things that bothered me. That bothered me. There was a situation where a lot of people had got shot. The unit seemed to be pretty keyed up and I heard that there was a staff NCO there that I'd never seen that, from what I understand, never got out of the truck or got out of the vehicle.
- Q. Who was the staff NCO? Let's talk about that a little bit, because I don't remember --
- A. I believe it was First Sergeant Beall.
- Q. Okay. And what -- tell us more about why that bothered you and what was going on with that?
- A. Because it -- with the stuff that I had seen, you know, some of the -- the weird, different, tactical decisions being made with some of the questionable people or questionable decisions being made as to who got shot and who didn't, I would fully expect and demand that a staff NCO get out there and -- I mean, that's what we do as staff NCOs is supervise. And I didn't see that. And the whole time I was there, I never seen him out of the vehicle and that bothered me.

Q. Did you know him from before at all?
A. Never. No, sir.

Q. And did you know him from after?
A. No.

Q. So that was your primary interaction with him, would you say?
A. I didn't have any interaction.

Q. Did you speak with him while you were on site?
A. No.

Q. Okay.
A. He never got out of the vehicle. I looked for him.

Q. How did you know that he was in the vehicle?
A. Because I asked. I said -- I knew that Major Card now was the on-scene commander. But there was some issues -- nothing big but, you know, picking the stuff up off the ground. Some of the Marines being pretty keyed up, you know, like still, you know, laying across the vehicle. Like, calm down a little bit. And I was going to look for that staff NCO to impart a little bit of leadership. I didn't want to jump and stick my hand in his refrigerator as another staff NCO in a different unit. And I couldn't find him. They said, Oh, he's in the C-square but I didn't --

Q. Ultimately, do you know what he was doing in the C-square or do you know why he chose to be there?
A. No, I don't know, sir.

Q. No idea?
A. I have no idea, sir.

Q. Did you -- ultimately you did start making some decisions there and directing folks or at least telling folks to do different things?
A. Yes, sir.

Q. Was that with your unit or was that also with the jump Marines?
A. That was my unit, sir.

Q. The -- so we've talked through the corpsman issue bothered you, the Cobras and the already a luma, the staff NCO situation. Could it be possible that First Sergeant Beall, then Gunnery Sergeant Beall, was in that vehicle for a good reason --

A. Sure.

Q. -- that you didn't know about?

A. Sure.

Q. Okay. Could it be possible that he needed to maintain comms back with --

A. Yes, sir.

Q. Okay. Was there -- what other -- what other things that evening were --

A. Well, civilian casualties, sir. I mean, in an environment like that, you know, kind of the way the Muslim world lives from what I've been taught is, you know, it's an eye for an eye. And with the casualties that I've seen, I didn't look forward to fighting for the next I don't know how long because of that.

Q. And what -- how did you know that all those individuals -- how did you know that there were no weapons there? Like, as you mentioned before, you come on the site 15 minutes --

A. Yes, sir.

Q. -- later at least. Did you know if the Marines had cleared any weapons --

A. No, sir.

Q. -- or [inaudible]? How --

A. No --

Q. Sorry. Go on. I apologize.

A. Sorry. I don't know if there were any on scene. I never said that. My Marines searched the vehicles, didn't find any. I don't know what happened prior to me getting there, sir.

Q. Did you -- and how many Marines were there on scene would you say?

A. From LAVs or from both, sir?

Q. Everyone who was there. You're standing in the middle of this chaotic scene. How many folks are there?
A. Maybe 60, sir.

Q. Maybe 60 folks?
A. Maybe.

Q. And --
A. That's before MAP-2 got there, sir.

Q. And were units coming in and leaving and going in and out or was it --
A. Just MAP-2 in my time, sir. Golf Company had left right before I got there.

Q. So when you got there, Golf Company's already gone?
A. Yes, sir.

Q. Okay. So -- and that rough estimate, about 60 folks there?
A. Yes, sir.

Q. Do you know if anyone from Golf Company did a search for weapons or took any weapons or anything like that?
A. No, sir.

Q. Do you know if anyone ended up clearing any of the buildings around to try and see if there were enemy in some of those buildings or anything?
A. We searched the ones to the southeast, right to the southeast there. They were all under construction, so we walked through all those. But it was dark outside. We did not -- we searched around the compounds for -- in the direction of the hospital, in the direction of the alley. We did not go into the homes because it was dark. And after seeing that we didn't see any brass anywhere else, we didn't want to go in there and pick that hornet's nest.

Q. Was there an attack that night?
A. An IED attack, yes, sir.

Q. And where did that IED -- where did that IED attack come from? What kind of IED attack was it?
A. I mean, I don't know, sir. I would think that it was -- at that time we were getting hit with -- not command detonated but remote detonated IED. That's what I would assume it to be. I don't know.

Q. Where do you think that the -- where do you think that the trigger man was for the IED?

A. In my experience, absolutely no idea.

Q. Okay. So -- but you would agree with me that there was a threat that evening, there was an attack that evening, there was a trigger man that evening who wanted to cause harm to American troops?

A. Sure. Yes, sir.

Q. There might have been others who were working with him or there might have been other insurgents on the scene?

A. Sure. Could have been, sir. I don't know.

Q. Would you agree that in general the commander on the scene has to assess the threats that he perceives and act in accordance with his judgment and what he's been trained in the Marine Corps?

A. Yes, sir.

Q. Was there anything else that kind of rubbed you the wrong way that evening? We talked about the casualties, we talked about the corpsman, the Cobra and the ROE and the staff NCO.

A. I kind of mentioned it with the corpsman, but there was a little bit of climate issues that -- little things that I seen. You know, just Marines that were -- you know, we're well past the dehumanizing the bad guys, but there was a little bit of issues like that, sir. Just, oh, I fucking killed that guy. Pardon my language. Stuff like that, sir, that -- it's incumbent. It's a huge --

Q. Did you hear anyone say anything like that that night?

A. Yes, sir.

Q. Okay. And who was it who said that? Do you remember specifically what was said?

A. No. I know that he was right beside the HMMWV that -- where Major Card was at, but I don't know what his name was.

Q. And he said I fucking killed that guy or something to that effect?

A. Yeah. He said something to that effect.

Q. Sure.
A. You know, I don't know who he was pointing at. I don't know who he was talking to or talking about or even to. He wasn't talking to me.

Q. And was that -- was that Major Card who said that --
A. No, no, no, no.

Q. -- or somebody else? It was another Marine?
A. It was.

Q. Did you see who he was pointing towards or directing --
A. No.

Q. So he's near the -- where was he? Where was that Marine located?
A. He was front left of the HMMWV, sir.

Q. So he's over here?
A. Like, front left. This is the front left of the HMMWV. He was --

Q. Okay. Got it. Was he near some of the casualties you had seen on the side of the road?
A. He was facing basically up the alley, sir. Kind of to the -- almost due west. West, northwest.

Q. Okay. But you didn't -- did you know what he was talking about? Could he have been talking about the dead Iraqi that you saw?
A. No. I -- sure. I don't know what he was talking about, sir. I just took it as, you know, kind of posturing that young Marines like to do when they shoot their weapon.

Q. Um-hm.
A. But, I mean, yes, sir.

Q. You talked about the brass that you saw before and the fact that there was a lot. How much would you say that there was and where was it located?
A. There was a bunch by the HMMWV. There was a bunch by the LAV that was right behind the HMMWV. It's to my -- I don't know. It was enough that when I was walking, I would feel, like, my feet shuffling. Like sliding over the brass. There was quite a bit of brass there.

Q. What kind of brass was it?
A. It was kind of hard to tell. I mean, I didn't stop and look and pick it up. I certainly -- I mean, I think it was 5.56 if I had to guess.

Q. How much -- and how much visibility was there when you were looking for the brass? Was it good visibility at that point?
A. Sure. Well, there was a decent amount. I mean, there were some street lights there. But the fact of the matter is, is I just -- I didn't stop and try to count or even really care to look at it. You know, I mean, I drew a conclusion from the fact there was a bunch.

Q. Was the individual who said that he'd killed that guy, was that the machine gun operator or was that somebody else?
A. It was later when I heard him say that. He could of got off the gun, but it's not very reasonable I don't think, sir.

Q. Okay.
A. And with that, I never seen who was on the gun, sir, so I don't know.

DC (Capt Baehr): Okay. I don't have any further questions right now. Thank you, First Sergeant.

WIT: Ooh-rah, sir.

IO: Let me just interject a couple of questions here.

DC (Capt Baehr): Oh, yes. First Sergeant, excuse me.

Excuse me, sir.

Could you just write your name on the overlay so we're identifying who's generated this one?

WIT: Yes, sir.

IO: And if you can date it, First Sergeant.

WIT: Yes, sir.

EXAMINATION BY THE COURT

Questions by the investigating officer:

- Q. First Sergeant, looking at your NCIS statement here.
A. Yes, sir.
- Q. This is what it states: When I arrived at the jump's HMMWV, I met Captain Card.
A. Yes, sir.
- Q. He explained that there had been an ambush and it had been initiated by an IED.

A. And that's affirmative?
A. Yes, sir.
- Q. All right. He then stated that as soon as the IED hit, he jumped out of his vehicle and that there was a man closing with him and he shot him. Or words to that effect.
A. Yes, sir.
- Q. The man that you saw shot in the chest and face lying on the sidewalk, do you know if that's the individual that Major Card shot?
A. I don't know, sir.
- Q. He never indicated who he had shot just that he shot someone?
A. That's correct, sir.
- Q. The man shot through the chest and face, was he dead?
A. He was, sir.
- Q. How do you know?
A. He wasn't moving, no more blood coming out. When I got there, I mean, there was a pool but nothing else running. No movement. Sternum rubbed him. Nothing, sir.
- Q. I think your statement talks about the back of his head was open?
A. Yes, sir. There was some distortion, sir.

Q. Your statement says that initially you thought he had been shot by a machine gun?

A. To be honest with you, sir, I don't remember writing that.

Q. Let me hand you Page 4 and 5 here. I'll just point your attention to it just so you can read it. See if it refreshes your recollection there. On Page 4 of 5, second paragraph down, does that refresh your recollection at all?

A. It does, sir. I don't think I meant -- and I know what I wrote, but I don't think I meant with a machine gun. I think I meant with the bigger rounds, sir.

Q. Okay.

A. Because there was a decent amount of damage.

Q. I believe you testified earlier that you believe it was small arms fire.

A. I believe so, sir.

Q. The wound to the head.

A. Yes, sir.

Q. That same individual had a -- some type of wound to his chest? There was some blood?

A. Yes, sir.

Q. Do you know if that was a -- what type of wound that was? IED? A shot of some kind?

A. I think it was small arms, sir. I mean, he didn't really have any distinct disfiguration.

Q. Was it a hole there?

A. I didn't see, sir. I mean, there was a lot of blood.

Q. The male with the hole in the head and the blood in the chest, what was his approximate age? And it was a male?

A. It was, sir.

Q. Approximate age?

A. Forty-five or fifty, maybe, sir.

Q. What was the lighting condition at the time?

A. It was dark outside, sir, but there were street lights -- there were street lights, so I could see decent enough.

Q. The other dead bodies in that area, how many dead bodies were there? Not including the Marine.

A. At least four, sir. I can think of four for sure.

Q. You got the guy on the sidewalk?

A. Yeah. Four -- four besides him, sir. So five.

Q. The guy on the sidewalk. The guy in the --

A. The vehicle that I passed, sir, coming from --

Q. All right.

A. -- heading to the north. There were two in there.

Q. Okay.

A. I got a report that there was one in Vehicle Number 2. The one that was headed south towards the intersection there.

Q. Okay.

A. And then there was the gentleman who was in the white IP Toyota Hilux truck right behind the wall who had been shot through the windshield, sir.

Q. Was that either an ambulance or a police vehicle?

A. It was a police vehicle, sir.

Q. Police vehicle. Were there any other dead bodies outside of vehicles except for the guy on the sidewalk?

A. No, sir.

Q. Were all of the deceased bodies still in the vehicles as of the time that you arrived on scene or had they been removed?

A. They were all there, sir, except for the gentleman on the sidewalk.

Q. All right. So they were all actually still in the vehicles?

A. Yes, sir.

Q. The wounded gentleman who came to life after you thought he was deceased.

A. Yes, sir.

Q. He had told you -- or I guess through an interpreter -- that he had come from the vehicle?

A. Yes, sir.

Q. The one with the doors open?
A. The doors open.

Q. Do you know where the deceased individual -- the one on the sidewalk -- where he came from?
A. He -- the gentleman who was shot who came alive, sir, said that he was with that man. I don't know where they were coming from, but he came from the vehicle, sir.

Q. So you think the deceased came at some point from the vehicle?
A. Yes, sir.

Q. If the deceased gentleman on the sidewalk had been moved -- I believe you stated earlier you think there should have been a blood trail of some kind?
A. It would be reasonable, sir.

Q. Would you have seen that based on the lighting condition?
A. On lighting conditions, I think -- I think the bigger problem would be the ground, sir, because it was -- you know, some weeds kind of grown up. I mean, maybe it would of got pushed down. But as far as a blood trail, we probably wouldn't of been able to see that except until he got on the concrete. But he was laying on it, so I wouldn't of known. If that makes any sense, sir.

Q. So it's possible he could have been moved, you couldn't see a blood trail, but that, in your mind, is not definitive that he wasn't moved?
A. Sure. Yes, sir.

IO: Counsel, any additional questions in light of mine?
Trial counsel?

GC (Capt Gordon): Yes, sir. Thank you.

REDIRECT EXAMINATION

Questions by the government:

Q. Did you happen to see what weapon Major Card was armed with?
A. I probably did, sir, but I don't remember.

Q. Did you see a pistol on him?

A. I honestly -- I don't remember, sir.

Q. All right. Now as far as -- as far as the vehicle that we're talking about, your Marines searched the vehicle approximately 15 minutes -- 15, 20 minutes later?

A. Probably 20 minutes. Yes, sir.

Q. And what did they find?

A. Nothing, sir.

Q. And you believe that those -- that the two gentlemen, the one victim and then the one that was playing possum, that both those two came out of that same vehicle?

A. Yes, sir.

Q. Okay. Can you come up here and show me which vehicle you're talking about?

A. It's this vehicle right here, sir. And I tightened this up a bit. I wish I would have spread it out a little more. But this is the vehicle he came out of and he kind of headed more straight to the road at that angle.

Q. Okay.

A. But this is the vehicle right here.

Q. So Vehicle Number 3?

A. Yes, sir.

Q. Or the point marked Number 3?

A. Yes, sir.

Q. All right. You can have a seat.

A. [The witness did as directed.]

Q. And how far -- how far away from the vehicle was the one that you did the sternum check with that was alive?

A. Sixty meters, probably, sir. 50, 60 meters.

Q. Did you -- did you find any evidence that there was or have any reason to believe that there was any hostile intent with either the passengers that came out of that vehicle?

A. Not from the time that I was there, sir.

Q. Why do you say that?

A. Well, we didn't find any weapons, didn't find any initiation devices. I mean, we didn't find anything, sir. There's no reason -- I mean, there was nothing on

them. So when I got there -- I mean, we didn't find anything, sir.

Q. Did that vehicle get hit in the blast?

A. It did, sir. It took a bit of shrapnel. Yes, it did.

Q. And why do you say that?

A. Because it had some shrapnel. It looked like shrapnel in it. And then from there -- you can see where the road kind of curves around. That vehicle drove straight off the road. So I wasn't there when it happened, but I could see the trail where that thing had ran off the road into that field.

Q. So what's that lead you to believe?

A. I don't know what that guy would have been trying to accomplish other than trying not to wreck his car. I mean, that's just -- you got -- you know, he lost control for whatever reason -- the shrapnel, whatever it may be -- and it pushed him off the road. Or he ran off the road. I mean, I just didn't see any intent there, sir.

Q. Can you describe in more detail if you can what the vehicle looked like? I understand it got hit with shrapnel.

A. Yeah. I mean, it had some small holes. It had jagged holes, so it didn't look like bullet holes, which, you know, we would see in Ramadi quite a bit here and there. But more jagged, odd-shaped holes. Decent size. There was some metal that was a bit peeled back in a couple of places. Nothing big, but, you know, smaller pieces where it had been peeled back. That's why I thought that it had been hit by shrapnel.

Q. Did the damage sustained by the vehicle, would it be reasonable to believe that the passengers were injured in that -- in the blast?

A. It's possible. I don't think that's the case, but it's possible, sir.

Q. If a -- one of the passengers was wounded --

A. Yes, sir.

Q. -- coming out of the vehicle or by the time he was laying on the ground, disregarding any shot to the head, how would you -- how would you suspect that he became injured?

A. The gentleman who died, sir?

Q. Yes.

A. How do I think he got the initial injury?

Q. Yes.

A. Well, clearly -- well, I believe that he was shot. If I had to guess, I would think that he got out of the vehicle after he ran off the road after the blast and somebody shot him. That's my guess based on what's a guy without a weapon going to do to an LAV? Bang on it? I don't understand what he planned on doing.

Q. And when you were arrived on scene, the Marines of the jump team, were they set up in any sort of security? Were they providing for their security?

A. They were, sir.

Q. How?

A. They were set up generally around the vehicles. And when I say generally, I mean I didn't see anybody off the road. Maybe the south off the road a couple of feet. But generally, everybody was kind of around the vehicles, set up, ready for whoever was coming to come.

Q. Did you notice if anyone had a -- wherever the deceased gentleman from that vehicle was -- that someone had that sector of fire for security?

A. No, sir.

Q. You couldn't tell?

A. No.

Q. Would you expect that it would be covered?

A. Oh, sure. It's an open field, sir. I mean, if they thought the fire was coming from that way, because it's only reasonable.

Q. Would it be -- this is probably a rhetorical question -- pretty easy to see that there's big guns fixed on you if you're -- if you're that person -- one of those folks coming out of the vehicle?

A. Absolutely, sir.

Q. When Major Card told you that he -- that he killed someone, did he -- he didn't point to any particular victim?

A. No, sir.

Q. So at that point you didn't know exactly who he was talking about?

A. No, sir.

IO: Let me clarify, you used the word "kill."

Did he say "kill" or "shot?"

WIT: He said he shot somebody, sir.

GC (Capt Gordon): Thank you, sir.

Q. He didn't indicate which person he shot?

A. I don't believe so, sir.

Q. I guess, bottom line, other than the IED -- what's your -- what are your overall thoughts on the enemy threat level of this engagement or alleged engagement?

A. What do you mean, sir? Like, do I believe that this happened basically? I mean, is that what you're asking, sir?

Q. Beyond the IED blast, do you believe that there was any -- any further enemy threat, any hostile acts, any engagements?

A. No. No, sir.

GC (Capt Gordon): Thank you, sir. I have no further questions.

IO: Defense counsel?

CC (Mr. Faraj): I'm going to ask a few follow-ups, Your Honor.

REXCROSS-EXAMINATION

Questions by the civilian counsel:

Q. First Sergeant, you were asked several questions about hostile intent.

A. Yes, sir.

Q. Are you ever able to determine if there is hostile intent from a dead body?

A. From a dead body, sir?

Q. Yeah.

A. I don't understand the question, sir.

Q. Well, the question goes to the intent. We form intent in our minds and we behave on it, right?

A. Yes, sir.

Q. Okay. So are you ever able to discover the intent of a person just from looking at a dead body?

A. I'm sorry. I'm confused. I mean, there can't be intent if the guy's dead.

Q. Okay.

A. Right, sir?

Q. What's that?

A. There can't be an intent.

Q. Exactly.

A. Okay.

Q. All right. And when you arrived, Golf Company had already come and gone?

A. Yes, sir.

Q. They had already responded to the blast, evacuated the casualties because there was some Marines that were injured that were still alive, right?

A. Yes, sir.

Q. All right. They loaded them up on vehicles. You don't know if they conducted a search, correct?

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

Q. All right. And just like you took some immediate actions when you arrived on the scene, you would expect that the leaders of that unit would have taken the necessary immediate actions when they arrived on that scene?

A. No, sir. I wouldn't of, sir.

Q. From Golf Company?

A. Yes, sir.

Q. You doubt their leadership?

A. No, I don't doubt their leadership a bit, sir. I doubt that they would have searched the area.

Q. I'm not talking about search the area. I'm talking they would have responded -- searching the area is not necessarily the only immediate action. They would of

responded to the tactical situation as they saw it, correct?

A. To a certain degree.

Q. Okay.

A. Yes, sir.

Q. Now, you said the vehicle had shrapnel -- appeared to have had been hit by shrapnel? You have to answer because of the recording.

A. Yes, sir. I'm sorry. Yes, sir.

Q. Do you know when it took that shrapnel?

A. Absolutely no idea, sir.

Q. You have no idea if it had shrapnel before or after?

A. It could have been before, sir.

Q. And you've already testified that it wasn't uncommon or it was common, in other words, that vehicles around Ramadi would have gunshot holes in them?

A. Yes, sir.

Q. Now, you made some assumptions about the tactical situation or the tactical situation as it developed that day. And I'm specifically referring to that there's no reason after the IED to assume that they would get attacked by maneuver or by intense, sort of, small arms fire.

A. Yeah. I don't believe that -- I mean, that's not necessarily going to happen.

Q. Right.

A. Yes, sir.

Q. You do agree with me that when American forces went into Iraq in 2003, there was no such thing as an IED?

A. Yes, sir.

Q. And there was no such thing as a VBIED?

A. Yes, sir.

Q. Correct?

A. Correct.

Q. So those tactical, sort of -- those TTPs developed in response to some things that the Marines were doing or the Army was doing on the ground to counter whatever

defensive measures that the -- that our forces were taking or whatever offensive measures that they were taking?

A. Correct, sir.

Q. All right. And so, as you sit here today presented with that situation, that day, as a leader you would expect in order to protect your troops, you would have to see perhaps ghosts even where none -- where you shouldn't be seeing any? Does that question make sense? I mean, you need to anticipate possible threats even though they weren't common at the time?

A. Sure. Yes, sir.

Q. All right. Now, let's talk about rules of engagement and I'm going to present a scenario to you. An IED goes off and a vehicle approaches your convoy. You can't see due to glare, due to direction, you can't see what's going on inside the vehicle. And we already know that VBIED are commonplace.

A. Yes, sir.

Q. Would you -- not necessarily you --

A. Sure.

Q. But would you discipline one of your Marines for engaging that vehicle if that Marine had just been in an IED and saw that vehicle approaching him?

A. For my unit, sir, it depends on where they engaged the vehicle. We had heavy machine guns.

Q. Very good.

A. We ran into situations that way. We shoot the engine.

Q. So it's situationally dependent, right?

A. Yes, sir.

Q. A vehicle approaches you -- you train your Marines, but then you leave the decision to that Marine?

A. Yes, sir.

Q. Based on what that Marine's observing?

A. Yes, sir.

Q. And as a general rule, we assume that all Marines follow orders, correct?

A. Yes, sir.

Q. And they try to do what's right?
A. Sure. Yes, sir.

Q. And so we give them the benefit of the doubt when they're presented with a difficult situation after a blast based on the training we give them?
A. And based on the law, sir.

Q. Based on the law. Well, that's the training, correct? You agree with me that we train them on the law?
A. Yes, sir.

Q. Right?
A. Yes, sir.

Q. And sometimes if -- sometimes it's not always the right decision, but we only know that on -- in hindsight, correct?
A. Correct, sir.

Q. So the Iraqi police vehicle, had it had weapons, you might have a completely different opinion right now, correct?
A. Possibly, sir.

Q. But you don't know what's going on in their minds at that time?
A. Sure.

Q. You say you assumed that that vehicle ran off the road after the blast?
A. Yes, sir.

Q. And the vehicle I'm referring to is Vehicle 3.
A. Yes, sir.

Q. How far from the road was it?
A. It's kind of hard to tell on that map. I would guess --

Q. You don't need to look at the map?
A. Well, I'm looking at the imagery, sir, trying to get a --

Q. I'm sorry. Okay. Well, I prefer you don't look at any -- just from memory. Where do you think it was?
A. From the closest point of the road?

Q. Well, you made some assumptions, that it ran off the

road.

A. Correct. Yes, sir.

Q. I'm assuming that it had a trail.

A. It did.

Q. Okay.

A. And it went a ways. Yes, sir. Probably 100 meters.

Q. All right. Based on the terrain in that field, does it make sense to you that a vehicle would after a blast maybe the -- for whatever reason the driver continues to go, that a vehicle would drive 100 meters without stopping after that kind of blast?

A. I don't know. I really don't know. I mean, it was a pretty flat, open field. I don't know.

Q. Do you know why they stopped after 100 meters?

A. I do not know, sir.

Q. Do you know why they got out of their vehicle after 100 meters?

A. I do not know, sir.

Q. All right. From the point they began to leave the road, that at that point how far away was that from the lead LAV that got hit?

A. How far was the vehicle from the --

Q. At the point of the blast where they began to leave the road, you're assuming that they began to leave the road after the IED blast?

A. Yes, sir.

Q. How far away was that from the blast site?

A. Probably a couple hundred meters, sir. 200 meters.

Q. Okay. Based on your experience, is that close enough to initiate a device?

A. Well, sure it is. I mean, you -- yes, sir.

Q. All right. And so we don't know at the time the blast went off, do you know if that vehicle was stopped or it was moving?

A. I don't know, sir.

Q. Okay. You don't know if it began to move after the blast?

A. I got no idea.

Q. All right. Again, I want you to make some assumptions based on what your understanding of the ROEs. A blast goes off, Marines see a vehicle begin to run away. Can you engage?

A. No, sir.

Q. Why not?

A. Because it's -- the way we were taught in my battalion is there has to be something that says that they mean to harm you.

Q. Okay. Now, when did you learn that?

A. Before we went, sir. Before we went to Iraq.

Q. Did the rules of engagement ever change after -- after 2004?

A. Probably, sir. I didn't go back out. I don't know.

Q. All right. You never got briefed again?

A. No, because we get specific briefs based on the situation; where we're going.

Q. All right. Before you left for Iraq, do you remember where you were briefed on your ROEs?

A. Yes, sir. In Kuwait. Camp Victory.

Q. Okay. And you were briefed by a judge advocate?

A. We were briefed by a judge advocate and then the battalion had -- everybody called him "the judge" -- had another judge advocate or staff -- yeah -- a judge advocate with us, and then he kind of spoke a bit more on it.

Q. Gave you some scenarios?

A. Not necessarily scenarios, but just more -- maybe scenarios. Just not big scenarios. Very specific.

Q. All right. Any scenarios where, you know, you take an IED and a vehicle either drives to you or begins to leave the scene quickly? You don't remember anything about that?

A. No, sir. Because we -- IEDs really got big after we were in country, sir.

Q. Okay. Fair enough. Thank you for clarifying that.

A. Yes, sir.

Q. Now you said one of the things that bothered you -- First Sergeant, what I'd like you to do, please, is go ahead and flip that overlay, go to another sheet, and then I want you to draw -- sort of focus us in. Almost like a focused in image -- the road, the sidewalk.

A. Yes, sir.

Q. -- where the body was, and where you believe -- let me see if I can -- what I'm trying to do here is -- sort of a bigger picture of No Name.

A. Yes, sir.

Q. Where the body lay, where the vehicle was, and where you believe -- I don't think you said it was dragged. But you thought if it was dragged, there might have been a blood trail?

A. I don't know, sir.

Q. Okay. Could you show us that? Could you show us and give us some distances? I know it's not going to be exact, but give us estimates of distances.

A. Sure. So you want to know basically where the vehicle was at. Where the --

Q. Go ahead and draw No Name for me as you remember it.

A. [The witness did as directed.]

Q. Okay. Let's make it sort of a -- you know, two lines so we can see the road.

A. And that's probably a little more curved than it needs to be.

Q. Okay. And then the sidewalk where you saw the body.

A. Here's the sidewalk.

Q. Okay. Where's the IED blast site? Just put it next to the IED blast site. Write IED next to it.

A. [The witness did as directed.]

Q. Where's the HMMWV, the C-2?

A. [The witness did as directed.]

Q. All right. And where's the body?

A. [The witness did as directed.]

Q. And where's the vehicle?

A. [The witness did as directed.]

Q. What is the distance from the vehicle to the body?
A. Probably about 40 meters, maybe, sir.

Q. Okay.
A. Forty or fifty meters.

Q. Just put a 40 next to that.
A. [The witness did as directed.]

Q. Where was the man whose sternum you rubbed?
A. About right here.

Q. And he told you that he came from this vehicle?
A. Yes, sir.

Q. And the vehicle I'm referring to is an -- let's mark this three. It's the same as the one on the other diagram; is that correct?
A. I believe it is, sir.

Q. Yeah. The small "x" is the man who's sternum you rubbed?
A. Yes, sir.

Q. All right. And the little stick figure is the man who had a defect to the face?
A. Yes, sir. And the reason I say -- not to interject, but the reason I couldn't tell if he was drug onto the concrete because his body was laying across it. His head was towards the road. Does that make any sense?

Q. Okay. Yes.
How far from the sidewalk -- well, is there any space between the sidewalk and where the grass begins or does the grass come right up to the sidewalk?
A. It actually drops off just a little bit. And to be honest with you, I don't know if it does there. I know in this area it kind of drops off. There's some problems -- there was some problems under the concrete but it should start right there.
Does that make any sense?

Q. Okay. I know --
A. And part of this area started right at the edge of the concrete and then -- for a period. And I don't know where it started but somewhere in here, there was a

drop-off of maybe this far off the edge of the concrete.

Q. Okay. Thank you.

A. Yes, sir.

Q. Now, you said there was blood on the upper torso --

A. Yes, sir.

Q. -- portion; is that correct?

A. That's correct, sir.

Q. Was it dark blood like he bled from there or was it sort of dripping blood?

A. No, I think that he bled from there.

Q. Okay. Do you believe that given the area of the upper torso, that those wounds could have resulted in a man's death?

A. Possibly. I don't know.

Q. Could you tell? Were there holes? Were there defects in the shirt that he wore?

A. I couldn't tell where the holes were at, sir. All I know is that he had a -- like, one, like spot. One solid spot. That's why I assume that he was shot. And somewhere in that blood spot. I don't know where it was specifically, sir.

IO: First Sergeant, how big was the blood spot? And if you would just point on your body was centered.

[The witness did as directed.]

IO: You're basically looking center mass in the middle of the chest.

WIT: Yes. Center mass. I would say maybe 12 inches. A little bit bigger than that maybe, sir.

IO: Thank you.

Questions by the civilian counsel (continued):

Q. Okay. Do you recall seeing the pattern of the blood?

A. What do you mean, sir?

Q. Was it just a big spot or was it --

A. It was a big spot.

Q. -- dripping down -- was it sort of a spot that's dripping? You see what I'm saying? Was it a tear shape or was it just a big round spot or did it lean to one side or another?

A. It didn't lean because I remember seeing both sides, but I don't know if it was a tear shape or not, sir.

Q. Okay. Was there any dirt on the clothing he was wearing like from falling forward or on his face?

A. I don't remember, sir.

Q. You don't remember because -- you remember the -- I guess, yes, no, or I just don't remember if he did or not.

A. I don't remember because I didn't look.

Q. Okay. So there could have been. You just don't recall?

A. Sure.

Q. Got it. I understand. Thank you.

Now, you said -- I heard you say a couple things about his face --

A. Yes, sir.

Q. And I'd like you to describe it. Because you said there was a defect in it.

A. Yes, sir.

Q. Was that like a birth defect --

A. No, sir.

Q. -- or was it from the wound?

A. From the wound, sir.

Q. Please describe with as much detail as possible what the face looked like when you saw it?

A. I can't based on -- I remember that there was, you know, some skin sticking up but I didn't, like, get down and look at the guy. All I know is when I seen him, there was some -- you know, it was a bit deformed. Not from birth. From the injury. You know, I mean, where there was -- there was a hole there. I mean, you could tell that he had been hit in the face.

Q. Okay. Was the face collapsed?

A. No, sir.

- Q. So the facial structure was still there. So when you say deformed, it is just a deformity from the bullet hole or was there more deformity to the face?
- A. As I remember I would say it's from the bullet hole -- almost like a broken nose. Like, you know, stuff's just kind of not where it should be.
- Q. Okay.
- A. Skin's broken. That kind of thing, sir.
- Q. Okay. If you were to give me the size of the wound, how would you describe it? You can use coins as a -- or diameter and centimeters or whatever.
- A. I don't know, sir. And the reason I don't know is because -- you know, with that, when he got hit in the face and there was a bit of deformity, I didn't get down and see what the hole looked like. I knew that there was something there. The guy had been -- you know, there was some blood. So I knew that there was a hole, but I don't know how big it was, sir.
- Q. Let's talk about the blood. Was there a lot of blood on the front or just sort of -- because there was a wound there?
- A. That's it, sir. I mean, there was a little bit pooled on his face, but that's it.
- Q. Um-hmm. And do you -- as you sit here today, do you remember any brain matter or blood underneath the head?
- A. I know that there was blood.
- Q. Okay.
- A. And I know that -- I remember -- I remember -- I don't know if it was a skin flap. I don't know. I didn't pick the guy up. But there was certainly at least some hair that wasn't in the right spot.
- Q. Okay.
- A. You know, I don't know if maybe a piece of skin had -- a skin flap maybe. I'm not sure. But there was a bit of blood under his head, sir.
- Q. Okay. When you say "a bit," I want you to describe the size of the pool underneath the head if there's a pool. I don't want to say pool. What -- describe the blood underneath the head.
- A. I would say probably the best way to describe it as I remember is probably about the size of my cover. Does

that make any sense? Like my --

Q. Yes.

A. You know, maybe this big probably.

Q. Okay.

A. And that's -- it's some years ago and that's the best I remember.

Q. Maybe 8 inches? 10 inches?

A. Something like that, probably. Yes, sir.

Q. Okay. The First Sergeant held up his hand and put his two hands together almost -- didn't quite bring them together but sort of an 8- to 10-inch distance --

Do you all agree?

[The government counsel nodded her head.]

IO: That's fair, yes.

CC (Mr. Faraj): All right.

-- to give us the size of the blood underneath the head.

Questions by the civilian counsel (continued):

Q. Can you tell the color of the blood at that time?

A. I couldn't, sir. There were street lights, but it was very difficult to tell, you know, much other than I could see it was blood.

Q. Did it seem to be still in liquified form or did it appear to be drying?

A. It didn't really look dry, but it wasn't running anymore. I mean, it -- I didn't really see any movement in it.

Q. It didn't look dry because there's a sheen to it of some sort?

A. Yeah. I mean, it wasn't -- you know, it wasn't -- it didn't look like it was starting to set up. It still looked like blood, but it wasn't getting any bigger.

Q. Got it. Okay.

A. Yes, sir.

Q. But you can't tell me if it was dry or wet at the time?
A. No, sir.

Q. It just seemed to be stopped?
A. Correct, sir.

Q. Okay. Did it seem to be leaning one way or the other or just sort of a pool?
A. Just a pool, sir.

Q. At about an 8- to 10-inch pool?
A. Yes, sir.

Q. You don't have an opinion and I don't think you would about what the time as to when the -- I'm assuming they're bullet wounds to the chest as compared to the wounds to the head. You don't know if they were at the same -- you can't tell if they were at the same time or at different times?
A. No idea, sir.

Q. Do you know what stippling is?
A. I do not know that term, sir.

Q. Was there anything else on the wound that appeared to be out of the ordinary from any other wounds you've seen?
A. No, sir.

Q. As you sit here nothing jumps out at you with respect to the deformity on the face?
A. No, sir. I mean, I'd seen a couple at that point, of who had been shot in the face. And he kind of looked the same.

Q. Okay. Now, First Sergeant, you said one of the things that concerned you was the location of -- no. I'm sorry -- was the air -- the aircraft and the illumine up in the sky at the same time?
A. Yes, sir.

Q. And you were in a weapons company?
A. I was, sir.

Q. What is the job of your company commander in Weapons Company?
A. Generally for us, he was a maneuver element commander.

Q. He was what?

A. He was a maneuver company commander.

Q. Are you familiar with the term fire support coordinator?
A. Absolutely, sir.

Q. Okay. What is a fire support coordinator do?
A. He distributes -- effectively maximizes the support throughout the battalion's AO for all nonorganic fires -- artillery, air, everything.

Q. Anything else?
A. That's about it, sir, I think.

CC (Mr. Faraj): All right. We don't have any more questions for the First Sergeant.

IO: Trial counsel, any additional questions?

GC (Capt Gordon): None, sir.

IO: All right. First Sergeant, thank you very much for your time and your attention today. Just a brief instruction: Don't discuss your testimony with anyone except for the trial counsel, the defense counsel.

WIT: Aye, sir.

IO: If anyone attempts to discuss the case, will you please stop them and notify trial counsel, Major Goode or Captain Gordon.

Do you have any plans in the next, I don't know, three to six months that would cause you to be unavailable if the case were to go to trial?

WIT: No, sir.

IO: Okay. No PCS? No overseas assignment?

WIT: I just PCS'd, sir.

IO: Okay. All right. Good to go. First Sergeant, thank you very much.

WIT: Have a good day, sir.

IO: You too.

All right. Counsel, let's take a lunch break.

All right. How long do you need? I suggest no more than 30 to 45 minutes. You tell me. It's 1353.

GC (Capt Gordon): 1430.

IO: 1430. 40 minutes?

CC (Mr. Faraj): That should be fine.

IO: All right. 1430. I'll see you all then.

[The Article 32 investigation recessed at 1353, 19 April 2011.]

[The Article 32 investigation was called to order at 1435, 19 April 2011.]

IO: The investigation is called back to order.

Gents.

CC (Mr. Faraj): We have an objection to this exhibit because it's suggestive with the vehicles. And even though those may be accurate at some point, it's just -- it's very difficult to follow and witnesses -- you know, this was created by trial counsel. So witnesses don't testify from their own memory, but testify based on what they're seeing on the road as accurate facts.

IO: I'm using this essentially -- I'll let the witnesses get up there and they can place the vehicles. I'm using this just as a live map as opposed to the overlay of just what's taking place. I don't really have -- I'm not focusing on the vehicles. So I'm just going to consider that as sort of an actual photo of the area I can see. It gives me a little bit better perception of the area as opposed to the overlay which is a little bit harder for me to, I guess, visualize some of the buildings and roads. So I'm not necessarily looking at the blue and red features unless the individual witness testifies.

CC (Mr. Faraj): I'm not concerned about you, sir. I'm concerned about the witnesses, because it's been such a long time. It's suggestive. And so you could still use that. But can we -- you know, we'd be happy to -- if you want to use the overlay paper to have the witnesses mark that

up.

IO: Do we have more of a cleansed version of that?

GC (Maj Goode): Not handy, sir. The witnesses have been pretty good about saying where the inconsistencies are and moving the vehicles in their testimony.

IO: Do we plan on having every witness get up there and draw a map and label the map?

CC (Mr. Faraj): Only the percipient witnesses to --

IO: All right. Well --

CC (Mr. Faraj): Well, if you -- we intend to have just about every witness draw a --

IO: Similar --

CC (Mr. Faraj): -- some of the events as they observed them.

IO: All right. Well, I guess we're going to have to do the same kind of drill. This one's got the vehicles on there. I do agree that it sort of suggests a certain location for the vehicles.

Do you have a cleansed one or can you make cleansed ones of some kind?

GC (Maj Goode): I can, but not in the next 30 minutes.

IO: Well at least a drawing wise.

GC (Maj Goode): Okay, sir.

IO: I'd say if you're going to have them do it, use a drawing as opposed to sort of suggesting where each vehicle was. Have them just get up there and draw real quickly. Because this sort of has a set diagram. Either that or confirm that it's accurate. It may or may not be accurate. I prefer them to draw their own and place the vehicles. Not that I necessarily want each witness to get up there and have a complete different drawing.

GC (Capt Gordon): Sir, would we be able to cover up the names of those plots, the points?

IO: Yeah. I think that's fine, if you could -- I'm not opposed to the picture. But I understand Mr. Faraj is concerned that you've got sort of things pre-labeled. It sort of suggests certain things to the individual witness. If you plan on going up and having each witness establish on a map where everything was located, the answers shouldn't be on the map that they're presented. They should have a clean version so they can say here's where Vehicle 1. Here's where this took place and not sort of have the answers in there already. Unless you get up there and they say, Take a look at this. Is that a fair and accurate representation of where every item on that map was.

So if you want to establish that, they can look at it and say, Well, this vehicle was over here. That vehicle was over there. Again, it may just require a whole new drawing by that individual. But I'd rather have them put it on a map as opposed to the answers being provided to them where everything was located. But they can certainly comment on, Well, this wasn't here. That was there. And I understand perhaps not every item on that map is relevant for every individual.

All right. Let's -- let's proceed on. Your next witness.

GC (Maj Goode): Yes, sir. My next witness is Marco Jimenez.

IO: Okay.

GC (Maj Goode): And so what I intend to do then with the map, sir, is I'll just go over his testimony with him, have him kind of lay a foundation where -- in his memory where he thought was, show him this map, ask him if this accurately reflects his memory or not, and if not --

IO: All right. He can either say yes or partly so and he can indicate what on there is different or not accurate.

GC (Maj Goode): Yes, sir.

IO: Okay.

CC (Mr. Faraj): Are you going to remove the map?

GC (Maj Goode): No.

CC (Mr. Faraj): Okay. I'm going to continue to object to this because --

IO: I'll allow the map to stay up there and the individual witness can look at the map and either say if it's accurate or not accurate.

CC (Mr. Faraj): Can we have the witness step out, sir?

IO: Mr. Jimenez, please step out.

CC (Mr. Faraj): As you're going to find out, a lot of the testimony of these witnesses has sort of evolved over time, because they hear something. And so we've got witnesses that may not have thought about this for five, six, or seven years and you come in here and you present them with something completed by the trial counsel based on their theory of the case. And in the absence of a better memory, anybody will adopt that. I mean, they might say something, oh, no, this was different --

IO: All right. Major Goode --

GC (Maj Goode): Yes, sir.

IO: Shut the thing off and we're going to have them draw their own map. I understand the concern and it's a valid one that you're sort of presenting the witness. And if they're not quite sure, they're just as -- they'll just as likely adopt that version as their own.

CC (Mr. Faraj): And we don't have an -- many of them drew their own maps with NCIS. We don't have an objection to having them -- their memories refreshed with that.

IO: Okay. All right. Continue on, Major Goode.

GC (Maj Goode): Yes, sir.

Marco A. Jimenez, a civilian, was called as a witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the government:

Q. Can you please state your full name, spelling your last for the record?

A. Marco Antonio Salto Jimenez, J-I-M-E-N-E-Z.

Q. And where do you currently live?
A. San Diego.

Q. What do you do?
A. I'm a Microsoft certified system engineer.

Q. Who do you work for?
A. SharePoint 360.

Q. Were you at one time in the Marine Corps?
A. Yes.

Q. What time frame?
A. '02 to '06.

Q. What was your MOS in the Marine Corps?
A. 0311.

Q. Where were you stationed?
A. Camp Pendleton; Las Flores.

Q. Which unit?
A. 1st LAR.

Q. Were you with 1st LAR your whole enlistment?
A. Yes, until I was TAD over to Headquarters, I guess, for the Division Jump.

Q. All right. I want to talk to you about when you were with the Division Jump in Ramadi in 2004. On 7 June 2004, which was the day your friend Lance Corporal Bohlman died. Do you remember why you guys were going out that day?
A. Some guy wanted a medal or something and we were doing recon -- a recon route up to some outpost or something like that.

Q. Do you remember what time of day you went out?
A. No.

CC (Mr. Faraj): Sir, we did not hear -- I didn't hear the answer to that last question.

IO: Mr. Jimenez, if you could just speak up loudly enough so that we can all hear. Thank you.

WIT: No, I don't remember what time it was.

Questions by the government (continued):

Q. Do you recall there being any disgruntlements among the Marines for going out that day?

A. No.

Q. I'm going to jump ahead to right before the IED hit. Which vehicle were you in?

A. The last 25.

Q. How many vehicles were there?

A. Four, I think.

Q. And you were one of the scouts; is that right?

A. Yes.

Q. Now, where were you sitting?

A. I was in the back, popped down.

Q. So you -- fair to say, then, that you had no visual --

A. No.

Q. -- contact with the outside?

A. None.

Q. Who else was in your vehicle?

A. Russell and Richmond and Custudio.

Q. And they were the other scouts?

A. Yes.

Q. Who was in the front?

A. What do you mean the front?

Q. Who was driving?

A. Ojehleto.

Q. And was there any other individuals in the vehicle?

A. Kadrie and Gunny Hyman were in there.

Q. Do you remember when the IED went off? Like, could you hear it? I know you guys were --

A. Yeah, I heard the explosion. We had a turret pointed to the back. Gunny had it turned it around to the front. That's what I remember.

Q. What was your reaction?
A. IED just went off.

Q. And what did you guys do?
A. We -- from being inside, I remember we cut left hard, went through an alleyway. I believe we broke through a wall to jump in front of the convoy and cover Michigan frontwards.

Q. Did you dismount?
A. Yes.

Q. And what were your instructions when you dismounted?
A. Dismount, cover the front -- cover the front of Michigan and this alley that we had down our side.

Q. Now when you say "Michigan," I guess you cut -- you cut all the way to the very front of the convoy; is that right?
A. Yes.

Q. And was the purpose of that to get in front of the disabled vehicle?
A. Yes.

Q. All right. When you dismounted, you said you covered an alleyway?
A. Yes.

Q. For approximately how long did you cover that alleyway?
A. It was light when we started and dark when we stopped. That's all I remember.

Q. Did you engage anybody or anything?
A. Yes.

Q. And what?
A. A vehicle that wouldn't stop.

Q. Describe kind of what happened with that vehicle?
A. We were covering the vehicle. We followed the proper ROEs. Tried to get it to stop. The vehicle wouldn't stop. We fired on the vehicle to make it stop and it stopped.

Q. After you -- well, let me ask you this: What were your instructions about leaving the alley, why did you end up leaving the alley?

A. Not quite sure. We just said scouts in. We just do what we're told.

Q. Who said scouts in?
A. Gunny Hyman did.

Q. And did you go back into the vehicle?
A. Yes.

Q. And then what happened?
A. We backed up all the way to the disabled vehicle and we were told to get out and collect all the serialized gear out of it.

Q. Is that what you did?
A. Yes.

Q. And when you got back to the vehicle, was it -- it was dark by then?
A. It was pretty dark.

Q. Could you hear any gunfire or any signs of an engagement going on?
A. I heard -- I think it was some gunfire just kind of sporadic afterwards, but nothing major.

Q. Gunfire coming from one of the Marines or from somewhere else?
A. No, from the other side. I think it -- I think it was -- I kind of remember after the big one, there was a little bit of gunfire going on, but not anything -- a couple rounds maybe.

Q. And when you had dismounted and approached the disabled LAV, what was the threat posture like? Did you feel -- still feel like -- I mean, was there security around you? What was going on?
A. Yeah. There was still security. I mean, we were out in the middle of Ramadi. It's never going to be relaxed. But we weren't firing at an enemy.

Q. When you get to that disabled LAV, what'd you see?
A. I saw one of my best friends lying on the ground with Doc Slaughter patching him up. Another one screaming louder than I can ever remember, because he was pretty wounded. I saw my -- you know, my other best friend, Bohlman, slumped over the vehicle. Looked like a gallon of blood falling down the side of it and onto the road.

- Q. Is it safe to say that affected you?
A. Yes.
- Q. How did you react to that? What did you do?
A. I was just kind of wondering around and I was offered a cigarette by Wike kind of just to calm me down. He came out of the hatch, gave me a cigarette, lit my cigarette for me, and we just kind of stood there.
- Q. Stood where? You said coming out of the hatch. Which vehicle was he in?
A. He was in the C-square.
- Q. And where was the C-square in relation to the other vehicles?
A. I'm going to assume it was right behind the disabled 25.
- Q. Now, when you had that cigarette standing outside of the C-square with Wike, how far were you from the field that was to the right of the vehicles?
A. I was -- I'm not good with judgment of, you know, sight and measurement. It was -- I was right on the other side. I was by the driver's hatch of the C-square. So as wide as that is. And the field was on the other side of that.
- Q. What, if anything, did you see going on in that field while you were having that cigarette?
A. A bunch of dead insurgents lying on top of each other.
- Q. When you say "a bunch," how many do you mean?
A. Like two dead bodies; three dead bodies on top of each other and make it into a line.
- Q. Where exactly were those bodies, do you recall?
A. They were in that field in between the roads. That's all I really remember.
- Q. So in the -- okay. Now, and the field; was there grass? Was it dirt?
A. I guess half and half. It wasn't too grassy, but there was dirt and grass there.
- Q. So the bodies were in the grassy dirt?
A. Yeah. They were laying down. Humped over there -- slumped over each other.
- Q. At what -- at some point did you see Major Card enter

that field?
A. Yes.

Q. And describe what you saw.
A. I saw him get out of the HMMWV and walk over to the field out of my peripheral vision, I mean.

Q. Did he have a weapon in his hand?
A. He had a holster. Everyone had a weapon.

Q. At any point did he draw a weapon?
A. Yes.

Q. What did he do?
A. He fired.

Q. Which weapon did he draw?
A. Nine mil.

Q. Where did he have it on his body?
A. It was up in one of those chest holsters.

Q. At what point did he draw his weapon? Was he still on the road or in the field when he drew the pistol from his holster?
A. It's hazy. I don't -- it could have been anywhere in between.

Q. Could you see where he was walking to?
A. Towards the dead bodies.

Q. What did you see him do?
A. Like I said, my best friend died, so it really wasn't something I was paying attention to. I saw him fire. That's all I saw out of the corner of my eye.

Q. Could you see what direction he was firing?
A. In the ground.

Q. Could you see what he was firing at?
A. No.

Q. Now you said that you saw -- there was some bodies over there?
A. Yes.

Q. Could you tell if those bodies were dead or alive?
A. I assumed dead if they were laying on the ground on top

of each other.

- Q. It wouldn't make sense that Major Card would shoot at a dead body?
A. No.
- Q. What do you think happened out there?
A. I have no idea. There's a wounded guy out there. He shot him. He was dead.
- Q. How'd you react to that?
A. Like I said, it wasn't too big of a deal. I don't even remember it up until I talked to NCIS.
- Q. Did you hear him say anything?
A. No.
- Q. Did you hear anybody else say anything around that time that you can remember?
A. I slightly remember something come out of someone's mouth about mother fucker, but that was it.
- Q. Do you remember who would of said that?
A. I have no idea.
- Q. Okay. Approximately how long after that was it till you went back to Blue Diamond?
A. I don't remember. It's hazy.
- Q. When you went back to Blue Diamond, do you remember approximately what time it was?
A. No.
- Q. Pretty late?
A. It was dark.
- Q. When you got back there, did you and the guys ever talk about what had happened?
A. As in the mission itself?
- Q. Yeah. In general about the mission.
A. Yeah. We talked about it. We had our debrief like always after every mission. And that was the last of it and moved onto the next.
- Q. I want to jump forward to September 4, 2009 when you were approached by Special Agent Periard. Where did he interview you?

A. It was on Miramar and I assume it was an NCIS building.

Q. When he had interviewed you -- or I guess approached you to interview you, did you know why you were being interviewed?

A. No. He wouldn't even tell me what it was about, what it was for. Couldn't meet me on civilian ground. Couldn't be over the phone. Had to be on a military installment.

Q. When you interviewed with him, how long was your interview?

A. It had to have been, three, four, maybe five hours.

Q. At the end of that interview, you gave a statement; is that right?

A. I spoke and they wrote statement. I told them that's the only way they're going to get a statement out of me.

Q. Why is that?

A. Because I'm -- you know how bad this is for me to even be sitting in this chair right now? I don't even want to be dealing with this right now. I wasn't going to write it down. If they wanted to get it, they could hear me talk.

Q. It's pretty hard going over all this stuff?

A. Yeah, it is, actually.

Q. You have PTSD?

A. Yeah. Severe.

Q. Is this affecting it?

A. Yeah. This has started it.

Q. After he typed up the statement, did he give you an opportunity to go over it and read it?

A. Yes.

Q. Did he give you an opportunity to make changes to it if you wanted?

A. Yes.

Q. And at the end of this, you signed it and swore that it was true; is that right?

A. Yes.

GC (Maj Goode): May I approach the witness, sir?

IO: You can. Yes.

Questions by the government (continued):

Q. I'm handing you that statement. Take a look at it real quick and flip to the last page. Tell me if that's your signature.

A. Yes.

Q. Is everything in that statement still true?

A. I haven't seen this in two years.

Q. Would you like a chance to go over it or are you --

IO: Let the witness -- give him an opportunity.

Mr. Jimenez, take --

GC (Maj Goode): I think I've got an extra copy here.

IO: What I'd like you to do, take some time.

And let's get him a pen here.

If there's anything in there that you feel is untrue, just underline it or something.

WIT: Okay.

IO: Just make a note of it and we'll get that from you.

GC (Maj Goode): Here's a highlighter.

WIT: I'm ready now, sir.

IO: Okay.

Major, you want to retrieve that?

GC (Maj Goode): Yes, sir.

WIT: I see some kind of weird inconsistencies with that though, ma'am.

GC (Maj Goode): That's okay. What I'm going to do now is we'll kind of go over everything that you highlighted, okay?

WIT: Yes, ma'am.

GC (Maj Goode): And the highlighted portions -- what I'll do, sir, is I'll mark this and submit it so that we have a record of it.

IO: Okay.

Questions by the government (continued):

Q. So the highlighted portions are the portions that you can't recall or don't think are true; is that right?

A. Yes, ma'am. They kind of skewed in the answer and question part of that. It's weird to me the way the questions roll.

Q. Okay. Well, the first page you don't have highlighted. And the first page summarizes going out that day and setting up security in the alleyway. So your memory of that portion is spot-on with the statement; is that right?

A. Yes, ma'am.

Q. You also didn't highlight the portion that had to do with Lance Corporal Bohlman. Obviously your memory from that is pretty good, right?

A. Yes, ma'am.

Q. So it goes onto the second page is the first highlighting and you highlighted, "He seemed angry and was pacing around. I then heard someone say, 'Is that guy moving or dead?' referring to a nearby insurgent I saw who appeared wounded and dragging himself along the ground away from the convoy." Explain why you highlighted that.

A. I don't -- I don't remember even saying that. My memory of it right now is not that detailed at all.

Q. Now you didn't highlight, "I then saw Captain Card unholster his pistol, point it at the insurgent and pull the trigger." You recall that incident?

A. Yes, ma'am.

Q. But you did highlight -- going onto the next sentence -- oh, I'm sorry. You did not highlight, "I heard the weapon go off." So you do recall hearing the weapon go off?

A. Yes, ma'am.

Q. All right. Do you recall how many shots it was?

A. No, ma'am.

Q. However, you highlighted the next portion that says, "You saw the recoil of the pistol." So you don't recall seeing any recoil?

A. I don't even remember saying that, ma'am.

Q. And you highlighted, "It appeared from where I was standing that he shot the insurgent in the head area." You don't recall that?

A. I -- it had to have been -- the way they worded the question to me was, you know, What area was it? Was it down below or was it up above? I don't -- it was in this area, but I'm not going to say it was the head.

Q. All right. So what do you recall as far as --

A. Just the pistol being pointed and it being fired.

Q. And you recall the pistol being pointed towards the ground or towards just low; is that your answer to that question?

A. Low. 45-degree angle towards the ground.

Q. And can you recall it being pointed at -- you say it was pointed at the insurgent in the middle of his body?

A. I'm assuming, ma'am. He was laying down. He was halfway covered up and I was seeing it out of my peripheral. I don't -- I can't give an exact.

Q. All right. You said that you did not see the insurgent posing any threat at the time. And you have that kind of --

A. I might have ran over --

Q. I'm going to show it to you. Is that part highlighted or not, because it could look like it's bleeding over from the bottom?

A. No. Yeah, it's just the bottom. It's this and then the bottom.

Q. Okay. So not highlighted is that next part, "I did not see in insurgent posing any threat at the time."

A. So is that your recollection? Did that guy on the ground, did he look like he was posing a threat to you? Not at that point. But would you turn your back away from someone that was just shooting at you, ma'am?

Q. I would not.

Was he standing up?

A. No, he was laying down.

Q. Was he moving?

A. I think he was moving. I wasn't -- I'm not too sure about it.

Q. All right. And then the next thing you highlighted was, "He was just unarmed and crawling away. I remember thinking, 'Holy crap, he shot him.'" Why is that part highlighted?

A. Because it's like I don't really remember him crawling away or any of that. And then that whole, "Holy crap, he shot him," I -- I was grilled for three or four hours, so -- and the questions and answers were kind of weird because it keeps saying "unarmed" but then on the top there it says that I clearly saw his weapon -- or I saw a weapon on the ground near all the dead bodies and that body that was not dead. And then it keeps saying unarmed, unarmed, unarmed. He keeps talking about unarmed.

IO: Where's the portion of the --

GC (Maj Goode): So now I'm moving onto Page 3 of 5, sir.

IO: Where is the portion that the witness is talking about?

Okay. Unarmed.

GC (Maj Goode): So now we'll go to the questions.

Questions by the government (continued):

Q. So you do recall seeing a weapon?

A. If there were weapons on them when they were shooting at us, they had to drop them when they died.

IO: We'll get that admitted as the exhibit.

GC (Maj Goode): Yes, sir.

Questions by the government (continued):

Q. Do you recall anybody picking up those weapons?

A. No, ma'am.

- Q. Approximately how many weapons do you recall seeing or do you remember?
- A. I don't remember.
- Q. Do you recall seeing any weapons on that insurgent -- individual that he shot at that time?
- A. No, ma'am.
- Q. Is it safe to say then that you don't feel comfortable saying that you saw him shoot an unarmed Iraqi because you just don't know if he was armed or not. Is that --
- A. Well, I'm -- I just don't like the phrase of "unarmed Iraqi." I think they were in there shooting at us. They got dropped by bullets that we shot, because they were firing on us. So they had to have had a weapon and there were weapons around them when they fell. So I don't feel it's an unarmed Iraqi. I think he was an insurgent and he was laying on the ground.
- Q. Could you see if he had a weapon in his hand?
- A. Negative, ma'am.
- Q. The next portion you highlighted is at the bottom of Page 3 of 5. The question was, "What part of the Iraqi's body did Captain Card shoot?" And you said, "His head area." And, again, you highlighted that because you --
- A. Yes, ma'am. Just reinforcing the fact I didn't see exactly a bullet go into an Iraqi's head.
- Q. From the vantage point where you were standing, what was your, I guess, line of sight towards that body?
- A. It was -- I think it was either off to my left or right. I mean, that's -- it's all hazy.
- Q. Could you see the entire body? Was there grass?
- A. Yes, I could see it. There was a little bit of a dropoff down into the field. I mean, I could see it.
- Q. Could you see if that individual was alive?
- A. That's not something at first glance I noticed.
- Q. The next highlighted portion is Page 4 of 5, midway down. The question is, "When Card made the comment 'Now he is,' what do you think he meant by this?" And your answer was, "Now he's dead." Why is that highlighted?
- A. Now he is -- I don't know what that -- I mean, where did that question come from? Is that something in the

beginning of the statement? Because I don't remember. I don't remember any of that.

Q. And midway down the next highlighted portion. The question is, "Where were you in relation to Captain Card when he shot the unarmed Iraqi?" And you highlighted the answer which was, "I was behind the C2 looking at Card's back left side. There was an insurgent to his feet and he was definitely moving away from me." Why is that highlighted?

A. That seems too vivid. I'm not sure if that was being in the seat with them for that long, but I don't remember that now.

Q. Do you recall being behind the C2? Is that where you were?

A. I assumed I was getting a cigarette from him. But when I was talked to by NCIS, they were kind of telling me exactly where I was standing because of other people's testimony.

Q. Well, what is your memory of where you were standing?

A. All I remember is grabbing a cigarette from the driver's hole.

Q. From the C2?

A. Um-hm.

Q. All right. Other than the highlighted portions of this statement, the rest of this is true to the best of your recollection?

A. Yes, ma'am.

Q. And when you got back to Blue Diamond -- in between Blue Diamond and when you talked to Special Agent Periard, did you ever talk about this incident with any of your friends or fellow Marines?

A. No, ma'am.

Q. When you got out of the Marine Corps in 2006, was your reenlistment up or were you discharged?

A. Reenlistment was up.

Q. Have you seeked[sic] treatment for your PTSD?

A. Yes. I'm currently at 70 percent for the VA and I get talked to every quarter. I was on medication; about six or seven pills daily.

GC (Maj Goode): I have no further questions at this time. Thank you.

IO: Defense counsel.

CROSS-EXAMINATION

Questions by the defense counsel: *Major workman*

Q. Good afternoon, Mr. Jimenez.

A. How's it going, sir.

Q. Mr. Jimenez, when did you first find out about this incident? How did you first get brought into this?

A. I got a call on my cell phone from Special Agent Periard saying that he needed to talk to me about something he couldn't talk about over the phone.

Q. Did you know who First Sergeant Periard was?

A. [The witness shook his head.]

Q. How did he introduce himself?

A. He said he was Special Agent Periard from NCIS, and he had to talk to me about something.

Q. How long had you been out of the Marine Corps when you got that a call?

A. It had to have been four years or more maybe.

Q. Had you ever been contacted by NCIS before that?

A. No.

Q. Had you ever been contacted by any other law enforcement agency before that --

A. No, sir.

Q. -- regarding anything that happened in the Marine Corps?

A. No, sir.

Q. So what were you thinking when you got this call from Special Agent Periard?

A. To be honest, sir, I had no idea. I've been through 300 combat missions. It could have been anything.

Q. How many?

A. Three hundred.

Q. And you thought it could have covered anything?

A. Anything.

Q. Did he draw your attention specifically towards combat?

A. Yes, sir.

Q. Okay. What else did he draw your attention towards? How else did he build your SA, so to speak?

A. He -- I think he said something about, you know, it had to do with the deployment being with the Division Jump. And then they told me that they couldn't tell me anything else over the phone. I had to come in. They couldn't meet me on civilian grounds. I had to come in and talk to them to see what they wanted.

Q. Okay. So they narrowed your focus to the Division Jump?

A. Yes.

Q. When they did that, did anything specific spring to mind?

A. No, sir. We did all sorts of stuff on the Division Jump. That was my worst deployment ever.

Q. What did you want to do? Where did you want to conduct the interview?

A. Where did I? I suggested a coffee house that was close to my house; kind of on neutral ground. I didn't really know what they wanted. I didn't want to commit to going to a military base. I didn't want them definitely coming to my home, so.

Q. Why not?

A. I just didn't feel comfortable with NCIS people coming into my house after I was out of the Marine Corps.

Q. Why did you feel uncomfortable about going to them on their ground?

A. Because they were being shady on the phone. They can't tell me what they want before. Why am I going to go over there and give them what they want?

Q. So they were being kind of covert about what they wanted on the phone?

A. Yes. It was kind of funny actually. It felt like a movie. They were asking me all these weird questions like that.

Q. Was there anything else they did over the phone that you would consider shady or --

- A. Yes. I originally tried to stay out of it. I didn't want anything to do with this at all. I told them no, I didn't want to come see them. They told me in so many words that if I didn't come, they were going to make me come.
- Q. Did they indicate how they would -- how they would make you come?
- A. No. I remember getting kind of freaked out at that point, and I agreed to meet them on Miramar because they suggested Pendleton but I didn't want to drive that far.
- Q. So in your mind, did you believe they really did have the power to make you come?
- A. Yes, sir.
- Q. How did you envision that happening?
- A. Some sort of arrest or them coming to get me. I didn't even really want to think about it, so I just went.
- Q. Needless to say, you took that threat very seriously?
- A. Yes, sir.
- Q. Okay. So how much time elapsed between that phone call and actually meeting them?
- A. I'm not too sure, sir.
- Q. Would you say it was a matter of hours, days, or weeks?
- A. It was probably more like weeks.
- Q. Weeks? Several weeks?
- A. It was something like that. I can't --
- Q. Okay. And was the appointment set up at that initial phone call or did they call back?
- A. I believe they called me a couple more times to talk about exactly where we were going to meet and, you know, to kind of pick a time and everything.
- Q. So at the first appoint -- at the first phone call, you agreed that, yes, you would meet with them?
- A. Yes.
- Q. And then the follow-up phone calls were just to arrange the time and place?
- A. Yes.
- Q. And date?

A. Yes, sir.

Q. Okay. During those weeks and in between those phone calls, did it ever spring to your mind what this might be about?

A. No, sir. We did quite a few things when we were with the jump, so I didn't want to jump to any conclusions.

Q. So where did you ultimately meet up with them?

A. I met with them down at Miramar at an NCIS building I believe.

Q. What was the environment like there in that building?

A. It was -- I met him at one of the gates. I was still IRR at the time, so I had my ID card to get on. I followed them to the building. It was just kind of an old, you know, regular military building with offices. Walked me to an office, sat me down, and shut the door and started talking to me.

Q. Was that the original plan to meet them at the gate?

A. Yes, sir.

Q. They escorted you back?

A. Yes, sir.

Q. Did you ride in their vehicle or did you follow them in yours?

A. I followed them in mine.

Q. So you met with them in an actual office space?

A. Yes, sir.

Q. Okay. There were computers and file cabinets, things like that?

A. Yes, sir.

Q. Okay. How did the interview begin?

A. They kind of started off, you know, about my deployments. They started throwing out dates and times, you know, about this particular incident. I immediately remembered the incident because it was when Bohlman died. Gave them my full statement about how I felt -- you know, how the incident went. They told me say it again. I said it again. I repeated it a few more times. And they had mentioned, you know, you're not remembering what we need you to remember. So I kind of got irritated and said, Well, tell me what you want me

to remember because this is what I remember. And they said, Well, with average PTSD people we see their spotty memory. But you seem to be remembering before this incident and after this incident. I'm like, Well, what's the incident? Said we can't tell you that. And they kept making me repeat it until I finally, eventually remembered this part.

Q. I want to back up a little bit. You said they initially brought up other deployments as well?

A. No. They just had me -- kept making me repeat over and over again the same -- you know, what I thought had happened at this particular IED attack.

Q. Okay. And who interviewed you? Who was conducting this interview; do you recall?

A. It was Special Agent Periard and there was some other guy with him. I'm not --

Q. The other guy, was he just more in the background or was he an active participant?

A. He was an active participant, sir.

Q. He was questioning you too?

A. Yes, sir.

Q. Did these two adopt different tone and tenor with you? In other words, kind of good cop, bad cop type thing?

A. Yes, sir. And they also did mention when I thought it was kind of weird and it really did upset me was that they said, you know, you're not going to be -- you know, we -- what'd they say? Something about protecting my own Marines. That I don't need to do that because we have statements from other individuals that say you were at this -- you know, you were here, so you have to remember. You know, you were at this place, so you don't need to cover for anybody. And you know, you can just let us know what happened. It was kind of rude and weird.

Q. Okay. So backing up again a little bit, how did they draw your attention to this day in particular? Did they just throw out the date or did they throw out an incident or what brought you to this day in particular?

A. The date. They said the date. And then as soon as they mentioned Bohlman's name, that's exactly when I remembered everything.

Q. Okay. Does June 7, 2004 -- is that enough to draw your mind to that incident at the time or would it have been Bohlman as well?

A. No. It had to have been the name.

Q. Okay. All right. So once they threw that out there, you just sort of told them start to finish everything you remember?

A. Yes, sir.

Q. On that date or on this particular mission?

A. On that the IED attack. The mission itself, sir.

Q. Okay. And they told you you didn't need to protect anyone?

A. Yes, sir.

Q. Okay. Now, initially, when you began your direct examination, you were asked why you were on that particular mission?

A. Yes, sir.

Q. Okay. What was your response?

A. All I know is -- and this may be me being angry because my friend died and a lot of people got hurt -- but some guy wanted a medal from the general and we had to go recon -- recon the -- you know, the route.

Q. So it sounds like you may harbor some ill will or some hard feelings over that?

A. Yes, sir.

Q. So it doesn't seem consistent with somebody who is trying to protect somebody?

A. Yes, sir.

Q. Okay. Which was one of NCIS's concerns as you're telling us, right?

A. Yes, sir.

Q. Is that why that made you angry?

A. Yes, sir. Who would I be protecting? I'm just telling them what happened.

Q. Okay. Did they -- did they indicate that you might be protecting an officer or a peer or an NCO or staff NCO or anything?

A. No, they didn't. They didn't really say anything until

I started remembering a little bit more and then they actually said Major Card's name.

Q. Okay. Do you recall what you might have remembered that would trigger that?

A. They kept forcing the cigarette -- you know, you got a cigarette from Mike. You got a cigarette from Mike. What happened right after that? What happened? I don't know what happened. You know, it kept going back and forth like that until eventually it popped in my head. That's what happened.

Q. So the cigarette with Wike, that was one particular fact they kept giving you?

A. Yes. And then -- I didn't even remember that until they told me that because they apparently got that from Wike or someone.

Q. How many times did they give you that fact?

A. I don't even know, sir. It was -- they kept doing it over and over again.

Q. Just over and over and over until you remembered?

A. Yes, sir.

Q. Or accepted that fact?

A. Yes, sir.

Q. Now based on what you know, do you actually remember him giving you the cigarette or have you just accepted that fact?

A. I do remember it, sir. I didn't at the time. But I do remember him popping out of his hatch and handing me the cigarette. It just wasn't a detail I remembered.

Q. And was it a top hatch or a side hatch?

A. It was a top.

Q. Top. Okay. How long did this interrogation or this interview go on for with NCIS?

A. Three, four, maybe five hours, sir.

Q. So three to five hours, somewhere in that range?

A. Yes, sir.

Q. Did you meet them in the morning? The afternoon? The evening?

A. It was -- had to have been close to morning time because

I was out of there later than I wanted to be.

Q. And both of them worked on you the whole entire time?

A. Yes, sir.

Q. What other facts were they suggesting to you as you recall?

A. They did mention that I -- you know, I had actually talked to Cotton afterwards. That was something I didn't remember, but, you know, it did happen. I did talk to Cotton. That was about it. They kept pushing that and that -- both of those actually.

Q. Any other facts that they kept suggesting to you?

A. Not that I can remember, sir.

Q. Okay. What did they say about the interview they had conducted up to that point?

A. What do you mean, sir?

Q. In other words, did they say anything about gathering other people's statements?

A. Yes, sir.

Q. What'd they tell you about that?

A. They said I was really hard to find. I was one of the last ones. They had enough evidence to take Major Card to court even without my even -- even without my testimony. But if I didn't tell them what I knew I knew, I would be interfering with something and I would get in trouble.

Q. Okay. So they told -- they threatened you with trouble if you didn't tell them what you knew?

A. Yes, sir.

Q. Okay. And is that why you proceeded to tell them everything you knew from the time of the IED blast forward?

A. I had told them everything that I knew from the beginning that I could remember the entire time they were talking to me.

Q. Okay. And how many times did you go through that sequence of events that you could remember?

A. It just was -- it was constant the whole time until pretty much I remembered what they wanted me to remember.

- Q. Okay. When you would go through the sequence of events, what was their reaction? What would they say to you about what you were remembering or not remembering?
- A. They just kept saying there was a particular part I wasn't remembering and kept bringing it back to my PTSD, saying if I -- my whole memory would be patchy if it was my PTSD causing me not to remember this certain part.
- Q. Okay. So who brought up the PTSD? Did you bring that up or did they bring that up?
- A. I maybe had mentioned to them that I had PTSD, but it wasn't something I use as an excuse.
- Q. So -- so how were they referring to your PTSD throughout this questioning?
- A. They just kept saying how, you know, an average person with PTSD has a spotty memory and you remember everything up to that event that we need to know and after the event. You don't remember the event. That's what they kept saying.
- Q. Do you like it when other people refer to your PTSD?
- A. Not really, sir.
- Q. How did that make you feel when they were questioning your memory and throwing the PTSD in there?
- A. Making me pretty mad.
- Q. Why is that?
- A. Because who are they to judge me? Who are they? Were they there? Were they getting shot at? Did they see their best friend's blood running down the side of the vehicle? They'll never know. And they're going to question me about what I remember, what I don't remember, and my PTSD? That didn't sit well with me, sir.
- Q. You said before you felt that you had been kind of manipulated through this process?
- A. Yes, sir.
- Q. Do you feel like the PTSD is part of what they used to manipulate you with?
- A. Now I feel that they threatened me that I need to go. Or if I don't go, I'm going to get in some sort of trouble.
- Q. So it was more the threat that you felt manipulated you?

A. Yes, sir.

Q. All right. And without me suggesting anything, how do you think the PTSD might have affected your memory on that night?

A. I've been hit by IEDs seven times. That was the first of my nightmare my entire time I was in four years in the Marine Corps. Like I said, I did over 300 combat missions. That -- them trying to make me remember something that started in the beginning and I have a whole boatload of stuff that happened afterwards, it's all -- you know, it's a big mix.

Q. You think some of the things that you -- that you experienced are mixing together?

A. All deployments mix together. My PTSD, I mean, it gets bad. It goes -- you know, it goes okay. It gets bad. But it just comes in waves.

Q. All right. At some point did NCIS -- did they appear to be coming more comfortable with what you were remembering?

A. Yes, sir.

Q. What point was that?

A. As soon as I said I remembered Major Card shot somebody.

Q. Okay. What was their reaction to that?

A. Acting like they already knew it.

Q. Okay. How so?

A. They were just kind of -- it wasn't a shock to them that I remembered that part or a -- like it was something new they heard. It was -- they seemed relieved like it was something, you know, that I was -- the thing I was supposed to remember. Then they just kept, you know, moving forward after it.

Q. How did they -- how did they show that relief?

A. They were just kind of calm; the way they were. They were just -- you know, instead of making me go back over and over and over about what I remember. As soon as I remember that, they started moving on with the rest of the process.

Q. Was that -- was that somewhat of a relief to you that now they were willing to move forward?

A. Yes, sir. I didn't want to be there.

- Q. And did it feel -- did you feel at that point like maybe you wouldn't get in trouble because you had given them something they were looking for?
- A. Yes, sir.
- Q. Did the -- the pace of the interview, did it pick up after that point?
- A. Yes, sir, I would say so. It just about wrapped up after all that.
- Q. Okay. So as soon as you gave them that piece of information that was sort of the end?
- A. Yeah. With a little bit of them writing it down, me having to double-check what, you know, they wrote, and some other questions, that was -- pretty much wrapped it up.
- Q. Okay. So throughout this interview process, were they taking notes on paper?
- A. I believe so, sir.
- Q. Were they typing up your statement as they were going?
- A. I'm not sure if it was -- I don't know how it ended up typed up, but I know they were writing down -- writing down things. Maybe typing on a keyboard. I'm not sure. I was kind of out of it. I don't remember that.
- Q. Okay. At some point they obviously typed it up?
- A. Yes, sir.
- Q. All right. Did you -- did they offer you to type it up?
- A. Yes, sir. I told them no.
- Q. You told them no. And what was your response to that?
- A. I just wasn't going to type it out. If they want a statement from me, they can listen to what I have to say and write it down. It's enough that I have to go through it and keep remembering it hundreds of times. I don't need to write it down.
- Q. All right. And then at some point you read it over and you signed it?
- A. Yes, sir.
- Q. And this was at the end of a 3- to 5-hour interview?
- A. Yes, sir.
- Q. Okay. And once you saw this thing in writing come

- before, did you feel like this was the end?
- A. Yes, sir.
- Q. What were you feeling? What were you thinking when they finally put this thing in front of you in writing?
- A. I just wanted to get out of there. And if you actually look at my signature, it's all scrunched together at the very end of it. That's not -- my signature is a lot longer than that. If I wrote it like that, that means I was -- I wanted to be done with it.
- Q. And once you signed it, was that the end of it?
- A. Yes, sir, with maybe a couple questions or about follow-ups. They were going to call me back, let me know what happened. But that was pretty much the end of it, sir.
- Q. Once you put your signature on this, did you feel like that threat of getting in trouble no longer existed?
- A. Yes, sir.
- Q. And then there came a point where you were -- you were questioned about this again; is that correct?
- A. Yes, sir, within I would say maybe a year. You know, after that they had called me sporadically throughout. I know they had met with me for lunch. Wanted to go over my statement with me. I don't remember actually going over it. I do remember meeting them for lunch though and asked them for a copy. They told me I couldn't have one. I said, how do you want me to testify? I'm not going to remember this when it comes up. They told me it was, you know, government property or whatever they said it was. They said I couldn't have a copy of it. A few more calls, you know, they had made to me. I think they switched -- something switched, because there was some other people calling me. And then -- that was it and then here.
- Q. So when you met for lunch, was that Periard?
- A. It was -- no, it was the other one that was with him and then a lieutenant colonel or someone I think.
- Q. Sullivan?
- A. I believe so.
- Q. Now, why did you want a copy of your statement?
- A. Because as far as I'm concerned, I was drilled for that information. To put me in that kind of mindset for me

to remember things like that, even the smallest of details, messes my brain up. It doesn't -- my PTSD we'll kick in. I feel like I'm sinking in the chair like I do right now. And then I'll just -- I remember whatever I remember. But give me a few days after that and I might not remember the same exact thing.

Q. Is it possible you might remember something different?

A. Yes, sir.

Q. Is it possible you might remember something different that never even really happened?

A. Yes, sir, it's fully possible.

Q. And I guess -- I guess that's kind of what I'm driving at. Why weren't you comfortable -- you know, without the statement, why weren't you comfortable just with your recollection of what happened on that evening?

A. It's just I don't honestly really remember. I mean, everything was haze. After seeing Bohlman, after being shot at, after watching the illume, that whole -- it felt like we were out there for hours. After all of that, I was so relieved of the shooting and everything being over and that we needed to get back. And then, you know, struck by one of my best friend's death that I didn't want to be there. I just wanted to get out. After I saw him, it was pretty much all over for my brain.

Q. Okay. I want to move forward a little bit, Mr. Jimenez, to the actual day in question, June 7, 2004. What vehicle were you in; do you recall?

A. I was in the very last 25.

Q. Okay. I've drawn here a very sort of crude depiction of the route that you were on that day. Do you recall what that route was called?

A. The tits I think.

Q. Have you ever seen this route on a map before?

A. Just the one they showed me earlier I saw and the blow-up picture I first seen at NCIS. But before that, no.

Q. Do you remember traveling this route?

A. We didn't quite make it to that ark after the IED went off.

Q. Okay. You do remember that?

A. Yes, sir.

Q. Based on what you've seen and perhaps what you remember, is this -- is this rough outline of the route, is this a fair and accurate depiction of Route Two Tits?

A. I'd have to see a picture. I think there's more of a bend. I don't think it was so much of an ark. But I have to see the actual thing of it.

Q. Okay. We're just going to pull -- we'll just forego this then.

All right. Mr. Jimenez, tell us a little bit about your relationship with Lance Corporal Bohlman.

A. Ever since I was a boot when I was with Weapons Company when I first came into the fleet, he was, you know, my senior lance corporal. Kind of, you know, took me under his wing, taught me how to run. You know, we were real, real close and we got attached to the jump together. And always joked around, always joked around. You know, said that my ex-wife and his girlfriend at the time, you know, they were going to be best friends. You know, we were going to get home to the States and we were going to hang out. Things were going to be cool. And two weeks before he was supposed to go home, he died.

Q. So he took you under when you were a boot you said?

A. Yes, sir.

Q. Was that back here at Pendleton?

A. Yes, sir.

Q. How did you get selected to the Division Jump? How does that process work?

A. I'm not quite sure how I got selected. I just got told I was going.

Q. What unit were you with before you reported to the jump?

A. I was with Weapons Company, 1st LAR.

Q. What about Bohlman? Do you know about him?

A. Bohlman was with Delta and then he was with Weapons with me before we went to the jump.

Q. Did you feel fortunate that the two of you were able to meet up on the Division Jump like that?

A. Yes, sir.

Q. Okay. What kind of missions would you perform?
A. Everything from, you know, route reconnaissance to -- you know, wherever the general wanted to go, that's where we went. Whatever happened in between happened.

Q. Was there anything different about going out on this particular mission on this night?
A. Routine.

Q. Routine. Was the general with you?
A. No, sir.

Q. Was it routine training would you say or routine reconnaissance?
A. It was just a regular drive through -- you know, through Ramadi, going where we needed to go.

Q. What do you recall about the actual IED going off?
A. I remember I didn't actually see the blast. They were more ahead on the curb than we were. I just remember being down. I just heard the boom. As soon as I heard the boom, it just all, you know, started going. We started moving.

Q. You started going and moving within the vehicle?
A. No the vehicle started backing up, then we turned left, and then cut. As soon as that IED went off, we reacted.

Q. Okay. What action did you take? What reaction did you take?
A. We just, you know, hit left on some alleyway and then busted through a wall and went in front of the convoy.

Q. So you actually remember driving through a wall?
A. Yes. I actually felt it when we hit it.

Q. Why did you want to be positioned in front of that disabled vehicle?
A. Because it was a down vehicle. We had no cover in the front.

Q. So your intent was to provide cover for that vehicle?
A. In front of that vehicle.

Q. What do you remember next? Once you got in front of that vehicle, what do you recall next?
A. They said scouts out. And as soon as we -- you know, we were briefed on what we needed to cover, we just got

out, headed up, split up between the alleyway, covered, you know, the front. And just that's what we were told to do. Don't let anyone come in.

Q. Where was the -- where was the alleyway relative to where the vehicles were?

A. It was in front of the lead 25. So the lead 25 wasn't even at the alleyway. We had deployed and went out front in front of it.

Q. Okay. And you were covering that alleyway?

A. Yes, sir.

Q. Did you actually go down the alleyway?

A. Negative, sir. We just kept eyes on.

Q. Okay. So as the vehicles were oriented, was the alleyway on the left side of the vehicles?

A. It was on the right side.

Q. Okay. What do you recall doing next?

A. Got -- I mean, we just covered the vehicle. I don't know how long we were sitting there for and nothing was really happening. A car started driving towards us with its headlights on. And we, you know, followed the proper ROE, told it to stop. You know, did what we needed to do and we -- you know, we disabled the vehicle. Made it stop.

Q. Do you recall how the vehicle was told to stop?

A. No, I can't -- I can't recall that, sir.

Q. How was the vehicle -- I know it's kind of obvious, but how was the vehicle made to stop?

A. Shot it in the front windshield. I'm not sure if we hit the engine or hit the driver, but the vehicle stopped.

Q. What kind of vehicle was it?

A. It was a white Sedan.

Q. Okay. And this vehicle was approaching you?

A. Yes, sir.

Q. Was it approaching you at a high rate of speed?

A. Twenty-five, thirty miles an hour. Enough for it to be a threat.

Q. How far away was it as it was approaching you?

A. I can't remember, sir. It was a straight shot down Michigan so we saw it coming.

Q. And a straight shot towards you?

A. Yes, sir.

Q. Who was primarily engaged with that vehicle?

A. Well, the 25 -- Gunny Hyman was right in front of me. He was pointing his turret right at it with his 240 Golf and we were off to the side, pretty much aiming straight at it as well with another scout covering our back side through the alleyway so no one would come up behind us.

Q. So the 25 was engaged on the vehicle?

A. It was on the road, facing directly in front of it.

Q. Okay. That's a 24 millimeter Gatling gun?

A. Yes, sir.

Q. Okay. Or machine gun. And you were just to the left of this?

A. We were just to the right of this.

Q. You were just to the -- positioned to the right?

A. Yes, sir.

Q. Okay. You said the 240 Golf was positioned on the vehicle as well.

A. Yes, sir, that was mounted on top of the turret.

Q. And that was mounted on top of the turret. Okay. Was that engaged as well as the 25 millimeter cannon?

A. The 25 millimeter was not -- did not shoot.

Q. Did not shoot.

A. No. The 240 Golf did though.

Q. Okay. And who was on the 240 Golf?

A. Gunny Hyman was.

Q. Do you recall where Corporal Phillips was throughout this?

A. He was in the back. I didn't -- I didn't see him until we started backing up.

Q. And once you started backing up and you saw him, what was he doing?

A. He was firing from the 240 on top of the turret. At

some point, he grabbed the 240, yanked it off the scissor mount and ran down the front of the vehicle, laid in the prone position, and was firing with the 240 Golf down that open area.

Q. Do you recall what he was firing at?

A. A bunch of insurgents running at us and shooting at us.

Q. Can you -- can you draw on that butcher block the direction that Corporal Phillips was oriented and the direction from which these insurgents -- the insurgents were coming?

A. I can try to the best of my ability, sir.

Q. Would you do that, please?

A. Yes, sir.

Q. And, you know, if you can remember where the vehicle was and things like that, just fill those details in as well.

Okay. Hold on one second. Can you do it in relation to the road? This being the road right here; this bump.

A. Yes, sir.

Q. I'm going to turn it over to you at that point.

A. You want me to draw it on this, sir?

Q. If you can recall where the IED was, if you would start with that.

A. You want me to draw on this?

Q. Yes, you can draw right over this plastic overlay.

A. The IED had to be somewhere around this area.

Q. Okay. And just -- could you just write IED by that circle that you've drawn?

The witness has done so. I actually have to narrate this for the record.

A. The 25 started out back here. We took some sort of way.

Q. Okay. He's not drawing but he's indicating back here from the 44 horizontal grid line, he's indicating that they took sort of a western approach to the front and swung up towards the front of the IED blast near the 43 grid line.

A. I guess it would have been somewhere around this area.

Q. And he's drawn a circle with LAV-25 to symbolize the vehicle that he was in.

A. So I assume this is Michigan still. So this is --

Q. This would be Michigan right there?

A. Okay. So then that's Michigan. I swear it must have been down this way.

CC (Mr. Faraj): Let me interrupt. Let's try and do it on this one. This might be better.

DC (Maj Workman): Okay. What we're going to do is just show you this Google Map picture, satellite image and just kind of have you draw on that.

Is there a smaller Sharpie floating around? A pen might work.

Is this easier?

WIT: Yes.

Questions by the defense (continued):

Q. Okay. He's going to draw on this satellite image instead.

Yes, sir. So why don't you start by marking the IED blast and just mark it with an "x" and write IED above that.

A. The witness has done so.
Came back through here, I'm assuming.

Q. Okay. That's an alleyway?

A. Yes, sir.

Q. All right. The witness is -- you know, why don't you just trace that route.

A. I'm assuming this is one of the walls because there was a house on that side. We busted through up here and ended up right around this area.

Q. Okay. Os the witness has drawn with the Sharpie a line indicating the route that they took southward and then turned westward to where he has drawn a circle marked "LAV-25" indicating the position where they stopped.

A. It was around this area up here where we stopped. There

was an alleyway we covered and you can't really see anything here. And then this was a house we raided. Yeah. So we were in this vicinity when we stopped. We were covering Michigan this way and --

Q. Okay. So he's indicated now that --

A. -- [inaudible] this way.

Q. -- they were covering Michigan in a southerly, southwesterly direction and they were covering an alleyway northwesterly.

And could you just draw a little arrow at the end of those lines to indicate what you were covering.

And he has done so.

Where was -- if you could just draw a square with two wheels from where that vehicle was approaching and where the vehicle was engaged.

A. [The witness did as directed.]

Q. The witness has done so on what he has indicated to be Route Michigan and the avenue of approach that he was covering.

Where was -- is this the direction that the LAV was engaged?

A. Yes, sir.

Q. Okay. Towards the symbol that he's marked representing that vehicle. Again, who was -- who was engaged this direction?

A. It was Gunny Hyman, I think Kadrie and OJ. OJ was the driver; Kadrie was the gunner. Kadrie had to have been in control of the turret and Gunny Hyman was on the 240.

Q. Okay. Who's OJ?

A. Brian Ojehleto, our driver.

Q. All right. And where was Corporal Phillips during all this?

A. He was back here somewhere.

Q. He was out of your sight at this point?

A. Yes, sir.

Q. Okay. All right. Now you also mentioned some

insurgents that were running around dismounted?
A. Yes, sir.

Q. Is that correct?
A. Yes, sir.

Q. Were these insurgents armed?
A. Yes, sir.

Q. What were they armed with?
A. I'm assuming AK-47s, sir.

Q. Were -- how many of them were there?
A. It was -- there was a bunch. It looked like a wave of them. There was a lot of them.

Q. Was there more than one wave?
A. Yes, sir.

Q. How many waves were there?
A. I would feel safe to say two, maybe three of them.

Q. Did they cover the same path?
A. Yes, sir. They all came out of the same gate to my knowledge.

Q. Okay. And did they all go the same direction?
A. Yes, sir.

Q. Could you mark with a dotted line from whence they came and to where they went?
A. It was either out of this building with the gate.

Q. Go ahead and think about it for a minute if you need to.
A. Out of one of these two buildings. But either way, they were going this way, sir.

Q. Okay. So the witness has indicated -- could you just draw a triangle representing those two different gates that are possibilities they could have come out of.
A. They could have come out of up here or --

Q. Okay. So the witness has marked with triangles two different gates that these insurgents could have come out of and he's drawn a dotted line in between those two possible gates to indicate their direction of travel.
Okay. And they were generally all traveling the same

way?
A. Yes, sir.

Q. Okay. Who engaged these insurgents?
A. I know Doc Slaughter engaged them. I know Phillips did for sure.

Q. When did you -- when did you notice them coming across?
A. I think we saw them when we were out here, sir. We could still see them running and hear the fire.

Q. Were you still located in this position marked by LAV-25 when you noticed them coming across the field?
A. Yes, sir.

Q. And is it safe to call this a field?
A. Yes, sir.

Q. Did you relocate yourself when you saw them coming across?
A. Negative, sir. We were covering the front and the alleyway. We didn't move until we were told to move.

Q. Okay. What was the result as these insurgents came across?
A. They were getting mowed down by Phillips and if Slaughter ever hit anybody. But they were all laying right here in this area.

Q. The insurgents were laying right there in that area?
A. Yes, sir.

Q. All right. Could you mark with an "I" where the insurgents were laying.
Okay. The witness has done so.
Could you mark with a "P" where you thought Phillips was during this?
The witness has done so.
Could you mark with an "S" where you think Doc Slaughter was during this?
A. He's either in front of or behind them. I can't remember. It was here I guess.

Q. Okay. The witness has marked with an "S" but he said he

was either in front of that position or behind that position. But somewhere very close to that position?

A. Yes, sir.

Q. Do you know where then Captain Card was during this engagement?

A. He was in the HMMWV, but I'm not sure what numbered vehicle it was.

Q. Do you remember where the HMMWV was?

A. I don't remember, sir.

Q. Do you remember where any of the other vehicles were?

A. Just where the downed one was and where we were.

Q. But -- the HMMWV went down as well?

A. No, the downed 25.

Q. The downed 25.

Could you just mark with "D25" where that downed 25 was?

The witness has done so.

All right. Any other vehicles that you can recall?

A. No, sir. There might have been some civilian vehicles up over here. Maybe one, maybe two.

Q. Could you just -- could you just mark "CV" where you think there might have been a civilian vehicle?

The witness has done so.

You've drawn this -- this northerly civilian vehicle with "CV" kind of in the field. Was it kind of in the field as you recall?

A. It was on this actual road right here.

Q. It was on the actual road.

Okay. All right. So Mr. Jimenez, where were you when you saw Captain Card engage the civilian?

A. I was down by the downed 25.

Q. Okay. So how did you go -- how did you go from this position here to right there? When did you go?

A. We mounted back up in the 25 and then backed up and moved over here.

Q. Okay. So you went -- you went across this area back on the 25. Did you take the original route that you took?
A. Negative, sir. We followed the road.

Q. All right. So you traced the road back up to the downed 25?
A. Yes, sir.

Q. All right. You can have a seat.
A. [The witness did as directed.]

Q. So when you reunited with that downed 25, what was the threat level at that point?
A. I mean, there was a few shots here and there but it wasn't -- we weren't being fully engaged by a platoon of, you know, insurgents.

Q. Okay. Once you got back to the downed 25, did you get out of the vehicle?
A. Yes, sir, for a moment.

Q. Why did you get out?
A. We were told to collect serialized equipment from the downed 25.

Q. Okay. What would that serialized equipment -- what would that include for example?
A. 240 Golf, the radio. I'd say we grabbed our A-24s if they were in there. Anything really with a serial number on it that we needed to take out of there.

Q. What about -- what about other loose gear that might have been adrift because of the blast?
A. I don't remember going anywhere else to grab anything. Just whatever was on the vehicle. That's what we got, sir.

Q. Is that something you normally would have done?
A. That was the first time we'd been hit, so I would assume so.

Q. Subsequent to that, do you think that's something you would have done?
A. Yes, sir.

Q. At this point, did you get a better idea of where then Captain Card was?
A. I really couldn't tell you. I mean, he was off to the

side where the downed vehicle was but that's all I really remember.

Q. What about the other leadership?

A. I have no idea, sir.

Q. All right. So you were -- you were retrieving the gear from the LAV-25. How long were you going about that business?

A. Time was all running together. I'm not even sure, sir.

Q. And was that because you thought you were going to have to leave the LAV-25?

A. Yes.

Q. All right. What happens after you recall retrieving that gear?

A. We grabbed the gear, I remember saying something to Phillips telling him it was time to go. He yelled at me. He said something to me, so I kind of left him alone. He was kind of out of it. He was acting real weird. He was still laying in the prone position after everything was really over. I think he was actually out of bullets. But I don't remember the trip back. I remember mounting up and we went back to Blue Diamond.

Q. Where was Corporal Phillips when he was acting weird as you said?

A. He was in -- he was in -- I think he was in -- I'm not sure. He was in the 25. He had to have been. He had the 240 Golf with him. I just remember.

Q. Did you say he was in the prone position?

A. He ran off, he grabbed the 240, grabbed the vehicle -- or grabbed the 240 off the vehicle, ran down the front of it, and he was down in there.

Q. Did you see him do that?

A. Yes, sir.

Q. Okay. And when he got off the 25, did you see him go into the prone position?

A. Yes, sir.

Q. Did you see him engage his weapon?

A. I saw him fire it a few times. I think that's when I was hearing pop shots here and there.

- Q. I think you said that you thought he ran out of ammunition?
- A. Yes, sir. He's -- at some point he had stopped shooting and I had told him he needed to -- you know, mount up, we're leaving. And he said something to me. He yelled at me and I left it alone.
- Q. What did -- what did he say?
- A. I can't remember. It was either, like, you know, don't talk to -- don't talk to an NCO like that or yelled something at me. I don't -- enough to make me shut up and not talk to him again.
- Q. You said he was acting weird. How else was he acting weird?
- A. He was -- I think it got to him, sir. I think the engagement got to him, sir. He was just real quiet and kind of real guarded. Even when we were -- you know, kind of let our guard down, he didn't.
- Q. How did he not let his guard down?
- A. He was still laying in the prone position with his 240 facing down range where all the insurgents were coming from.
- Q. And was that when you observed he was quiet or is that an observation that you made later?
- A. No, that's just when he was -- he was just -- I mean, he was always a quiet guy. But, you know, he was just kind of acting odd.
- Q. What else did he do to act odd?
- A. Basically just laying in that prone position, you know, with his -- you know, holding onto the 240 like there was someone else coming at him. That was, you know, when we weren't like that. We were just kind of not at that -- you know, not at that level.
- Q. Had you seen him under intense stress before that occasion?
- A. No, sir.
- Q. Did you get a chance to see him under stress after that occasion?
- A. I can't remember, sir. Nothing really as bad as that.
- Q. Did you -- did you get a chance to observe him when he wasn't under stress before that occasion?

A. Yes, sir.

Q. Did that occasion seem to change him or alter his demeanor at all?

A. I know he was in the Army before and he was a little weird and he was always quiet. So I know he did something -- he done some kind of combat missions with special forces or something when he was in the Army.

Q. Did he ever talk about that?

A. No, sir.

Q. All right. At some point you said that out of the peripheral, you saw then Captain Card engage an insurgent?

A. Yes, sir.

Q. Do you remember where you were at that point?

A. I was standing by the C-square. I remember getting a cigarette, so I had to -- that was where it had to have been, by the hatch.

Q. Was that -- was that when you were -- when you were pressed forward here and oriented in a southwesterly direction?

A. It's when they started getting us to walk backwards and then that's when.

Q. So it was after the LAV had returned up by the downed 25?

A. Yes, sir.

Q. Okay. Do you -- and you said you were getting a cigarette from who? From Wike?

A. Yes, sir.

Q. And he was in the top hatch?

A. No, he was in the driver's hatch of the C-square, sir.

Q. Okay. And do you have to climb up there to get that from him?

A. No, sir. He popped up and, you know, opened the door and gave it to me.

Q. And he was able to just reach down and handed it to you?

A. Yes, sir.

Q. Was it during this time that you were taking the

cigarette from him that you saw this out of your peripheral?

A. Yes, sir, I believe so.

Q. Okay. Was it out of your right peripheral or your left peripheral?

A. My left, I believe. No. Wait a minute, I think I turned around and I was facing Wike this way so it had to have been out of my right.

Q. Okay. Were you standing on the right side of the road or the left side of the road as you're facing west?

A. Left side, sir.

Q. You were standing on the left side of the road. Okay. And was that -- was the LAV between you and the field?

A. Yes, sir.

Q. Okay. So where was Captain Card?

A. That I can't -- I can't really remember, sir.

Q. Do you remember if he was in the field?

A. No, sir. He was in his HMMWV.

Q. I'm sorry?

A. He was in his HMMWV, sir.

Q. He was in his HMMWV?

A. Yes, sir.

Q. So when you observed him out of the peripheral, was he in his HMMWV when he engaged this Iraqi?

A. He was getting out.

Q. He was getting out?

A. Yes, sir.

Q. In which direction was he walking when he got out of the HMMWV?

A. Towards where they came at us, sir.

Q. Over here towards the dotted line?

A. Yes, sir.

Q. At this point was the LAV still between you and the field?

A. Yes, sir.

Q. In other words, was the LAV between you and the dotted line?
A. Yes, sir.

Q. Okay. So I'm just kind of struggling with how you might have seen this out of your peripheral if that LAV was between you and the dotted line.
A. Yes, sir. There might have been a gap. I'm not sure. A gap between one of the vehicles, two of the vehicles. I just saw it out of the side of my eyes.

Q. Okay. Did you see him make the walk from the HMMWV all the way over to where the insurgents were?
A. I can't remember, sir.

Q. So it was out of your left peripheral you said, correct?
A. Out of my right, sir.

Q. It was out of your right peripheral?
A. Yes, sir.

Q. Okay. Did you turn and focus on it, on the event?
A. Negative, sir.

Q. So the whole event transpired in your peripheral vision?
A. Yes, sir.

Q. At no point did you ever turn over and focus on it directly?
A. No, sir.

Q. Okay. Mr. Jimenez, as best you can, there's sort of a range of peripheral vision if you will. Where would you say that occurred in your peripheral vision. If you would just indicate that by maybe holding out -- just focus straight ahead and hold out your right arm since you said you saw it out of your right peripheral. Just kind of indicate in your peripheral where you might have seen that event take place.
A. Right here, sir.

DC (Maj Workman): Okay. So the witness is indicating not quite straight out but maybe --

IO: He's looking forward --

CC (Mr. Faraj): Eighty degree angle from his forward.

DC (Maj Workman): As he's looking forward, maybe 80 degrees to his right.

IO: Yeah. Somewhere around there. If 90 degrees was straight to the right. 45 degrees was halfway. It would be much closer to 90 than 45.

Questions by the defense (continued):

Q. Okay. All right. And, again, then, Mr. Jimenez, at no point did you turn and focus on that directly?

A. No, sir.

Q. As you recall, how high was the grass in that field?

A. I couldn't tell you, sir. Sometimes my memory says it's dirt. Sometimes says it was a little bit smaller than knee high.

Q. So anywhere between bear dirt and knee high?

A. Yes, sir.

Q. Do you recall the Iraqi laying on the ground?

A. There's a bunch of them laying there, sir.

Q. Do you recall which one he was pointing at?

A. No, sir.

Q. Do you recall these Iraqis being piled up on top of each other or sort of dispersed?

A. I think there maybe was a few piled on top of each other. They were just all kind of all over. Like in kind of a straight line but there were a little bit separated. But some were piled.

Q. As far as you could see was the -- was the individual armed?

A. As far as I knew, they were all armed, sir.

Q. I think in prior conversations you'd refer to this individual -- I believe in your statement too, you refer to this individual as an insurgent?

A. Yes, sir.

Q. Okay. Why do you choose that term?

A. Because they were shooting at us and running at us.

Q. And do you believe this was one of the people that was shooting and running at you?

A. 100 percent, sir.

Q. In your mind as best as you can recall, you believe this person was still armed?

A. Yes, sir. I believe he was a threat.

Q. You believe he was still a threat?

A. Yes, sir.

Q. And why do you say that?

A. If he's not dead, he's still a threat.

Q. Especially if he's got armaments, arms nearby?

A. Yes, sir.

Q. I think you spoke about being debriefed later --

A. Yes, sir.

Q. -- after the event?

Who debriefed you?

A. I can't remember, sir.

Q. Routinely, as a matter of course, who would you typically give a debrief to? An officer? A staff NCO?

A. I believe it would have been -- it could have been Gunny Beall at the time. I'm not sure with the debriefs who it was.

Q. Were these thorough debriefs?

A. Yes, sir.

Q. Did the event involving Major Card, did that ever come up in a debrief?

A. Not that I can remember, sir.

Q. Did your debrief sometimes occur with General Mattis?

A. I guess so, sir.

Q. Do you recall seeing General Mattis on the night in question?

A. No, I don't really recall much after I saw Bohlman, sir.

Q. All right. Mr. Jimenez, if you would have seen something that wasn't right, if you would have seen a crime occur or something of that nature, would you have told somebody?

A. Yes, sir.

Q. Have you ever seen an officer in shower shoes at the exchange, I mean back when you were on active duty, did you ever see things like that?

A. Yes, sir.

Q. Did you stand up and say, Hey, you're not supposed to be wearing shower shoes in the exchange?

A. If he was a higher rank than me, sir, I wouldn't say anything to him.

Q. You wouldn't say anything. Would you say something to somebody else?

A. Yes, sir.

Q. Okay. And on this occasion during this time, were there other people that you could have gone to?

A. Yes, sir.

Q. Were there other people that you would have felt comfortable going to?

A. Yes, sir.

Q. Like who?

A. Any one of those guys, sir.

Q. You were a pretty tightknit group?

A. Yes, sir.

Q. Okay. Aside from reporting, making a report, is this something that you would of discussed amongst yourselves if you would have seen an officer go out and execute somebody? Is that something you all would have talked about?

A. Definitely, sir.

Q. Okay. But you don't recall ever talking about it?

A. No, sir.

Q. Have you ever discussed this incident with any of your peers? Any of those fellow jump members between the time of June 7, 2004 until NCIS contacted you?

A. No, sir.

Q. Has any -- at any point, has any defense attorney -- you know, up until maybe the last few weeks, has any defense attorney reached out to you and contacted you?

A. Not that I can remember, sir. I think I got a call from somebody from JAG I think.

- Q. How long ago was that?
A. It had to have been last week.
- Q. And did they do anything to try to influence your testimony?
A. No, sir, not at all. They actually tried to help me.
- Q. How so?
A. When I let them know that I didn't -- you know, they had brought it to my attention that -- you know, did you not get a copy of your statement? I said, That's correct, sir. And they said that they would help me get one if I needed one.
- Q. Did you get one?
A. I didn't pursue it, sir.
- Q. Okay. Is there anything else you need?
A. No, sir.

DC (Maj Workman): Can I have one moment, please?

Mr. Jimenez, thanks for being here. You know we're just trying to get to the bottom of things. And that's all the questions I have for you right now.

WIT: Thank you, sir.

IO: Trial counsel, any follow-up questions?

GC (Maj Goode): Yes, sir.

REDIRECT EXAMINATION

Questions by the government:

- Q. You stated that you've been in over 300 engagements; is that right, or firefights?
A. [The witness nodded his head.]
- Q. How many IEDs would you say you were involved in?
A. I've been directly blown up seven times, ma'am.
- Q. Do they have a tendency to all kind of blend together?
A. A little bit, ma'am.
- Q. Is it difficult sometimes to differentiate between some attacks and other attacks?

A. If it wasn't a major one, yes, ma'am.

Q. When you were in that alleyway at the beginning right after the IED went off, when you were covering down that alleyway, do you recall approximately how long you were in that alleyway?

A. No, ma'am. It was light and then it was dark. I remember arguing because we couldn't get Arty to shoot the lumes up fast enough for us.

Q. And when you finally came back to the LAV to pick up the gear -- now you said you have a memory of seeing insurgents kind of rush down the street towards where Corporal Phillips' position was. But do you recall what time frame of where in the timeline that occurred?

A. No, ma'am.

Q. So you can't recall whether or not in your memory that would have occurred before you saw Lance Corporal Bohlman or after?

A. I can't recall when it would have happened, ma'am.

Q. All right. To the best of your recollection, you recall out of your periphery seeing Major Card shoot a body, an individual on the ground in the field. Is that your memory?

A. Yes, ma'am.

Q. Do you think he committed a crime?

A. No, ma'am.

Q. And why is that?

A. Because, I mean, it was a threat. There was some moving that was shooting at us, I would of done the same thing.

Q. If an individual is wounded and lying down in a field, is he a threat?

A. Yes, ma'am.

Q. Why?

A. He's still alive. He can still grab a gun. He can still shoot me.

GC (Maj Goode): Okay. No further questions.

IO: Defense counsel.

REXCROSS-EXAMINATION

Questions by the defense:

Q. Just one brief point of clarification. You've been on over 300 combat missions, correct?

A. Yes, sir.

Q. Which is different than 300 firefights or 300 --

A. Yes. It could be IED attacks. It could be routine reconnaissance. It could be an HVD hit. It could be a convoy. It could be anything.

Q. And it could be completely uneventful?

A. Yes, sir.

DC (Maj Workman): Sir, that's all the defense has.

IO: Trial counsel, any additional questions?

GC (Maj Goode): No, sir.

IO: Can I see the statement -- the highlighted statement?

GC (Maj Goode): Yes, sir.

IO: We're going to admit that. That will be Investigative Exhibit 9.

Mr. Jimenez, thank you for being here today.

WIT: Thank you, sir.

Q. The things you saw with Captain Card or Major Card -- grab a seat, please. I've got a few follow-up questions for you. Thank you.

You saw, if anything, out of your peripheral vision.

A. Yes, sir, at best.

Q. If this is directly ahead of me, this is 90 degrees, it was somewhere in this area. 80-plus degrees.

A. Yes, sir.

Q. So you didn't have a great look at the thing?

A. Yes, sir.

Q. You pretty sure what you saw though?

A. Pretty sure, sir.

Q. Did you see who -- I'll call him Captain Card -- Captain Card shot? Who do you --

A. It was the insurgent on the ground, sir.

Q. Describe for me the body position of this individual. Flat on his back? On his stomach?

A. The best I can do for you, sir, is flat.

Q. Do you know on his front or back?

A. I couldn't tell you, sir.

Q. And I think you described that you're not quite sure where Captain Card shot him. It was somewhere towards the upper --

A. Yes, sir.

Q. -- upper portion of the body?

A. Yes, sir.

Q. How far, distance wise, were you from where Captain Card was?

A. I'm not good at feet or meters, sir. I'm not sure.

Q. Well, if this -- how far would you say that wall across us is?

A. I couldn't tell you right now, sir. I don't --

Q. 30 feet? 20 feet.

A. Sure.

Q. Well, let's say that's 30 feet.

A. Yes, sir.

Q. All right. Using that as a benchmark, how far do you think you were from Captain Card?

A. Probably about that.

Q. Thirty feet?

A. Yes, sir.

Q. About the same distance as that wall?

A. Yes, sir.

Q. How close was Captain Card to the insurgent he shot?

A. Just about right on top of him, sir.

Q. Within a couple of feet?
A. Yes, sir.

Q. Do you have any reason to believe that that individual was wounded?
A. I would think he would of been wounded or dead, sir.

Q. Because of why?
A. Because of us shooting them, sir.

Q. Did you see any blood or anything?
A. No, sir.

Q. You stated that the individuals on the ground were armed. Is that because they were carrying arms in their hands or because there were arms generally in the area.
A. Because they were carrying arms when they were alive at us, sir, and rushing us. And then when they got shot, they dropped them wherever they dropped them or they were still on them.

Q. Do you have any reason to believe that the insurgent on the ground that was flat was in possession of a firearm?
A. I couldn't tell you, sir.

Q. Describe for me the best that you can, is this a man?
The insurgent was a man?
A. Yes, sir.

Q. Could you even approximate an age?
A. Military age, sir.

Q. And what do you mean by military age? Twenties?
A. About twenties to early thirties, sir.

Q. What do you think Captain Card was doing at that time?
If you had to describe what he was doing, what would you tell me he was doing?
A. When he did that, sir?

Q. Yes. What is that?
A. He was protecting us, sir.

Q. Why do you say that?
A. Because there was clearly something we didn't see.

Q. Is your testimony that you don't believe that that was a crime because the individual was still alive?

A. He was still a threat, sir, yes.

Q. Because he's alive?

A. Yes, sir.

Q. If he was breathing but unconscious, is he still a threat?

A. No, sir.

Q. He's still alive though, right?

A. Yes, sir.

Q. So if he's unconscious, lack of blood, he's still alive?

A. Yes, sir.

Q. He's not a threat at that point?

A. If he's unconscious, sir, he can't move.

Q. So a conscious individual is a threat?

A. Yes, sir.

Q. Is a conscious individual who doesn't have a weapon a threat? An unarmed, conscious, wounded insurgent, is that a threat?

A. It's availability of weapons. Potentially being around him, sir, I still think he's a threat.

Q. Did you see the insurgent after Captain Card shot him?

A. No, sir.

Q. You just saw the shot?

A. Yes, sir.

Q. Heard the shot?

A. Heard it, yes, sir.

Q. And what did Captain Card do after that?

A. I don't remember, sir.

Q. Without getting, I guess, too much into your business, do you take any medications right now related to PTSD?

A. Supposed to, sir.

Q. You're not taking them?

A. No, sir.

Q. What type of medications are you, I guess, supposed to take?

A. Two antidepressants, antianxiety a sleep pill, and some other kind of pill.

Q. Did you try taking them for some period of time?

A. Yes, sir. For a good year and a half.

Q. And what, they just weren't working for you or you didn't like the results of them?

A. I didn't like the results, sir.

IO: Counsel, any additional questions in light of mine?

GC (Maj Goode): No, sir.

IO: Defense counsel?

DC (Maj Workman): One moment please, sir.

IO: Sure.

Major Workman, I'm sorry. Just one quick follow-up question.

DC (Maj Workman): Yes, sir.

Questions by the investigating officer:

Q. Mr. Jimenez, you refer to this guy as an insurgent because he was one of the guys actively engaging the Marines.

A. Yes, sir.

Q. Do you know if he, in fact, was engaging the Marines or he was just some poor slob who was sort of caught in the wrong place at the wrong time?

A. I don't think that's possible, sir.

Q. I guess what I'm asking at some point did you see this individual actively engage the Marines, either shooting or firing? Or just kind of your own gut sense and common sense?

A. Common sense, sir. If there's a body laying amongst the other bodies that were shooting us with weapons around them.

Q. The other bodies that were -- the other bodies, do you know if they were shooting at you?

A. I couldn't go and point out each man at once --

Q. All right. So you're basically saying what your gut instinct, your common sense, your training --

A. Yes, sir.

Q. -- tells you rather than hard, I guess, I saw type of evidence, correct?

A. Yes, sir.

IO: All right. Defense counsel?

DC (Maj Workman): We're good, sir.

IO: Trial counsel, any additional questions?

GC (Maj Goode): No, sir.

IO: All right. Mr. Jimenez, I appreciate your testimony today. I know it's not easy for you to come in and relive these things.

WIT: Yes, sir.

IO: Are you going to be in the local San Diego Area for the immediate future?

WIT: Yes, sir.

IO: I don't know if the case is ever going to go to court or not, but if you're called, you'll be available?

WIT: Yes, sir.

IO: All right. I'm going to give you just a brief instruction I'm going to give all the witnesses. Don't discuss your testimony with anyone except for the trial counsel in this case, defense counsel team as well. If anyone attempts to discuss your testimony or what took place, just stop them and you can alert trial counsel. You can alert the defense counsel. Okay?

WIT: Yes, sir.

IO: And take care of yourself, alright?

WIT: Alright, sir.

IO: All right. Thank you.

[The witness was warned and departed the courtroom.]

IO: All right. Do you all need a five-minute break or do you want to press it?

GC (Maj Goode): Yes, sir.

IO: All right. Quick five minutes.

[The Article 32 investigation recessed at 1613, 19 April 2011.]

[The Article 32 investigation was called to order at 1627, 19 April 2011.]

IO: Investigation is called to order. You may call your next witness.

GC (Capt Gordon): Sir, the government will call Christopher Russell.

Christopher L. Russell, a civilian, was called as a witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the government:

Q. Please state your name and spell your last.

A. Christopher Lee Russell, R-U-S-S-E-L-L.

Q. And what's your current city and state of residence?

A. Victorville, California.

Q. And you're a former United States Marine, correct?

A. Yes.

Q. When did you join the Marine Corps?

A. July of '01.

Q. And when did you get out?

A. July of '05.

Q. And what units were you assigned to while you were in?

A. LAR. Like every company in LAR.

Q. And do you recall being on deployment in the vicinity of 7 June 2004?

A. Yes.

Q. Who were you attached to at that point?
A. The Division Jump.

Q. And how long were you with the Division Jump team? The entire deployment?
A. No, probably four months.

Q. Do you remember when?
A. It was from the time that -- I don't remember the date that Staff Sergeant Bautista died, but we placed their vehicle till the end of the deployment.

Q. And on 7 June 2004, you recall that day?
A. Yes.

Q. What -- you guys were doing route recon, correct?
A. Yes.

Q. And you stopped at the Snakepit?
A. Yes.

Q. And then you were taking a different route back?
A. Yes.

Q. All right. Start from there. What do you recall from the route back?
A. I remember going down a road and then we were about to take a corner and we got hit with an IED.

Q. Where were you?
A. I was in the trail vehicle popped up in the --

Q. I'm sorry. Where was the unit?
A. Ramadi.

Q. And what section of road, do you recall?
A. No.

Q. Does Two Tits sound familiar?
A. Sure. I don't know. I wouldn't know the name of that road.

Q. Okay. And where were you positioned?
A. I was in the trail 25, popped up in the rear hatch.

Q. The lead 25 or the rear 25?
A. The rear 25.

Q. And what was your job?

A. Chief scout for that vehicle.

Q. So what happened?

A. We got hit with the IED. My vehicle backed up and went around to take the lead position and then the scouts got out and we went and secured an alleyway. And then we were there for awhile. We went back to our vehicle. And then once we got to our vehicle, Sergeant Hyman at the time told us to get out and go back to the lead 25 which was the lead 25 prior to us taking lead. And we went back there and helped clean everything up that I recall. And then we -- the next thing I remember is going back to the C-square to smoke a cigarette and talk with everybody.

Q. All right. Just one second.

IO: What's the C-square?

WIT: It's -- the C-square is the logistics vehicle. It's the one that has all the radios and all that stuff in it. It's the one that either General Mattis or -- were riding in.

IO: Okay. Got you.

GC (Capt Gordon): I'm sorry, sir. I didn't hear the question.

IO: The C-square, we referred to it a couple times. I just want to make sure I'm tracking.

CC (Mr. Faraj): Command and control vehicle. C2.

IO: Yeah. Command and control vehicle. Which vehicle --

WIT: It was in the.

IO: It was the second vehicle?

GC (Maj Goode): Third.

WIT: I don't -- was it the third? I don't remember where the HMMWVs were.

IO: All right. You don't remember? All right. Your testimony. I got you.

GC (Capt Gordon): Sir, we'll ask the next witness that.

IO: Okay.

GC (Capt Gordon): Okay. Let's fill in a few gaps from there. So when the IED hit, it hit which vehicle?

A. The lead 25.

Q. And you guys went around and took position where?

A. In front of the -- where the lead 25 was hit around a bend where there was another road and there was an alleyway in front.

Q. And what was your job when you assumed that position?

A. To take the front sector of fire, to cover the front.

Q. And part of that was protecting the alleyway?

A. Yeah. Well, that's the scout's job was protect the alleyway and making sure nobody came from the flank because there was a brick wall there and the vehicle couldn't see through it.

Q. While you were protecting your sector of fire, what did you observe?

A. A whole lot of nothing. One vehicle came down the road and the -- Sergeant Hyman put warning shots down the road and then they didn't stop. So we took fire and stopped the vehicle.

Q. And --

A. That's the last thing I remember being in the alleyway. Right after that is when we got called back to the vehicle.

Q. And was that vehicle -- that was actually on the road? That was driving on the road?

A. Yes.

Q. What happened to the vehicle once it was stopped? Did it stop right there in the road? Did it --

A. It stopped right in the road and the passenger got out and walked up to me with pretty much hobbled because he only had one leg. The other one was all bloody, but -- and we told him to leave and he left. Just walked back down the street where they came.

Q. Was he the only passenger?

A. I couldn't tell you who all was in that vehicle.

Q. Do you recall if anyone searched that vehicle?
A. No.

Q. So what else did you observe during that time?
A. Being in the alleyway?

Q. Yes. When you were providing security in that sector.
A. Nothing that I remember.

Q. Do you recall -- were there any dismounted insurgents present anywhere?
A. No. Not from that area. Nobody, no fire, nothing from that area.

Q. You don't recall taking any fire?
A. Before we went around and took front, yes. But once we took front and we were in the alleyway, no.

Q. All right. Please explain what fire you recall receiving from dismounted insurgents.
A. From dismounted? We didn't take any fire being in the front.

Q. I see. When I say "we," your unit that you recall. Any firefight that ensued.
A. When we first got hit, we were getting fire from the right, our right as we were traveling down the road. But once we got to the front, us, the only ones I know of, that I remember, were up front and we didn't take any fire. The people in the back took fire, but I don't know who was there or how long that lasted. I remember hearing it, but I don't remember how long that lasted.

Q. When you say "in the back," you mean the guys in the third vehicle?
A. The --

Q. The C-square vehicle?
A. The C-square and the Hummers yeah.

Q. What do you -- do you recall seeing any of that take place?
A. No.

Q. Did you actually get eyes on any dismounted insurgents?
A. No. Just the one that got out of that vehicle.

Q. Okay. And then -- and then what happened after you

were -- after you were done providing security to that alleyway?

A. We went back into our vehicle. Sergeant Hyman called us back to our vehicle. And it seemed like as soon as we got in there, he told us to go back to the lead 25 to help clean up everything, so when the recovery got there, they could just take it. And then after that, there's a big blank spot and then the next thing I remember is smoking a cigarette by the C-square.

Q. Okay. Let's -- just going back. So as you're making your way back to the C-squared vehicle, were you observing your surroundings?

A. I probably was, but I can't remember to tell you the truth.

Q. What observations, if any, do you remember from looking out into the field?

A. When we first got hit, I just remember the buildings and then I remember flashes coming from the buildings. And then when we went around, I never looked that way because I was looking down the road. Richmond, who was on the other side was looking that direction.

Q. Which buildings? Are you talking the buildings as you were traveling initially, the buildings to the left --

A. My -- to my right.

Q. -- or the buildings to the right across the field?

A. To the right. I'm sorry. Did I say left and do this? I might have. It was to the right as we were driving down the road.

Q. Okay. Let's just clarify. The right is the field, correct?

A. Yes.

Q. All right. So you were taking -- the fire you recall receiving was from either the field or beyond?

A. Yes.

Q. So if you say "buildings," you're talking about buildings that were beyond the field?

A. Yeah.

GC (Capt Gordon): Okay. When did the engagement -- the total engagement cease? How -- I'll put it in terms of this: How long after the IED blast did the engagement piece of

this whole incident cease?

CC (Mr. Faraj): I just want -- when that question was asked, Mr. Russell gave a very sort of confused look as if he didn't -- almost in response to, you know, that -- there was a -- I don't understand what the answer was, but I'd like to hear a response because his was a very confused look.

IO: Do you understand the question?

WIT: Yeah. I -- seriously, I don't remember times. To me it probably felt like four hours, but it probably wasn't. It seemed like forever being there. It seemed like we -- well, the firefight probably wasn't four hours. It was probably an hour of it. But to me, I feel like I was there on the street doing everything from the time the blast hit to the time that the recovery got there was probably four or five hours. Just looking back at it. Just because I thought it was forever while I was there.

Q. And when you say "the recovery," you're talking about the QRF?

A. No, the 88, the tank.

Q. Okay.

A. The recovery of the vehicle.

Q. How long do you think it was until the QRF arrived?

A. I don't even remember the QRF getting there, so I don't know.

Q. Do you remember the -- Golf Company --

A. [The witness shook his head.]

Q. Coming out --

A. No. I don't remember anybody. I remember seeing the 88, the tank recovery that took the vehicle back. I remember seeing it. I don't remember seeing anybody with the tank though. I just remember it being in between the 25 that got hit and the tank hooking it up.

Q. So when you were -- when you were making your way back from the alley, do you recall seeing any shots being fired from any direction from enemy hostiles?

A. No. No. I was running. My mind was get in the vehicle.

- Q. I guess, do you know if there was any shots coming or you just don't know?
- A. I just don't know. I don't remember. I don't remember hearing anything. I don't remember.
- Q. But you recall -- do you recall your mind state that you had at the time that you needed to be -- you know, you needed to be at the alert, ready to go? Or it was more okay, it's over? It's relaxed now?
- A. It wasn't at that time because I remember running -- if it was more relaxed, I wouldn't of been running. But I remember running back to the vehicles.
- Q. And that's running back to the C-squared vehicle?
- A. No. Running back to the 25, my vehicle. Or should I say Sergeant Hyman's vehicle because he was the VC.
- Q. So what happened after -- what happened when you made your way back to the vehicles?
- A. I ran back to the 25. I got in and it seemed like as soon as I got in, Sergeant Hyman said go back to the 25 that got hit to help clean up all the stuff that had been blown out of that vehicle?
- Q. What did you do at that time?
- A. Went and cleaned up everything. But that was more relaxed because I think Sergeant Hyman might have told me that the QRF were here or something, but I can't remember him saying anything. But I remember being lax, picking up the stuff and putting it back in the vehicle.
- Q. Do you remember how long it was in between the blast and this time period that we're talking about now?
- A. No.
- Q. Do you recall who you went with to go back to the vehicles, when Sergeant Hyman told you to go help pick up?
- A. I remember taking my scout platoon back there. Myself, Richmond, Jimenez, and Custudiojuarez.
- Q. All right. So what happened after that?
- A. After that, that's when that blank spot hits that I don't remember anything. The next thing I remember -- or I don't -- I remember it because I see pictures of it. That's my thing. I see a picture of us sitting or standing like the front left corner of the C-square over there, the opposite side that the fire was coming and

smoking a cigarette. But I can't see the faces of the people that were standing there either.

Q. When you're smoking a cigarette, it's your testimony that the tanks -- or the tank team had already --

A. No, the tank -- the recovery wasn't there yet. That's what we were waiting on. But we had to have -- the QRF was there. They had to have been there; otherwise, we wouldn't of just been standing there.

Q. Do you recall seeing anyone in particular from the QRF team?

A. No.

Q. Do you recall any insurgents actually rushing you or seeing them rush anyone else in sort of an ambush fashion?

A. No.

Q. Do you just not remember or no, that didn't happen?

A. I just don't remember. If I say no, it's I don't remember if something happened. Or I'll tell you it didn't happen.

Q. What happened after the cigarettes you guys were having at the C-square?

A. The next -- there's another blank spot. And then the next thing I remember is hooking up the 25 to the tank, the recovery. And then getting back in our vehicle, going to wherever we dropped that vehicle off. I remember dropping the vehicle off and then I remember being back at Blue Diamond going through the weapons and gear that we had from the wounded. And that's the last thing I remember. Well -- and then Doc gave us a pill to help us sleep if we wanted it. And then that's the last thing I remember.

Q. Is there anything of significance in the following days that pertains to this case that you remember?

A. I don't remember. I don't remember. I try and think back to the rest of that deployment and I can't remember it. I can't remember the next day. The next thing I remember is calling my wife, like three days later -- because we couldn't call. After something like that happened, we couldn't be on the phone for security reasons for, like, three days. And I remember calling her and her crying asking if I was okay. And that was the next thing and the last thing I remember from that

deployment.

- Q. How's your memory been affected just purely by the passage of time in this case?
- A. I don't think it -- it hasn't gotten any worse because I've been dreaming about it. I've been trying to think about it. I've been trying to remember things. I just don't remember anything. I don't think the time has really done anything to my memory. Because if it had in the last, what, four years leading up to the first thing with NCIS, from that time to now I probably would have remembered it.
- Q. How was your memory when you gave your statement to NCIS that first time around?
- A. I have not tried to think about it for four years. I got a call from NCIS saying they wanted to do a routine thing. I went in there and within five minutes of being in there, they told me what they were there for and to start doing the thing. So that statement was out of the blue after four years, remember this. That statement has a lot to do with pictures in my head that are through both of my deployments because it was all jumbled, bring all these memories back, do this. Tell me what happened.
- GC (Capt Gordon): Sir, I'd like to show the witness his statement.
- CC (Mr. Faraj): I'm going to object to that. There's no -- there's no reason to show him his statement because there isn't a question.
- IO: Well, I think the questions are going to follow.
- If you would hand him -- I'm going to allow him to look at his statement and read through that.
- CC (Mr. Faraj): Again, Your Honor, this is -- I mean, you're seeing where this is going.
- IO: I'm going to ask him the questions. I've got a statement here that I want him to explain one way or the other. I'm going to ask him the question. There's a statement here. He can explain it's a complete fabrication. It's completely true. But certainly the prosecution can ask him about a sworn statement that he gave to criminal investigators. His answers --

CC (Mr. Faraj): I understand. But is there a question that we're trying to get that he's not getting from here. I mean, let's ask the question, then he can say do you remember giving a statement or whatever. But what are we getting at otherwise?

IO: You recall giving a statement to NCIS?

WIT: Yes.

IO: All right. I'm going to have him take a look at the statement.

GC (Capt Gordon): And you've had an opportunity to review the statement as well coming in today?

A. Yes.

Q. Sir, I just -- all I want him to verify this is his signature on the back and we'll go through the questions.

IO: I hear you. You can go through it and ask him if it's accurate. If it's not accurate, his answers are his answers.

Q. Is that your signature at the bottom of that?

A. Yes, it is.

Q. Would you --

IO: And that is -- one second -- you just handed the witness --

GC (Capt Gordon): Sir, that was Investigative Exhibit 13.

IO: Yeah. It's Investigative Exhibit 13.

Questions by the government (continued):

Q. So you recall making this statement on 11 June 2009?

A. Yes.

Q. And since you've had the opportunity to review it, I assume that you concur that you have several -- there are several discrepancies with this?

A. Yes.

Q. Just to briefly go through it -- you put -- well, first

let me say how is this statement drafted up? Did you type this --

A.

No.

Q.

-- [inaudible] for you?

A.

Somebody else did.

Q.

Who typed it?

A.

The -- there was two NCIS agents. One of them was asking the questions and the other one was actually writing it down and then typed it up later I'm guessing. Because he was in the room when he hand wrote it.

Q.

And they -- once they typed it up, then they gave it to you for your review?

A.

Yes.

Q.

And you initialed all the paragraphs?

A.

Yes.

Q.

And what do those initials mean? That those were --

A.

They were believed to be true at that time.

Q.

All right. Do you recall initialing on the paragraph discussing, As you walked up to the C-square -- so this would be when you're going to have a cigarette that you saw Captain Card standing on the sidewalk next to the HMMWV and he was talking to an Iraqi male that was on his knees in the ditch?

A.

I never said Captain Card, but that's what is implied in that. But I do remember saying that, but now that I think about it, that was another deployment and figures I can't remember.

Q.

What do you mean another deployment? There was another scenario like this?

A.

Yes. My first deployment, we were -- I don't even remember the name of the town. But we were going into a town and we came upon -- I was a lead vehicle with that platoon. We came upon an individual in the gutter to the left of our vehicle and we got out and searched him. And then I got back in the vehicle and there was two individuals standing there. So that's the picture I have is the two individuals standing there with that guy and they searched them again. And then we just drove off because he didn't have any guns. But that's -- that visual is what I recalled in that.

Q. Okay. And then to -- it goes on to say that within 30 seconds to 10 minutes after you arrived at the C-square building that you heard [inaudible] fire off a round or two and you look to your left and you saw a Captain Card pointing the --

A. I don't remember that.

Q. Do you remember -- do you remember making any of that statement to --

A. I remember saying that statement, but I never said Card's name.

Q. Okay. So what do you recall?

A. With that, I remember the fire. I remember fire, but I don't remember seeing anything.

Q. You remember hearing shots?

A. Yes.

Q. When do you remember hearing shots?

A. Standing at the C-square, smoking a cigarette.

Q. They were friendly shots?

A. I couldn't tell you.

Q. Is it safe to say to assume that if they were -- if you thought you were taking fire from enemy hostiles, you probably wouldn't of continued smoking cigarettes?

A. Well, it was a couple shots then it stopped. I couldn't tell you how many shots it was. I couldn't tell you what gun it came out of right now.

Q. But you don't remember who shot it?

A. No.

Q. And then went onto discuss an Iraqi male being shot and falling. Do you recall that at all?

A. No. That goes back to that picture with the prior deployment.

Q. You discuss that there wasn't -- you didn't see anyone posing a threat at the time? Would you agree with that?

A. Yeah.

Q. That when you were at the C-square --

A. At the C-square --

Q. -- smoking a cigarette, there was no --

A. No threat at all.

Q. Do you recall hearing anyone say this mother fucker isn't going to set off any more IEDs?

A. No.

Q. All right. You recall doing the question and answer portions, you gave your statement then they asked questions and you gave answers?

A. Yes.

Q. Is your -- right now, is your recollection of that question/answer session, is your recollection good of the answers that you provided?

A. There's a couple of them there that I disagreed with yesterday.

Q. Prior to your deployment in 2004, did you receive LOW, ROE and LOAC training?

A. Yes.

Q. What -- was this for -- this was with LAR that you received this training?

A. Yes.

Q. Was Major Card or then Captain Card, was he a part of that?

A. No.

Q. Who do you recall carrying M9 pistols?

A. Sergeant Hyman, Doc Slaughter, and Captain Card as far as I recall that was there. A lot of the -- like Singleton, but he wasn't there. He carried a 9 mil. There was a couple of the comm guys that carried a 9 mil. I don't remember their names or who they were or if they were even there that day.

Q. Was Gunnery Sergeant Beall one of the comm guys?

A. No. But he did have a 9 mil. I forgot about him.

Q. So those are the --

A. Four. Yeah.

Q. -- particular that you recall being there that day?

A. Yes.

Q. You were asked the question based on what you saw immediately after hearing the pistol shot, what do you

believe happened. Your response was Captain Card had shot an unarmed Iraqi.

A. I don't remember saying that, but I initially --

Q. Well, what's your response to that?

A. Couldn't tell you. I seriously don't remember saying that but my memory is not the best.

Q. Is that your memory right now that that answer is correct?

A. No.

Q. And then you were asked the question how long after the firefight on the Corolla did Card shoot the unarmed Iraqi. The answer was 10 to 30 minutes. Same thing?

A. Yeah. I don't -- that's not true, because I don't remember that.

Q. You went on to describe how far away Captain Card was holding the -- or how far away he was when he was holding the pistol.

A. See, that goes back to that picture. That wasn't -- I never said Card. That was put in there by the NCIS guys. I never said Card's name. That was the individual standing -- I said the individual standing. Because I never seen Card's face, so I would not have said Card. I know that for a fact. And that I was kind of rushed to get done, because I was tired and wanted to go home.

Q. Did you observe this dead Iraqi?

A. No.

Q. At any time?

A. No.

Q. So would it be your testimony that anything pertaining to the appearance or distance or anything of an unarmed Iraqi or an Iraqi that got shot is not true?

A. Yes. That all goes back to the first deployment. All that -- the distance and all that was the first deployment.

Q. Do you recall where on Major Card's person did he wear his pistol?

A. Probably on his right leg. I don't remember ever seeing his holster to tell you the truth.

Q. The last question --

A. Actually hang on. Now, I'm getting a picture of like a leather holster that was like right here, but I don't -- I don't know if that was him or the major or General Mattis. I don't remember, so nevermind.

Q. One of the final questions is: Question: When we told you Card was still in the Marines, you said you were scared. Why? Do you recall answering that question?

A. Yes.

Q. What was your response and why?

A. Because when I think of back in the Marine Corps, I think of, like, an infantry battalion. And personally, I don't think that Major Card belongs in an infantry battalion just because his mindset when we were out in patrol and stuff, he didn't have the mindset of like an 03 or an infantry guy.

Q. Sir, at this point I feel like I've gone through the statement to find the major discrepancies, but if it's helpful like we did with the last witness, we can provide the document to the witness and allow him to highlight portions that he deems are in contradiction.

A. I don't want to read that thing again.

IO: Well, it's my understanding that it's very -- there's nothing incriminating in this statement. If there's something incriminating in this statement, let me know.

GC (Capt Gordon): Incriminating --

IO: Based on what he agrees right now.

GC (Capt Gordon): Agree, sir.

IO: Yeah. If you want to clarify those points, I'm going to take the whole statement as there was a statement. I'm going to give absolutely no weight to the statement other than the fact the statement was made. So if you want to go over some points that you believe, the government believes is incriminating within the statement and that the witness agrees to or states is a fact, then do that. Otherwise, I'm going to take the whole statement as one basic highlighted statement.

GC (Capt Gordon): Okay, sir.

Questions by the government (continued):

- Q. As it pertains to the statement, obviously there's a lot of discrepancies. What is your explanation as to why there are so many discrepancies now?
- A. Because the NCIS, during that investigation, I don't know if they -- I don't think they tried to force things into me, but they brought up other memories in my head from the other deployments that I might have pictured with that one. I have pictures from both deployments in my head and they all mix together, because I didn't think about anything for four years before that. And then all of a sudden I spent four years trying to get it out of my them. And then all of a sudden within three minutes, five minutes, whatever, they wanted all those memories back on paper. So that is a mixture of both my deployments right there.

GC (Capt Gordon): Sir, I don't have any further questions.

IO: Defense counsel, any questions?

CC (Mr. Faraj): Yes, Your Honor. Yes, sir.

CROSS-EXAMINATION

Questions by the defense:

- Q. How were you contacted by NCIS to give a statement?
- A. They called my mother-in-law. My mother-in-law called me.
- Q. Where does your mother-in-law live?
- A. Fontana, California.
- Q. And how did you feel when you were contacted by NCIS?
- A. Fine. Because I just wanted to -- they just wanted to know stuff about the Division Jump.
- Q. What did they tell you they wanted to know?
- A. Like, just a routine -- they -- I remember hearing something about doing like a newspaper article or something about the Division Jump that the --
- Q. They wanted to do a newspaper article?
- A. Something similar to that. They wanted like an archive or something of what the Division Jump was and did.

Q. All right. Let's focus on the person that said that to you. Who is that?
A. I couldn't tell you.

Q. Periard? The agent?
A. I couldn't tell you his name. I don't remember it.

Q. Well, did that person that asked you is the same person that took the statement from you?
A. Yes. The one that asked me questions -- one asked me questions and one wrote that down. So I don't know who wrote that down or which one was which.

Q. Okay. Well, it says here you gave -- they're saying here that Periard took it from you, that statement that you gave.
A. Okay. That could be true.

Q. Okay. And that's the person that told you they're doing some sort of archive newspaper article?
A. Yes.

Q. Is that true?
A. What?

Q. That they're doing an archive newspaper article?
A. Not that I know of.

Q. Okay. So if it's not true, it's a what?
A. Lie.

Q. All right. How do you feel about being lied to?
A. Like shit.

Q. Okay. Do you know this guy's a Marine?
A. No.

Q. Periard. Did you know he was a Marine?
A. Nope.

Q. Do you know if he's -- how do you feel about that now knowing that he's a Marine and not telling you the truth?
A. Seriously, it's not my problem now. I'm out.

Q. Yeah. Did he talk to you about PTSD?
A. He might have maybe.

Q. Did he know you had PTSD -- do you have PTSD?
A. I think I might have told him that I did.

Q. Okay. When did he come clean that this is not about some newspaper article?
A. When we sat down in that room, the first couple minutes.

Q. How did that -- how did he deliver that message?
A. Said let's specifically talk about what happened 7 July or June, whatever month it was. We're going to talk about that day.

Q. Okay.
A. So I knew it wasn't about the whole time.

Q. Okay. Why did you know -- why did that day -- why is that day a memory to you?
A. Because it's the day I got my Purple Heart.

Q. Okay. And something else happened that day too.
A. Yeah. We got blown up.

Q. You lost one of your close friends.
A. Well, yeah.

Q. Did you know at the time that you were being interviewed by NCIS that they were law enforcement?
A. Yes.

Q. And you know law enforcement do investigations?
A. Yes.

Q. Okay. At the time he sat down with you and he said I'm looking into June 7, 2004, at that moment did anything in your mind click that there was something illegal that happened on June 7?
A. No.

Q. As you sit here today, do you believe that anything illegal happened on June 7?
A. No.

Q. Let me be more specific. Anything that you guys did or anybody in charge of you did on June 7?
A. No. I don't remember anything illegal that night. I can't answer for anybody else there.

Q. Okay. There's a lot of specific -- very specific

A. facts -- you read this statement recently, right?
Yes.

Q. And you said one of the explanations is it brought back a bunch of memories?

A. Yes.

Q. The memory about Major Card that they put in here is pretty specific.

A. Yes.

Q. Do you agree with that?

A. Yes.

Q. Is it fair to say that they suggested this memory to you?

A. The memory of Card?

Q. Killing somebody.

A. They told me about it at the end of the -- at the end of the interview after four and a half, five hours of sitting in a room.

Q. Okay. What did you do for four and a half or five hours? I mean, you just -- you told us everything here in less than an hour. What did you do for four hours?

A. They asked me the same question about a million times.

Q. How'd that make you feel?

A. Irritated.

Q. Did you feel like you could just get up and leave any time?

A. Yeah, I could of.

Q. Why didn't you?

A. If I had nothing to hide, why not answer their questions and get what's out there out there.

Q. All right. But if they were asking you the same questions over and over again, do you know what their point of asking the same questions over and over again?

A. They asked them to me in different words. So it's like taking a test. They give you weird words and you actually have to think about it. So in that way, they asked me the same question a bunch of times trying to get -- see if different things -- that's how I took it.

Q. Did that make you feel anything about the way they were doing that?

A. Irritated. But I didn't know any better. I thought that's how NCIS worked.

Q. Okay. Did you believe that NCIS had any authority over you at the time they did this?

A. No.

Q. Did anyone lead you to believe that?

A. No. I was out at that time too.

Q. Now you gave this statement in June of 2009, correct?

A. Yes.

Q. And you testified today that this statement is full of inaccuracies. You have no memory of any of the things that are in here, correct?

A. I have memory of the things that are in there, but that's a mixture of my two deployments as I said before.

Q. Very well. Let's focus on a very specific memory. Major Card shooting somebody.

A. Don't remember that.

Q. Okay. That's what I want to focus on, want to clarify. I wouldn't of said Card's name to begin with just because if I didn't see his face, I won't say his name.

Q. Okay. And your testimony today, that you don't remember that otherwise you would of said Card --

A. Yeah.

Q. -- that didn't come as a result of you talking to anyone of us here on the defense team?

A. No.

Q. In fact the first time I talked to you was yesterday.

A. Yesterday.

Q. And I think you talked to Major Workman when we -- days ago.

A. A couple of weeks ago, he called me for, like, maybe 30 seconds that I recall. I just remember hearing him. I don't remember what he asked me. I don't remember what he said. My memory is shot.

Q. Okay. The point is -- the point is none of these

contacts changed your --

A. No.

Q. -- changed your mind about this statement?

A. No.

Q. You weren't contacted by any of your buddies trying to influence your testimony about this statement?

A. No.

Q. Describe the type of relationship you had with Major Card when you were in the Jump CP.

A. The lance corporal and a captain. They don't get along that well.

Q. And from lance corporal to captain, there's usually not that much contact period, right?

A. Exactly. Yes.

Q. NCO and maybe staff NCO?

A. Yeah. I dealt mostly with the -- like, Sergeant Goot[ph] and all the sergeants that were in our building and if I needed to, I'd go to Gunny Beall, now First Sergeant Beall.

Q. Let's get right down to it. How do you feel -- how did you feel about officers back then?

A. When I joined the jump, there was only a couple officers in the Marine Corps that I would die for. Once I joined the jump and met General Mattis -- I love General Mattis. I'd die for him right now if I needed to just because he's that type of guy.

Q. Not talking about General Mattis.

A. Okay.

Q. Just officers in general.

A. Officers in general, they should stick to what they know.

Q. Is it fair to say that if you thought Major Card had done something bad, you wouldn't be here protecting him or do anything to win his favor?

A. Say that again.

Q. If you thought -- is it fair to say that if you thought Major Card had committed a crime or had done something bad, there is no reason for you to be sitting here and

try to protect him?
A. No.

Q. He's just another officer?
A. Yeah.

Q. In fact, you already testified that you didn't even think Major Card belonged in the infantry?
A. Yes. I don't know his background or anything, but to me it's like taking a captain that's in, like, supply or whatever and throwing him in an infantry company, platoon, whatever. It might as well be a PFC, because he doesn't know the SOPs and the stuff that all the O-3s and all that have worked their whole career to know. He's not going to know that instantly.

Q. All right. Let's talk about what combat is like. You've been in some combat?
A. Yes.

Q. I'm going to ask you some leading questions but I don't want to suggest any questions. I just want to move along so we can get out of here. Is that fair?
A. Yeah.

Q. All right. You were asking questions about you were at the lead vehicle -- you became the lead vehicle, remember?
A. Yes.

Q. And there was a lot of questions about, you know, I was up front but I don't know what was going on in the rear. Remember that?
A. Yeah.

Q. The rear can be pretty far away?
A. Oh, yeah.

Q. 200 meters? 300 meters?
A. When you're in that time zone -- or you're in your sector, that's all that matters to you right now. I don't remember anything behind me.

Q. And you're not supposed to worry about anything behind me.
A. Exactly. I don't recall anything behind me.

Q. Because your buddies take care of what's behind you and

they expect you to take care of the front?
A. Yes.

Q. Right? In fact, you maybe been in columns where the front might be eating chow and the rear's engaged. Have you ever been in that kind of situation?
A. Not really.

Q. Okay. But it's not odd?
A. No.

Q. Fair to say it's pretty hectic?
A. Yeah.

Q. Time slows down?
A. Yeah.

Q. And unless there's something really big out of the ordinary, you're not going to have specific memories. Things kind of get jumbled together, right?
A. Yeah.

Q. Okay. And you said you remember the 88, but you don't really remember the QRF, correct?
A. Yeah.

Q. 88 is a big --
A. It's a tank. It's a -- pretty much --

Q. Tank recovery?
A. It's pretty much an Abram without the turret and the crane on top of it.

Q. And that's again because you have -- you're designated a sector that you're supposed to worry about and you don't worry about anything else?
A. Yes.

Q. All right.
A. Can I say something real quick?

Q. Absolutely.
A. Referring to you saying if nothing major happened, referring that if he did do this, which I don't remember, if that would have happened, I wouldn't -- at that time, I wouldn't of thought that as something major.

Q. Okay.
A. Because that was -- honestly, I probably would have done the same thing. But that wouldn't be a major thing that would stick out in my head.

Q. Okay. Fair enough.
A. Just to clarify that.

Q. Well, major -- the death of Bohlman was major?
A. Yeah.

Q. Getting -- suddenly getting engaged by an ambush or heavy fire would be major?
A. Yes.

Q. Okay. Now you said that you would of done something -- you could of done what he's accused of?
A. Yeah.

Q. How do you mean by that?
A. At the heat of the moment you don't know what you're going to do. It's kind of like you blackout. I blackout all the time now because of my PTSD. I don't recall what I did. I could have done that overseas and done the same thing.

Q. Okay. But when you say I could have done the same thing, what are you referring to? That you would have shot somebody who's --
A. What he's accused of.

Q. Shooting somebody who's unarmed?
A. Shooting anybody.

Q. Okay.
A. I could do that in the states right now.

Q. Do you even know what he's accused of?
A. I've heard of it from NCIS.

Q. What did you hear?
A. That he shot somebody point blank in an alleyway -- or not an alleyway but a ditch. But I don't recall that.

Q. What else did they tell you?
A. That's pretty much it that I remember that they told me. That sticks out in my head because they told me that.

Q. Got it.
A. But I don't see it, so I don't remember it.

Q. Got it. I understand. Have you been -- you have been diagnosed with PTSD?
A. Yes.

Q. Have you been designated with any kind of disability when you left the Marine Corps?
A. Yes.

Q. What is that at? What level?
A. Through the VA?

Q. Yeah.
A. 70 percent.

Q. Have you sought medical treatment for your PTSD?
A. Yes.

Q. And you have received some prescriptions for any medications?
A. Yes.

Q. Would you please share that with us?
A. Can I turn my phone on?

Q. Sure.
A. I have a list of all my pills in here for all my other doctors, so I'll tell you what I'm on.

Q. Please, once you get a chance.
A. Actually I think this is missing a pill that they just gave me.

Q. Well, as it boots up, you were asked about who in the Marine Corps carries -- or you were asked who was carrying pistols that day?
A. Yes.

Q. Do you remember the kind of pistol the Marine Corps uses?
A. A Beretta 9 mil.

Q. Okay. Do you remember telling them anything about a Beretta? Would you have said -- if somebody asked you, you know, what kind of weapon was Card carrying, would you have said a Beretta or a 9 mil?

A. I probably would have said a Beretta 9 mil. I fire that gun once a week right now.

Q. Okay. Do you recall what your drivers used to carry in the LAVs?

A. With the jump? I don't remember. But as the rest of the battalion, they carried an M4.

Q. Okay.

A. I don't remember if they carried a 9 mil once we got to the jump or not.

Q. Okay.

A. I remember a big ordeal before we went overseas that they were going to get 9 mils, but they didn't end up getting them. Just the VCs.

Q. I'm saying is it powered up?

A. Yeah. I take Naproxen, Amperzol[ph], Citalolpram, and that's it. And there's one more that I just started taking to get rid of other side effects, but I don't remember the name of it.

Q. Tell me the names again, please. Sorry. I got Naproxen.

A. Naproxen. Here, I'll just spell them for you. They're hard to say. O-M-E-P-R-A-Z-O-L-E. How would you say that?

Q. I don't know.

A. Exactly.

IO: What type of drug is that? Do you know?

WIT: That's an antidepressant.

IO: Antidepressant.

WIT: And the one they just started giving to me is an antianxiety.

IO: Okay.

WIT: And then the other one -- it's either an antianxiety or a heartburn pill -- or a depression or a heartburn pill. One of them's one and the other one is the other one. And the other one is --

IO: You should probably figure that one out.

WIT: Well, I take them all at the same time. I know the looks of the pills.

IO: Okay. It's kind of different. Heart burn and depression.

WIT: Yeah. I take them both every night.

Q. So one of them causes heartburn so they gave you some heartburn medication as well?

A. No. I have heartburn because I'm fat and I smoke cigarettes. That's why I have heartburn.

Q. All right. The Naproxen I think is for your back problems?

A. It's for, yeah, my swelling in my back.

Q. Okay. What other side effects, if any, do you know of that these drugs cause?

A. Sexual problems. That's about it that I know of; that I've realized.

Q. Okay. What happens when you don't take them?

A. You don't want to know. I'm very irritable. Very irritable. As if I'm not right now.

Q. As if?

A. As if I'm not right now.

Q. Were you taking these when you were interviewed by NCIS?

A. Yes.

Q. Okay.

WIT: No wonder why it takes two hours a person.

CC (Mr. Faraj): It's a lot less than five hours.

WIT: Yeah.

CC (Mr. Faraj): And you got asked the questions by two people. Imagine that?

WIT: Yeah.

CC (Mr. Faraj): I'm done. I'm done, sir.

IO: Trial counsel, any additional questions?

GC (Capt Gordon): Yes, sir. Real briefly.

RE-CROSS-EXAMINATION

Questions by the government:

Q. Do you have any concern about your testimony -- or did you at any time have any concern that your testimony or the statements you made would potentially be used in some way, shape, or form against General Mattis?

A. Yeah.

Q. How so?

A. Just because of what he's said on the news and stuff. Getting passed over for Commandant. Things like that. I don't want to hurt his career any more than what he already has himself.

Q. That's obviously a big concern to you throughout this whole process?

A. Yeah.

Q. Has it affected the way that you've handled this situation?

A. No. I'll tell you the truth. I'll tell you what I know. I have no reason not to.

GC (Capt Gordon): Okay. I have no further questions, sir.

IO: Defense counsel, any additional questions?

CC (Mr. Faraj): Not at this time.

IO: All right. Mr. Russell, let me just kind of sum up some questions here. You read through the NCIS statement?

A. Yes.

Q. All right. You gave a statement 11 June 2009, does that sound accurate?

A. Yeah.

Q. Is it possible that the information contained in this statement is all truthful and took place, you just don't remember it now?

A. It's possible, but I don't see myself losing memory.

Q. You testified that you didn't use Captain Card's name?
A. Yes.

Q. When I read through the statement though, it says Card in big capitol letters, correct.
A. I know.

Q. The NCIS agents, I'm assuming, gave you an opportunity to review the statement?
A. Yes.

Q. And you initialed after virtually every paragraph and line?
A. Yes.

Q. You signed it at the bottom?
A. Yes.

Q. You swore to the truthfulness. It says this statement is true to the best of my knowledge and belief, correct?
A. Yes.

Q. After you gave this statement, at some point did you come to realize either then or days or weeks, months afterwards that this information could be hurtful to the Major?
A. No. Honestly, he could mean -- he's nothing to me. Why would I care if it hurts him. If he did it, he should get prosecuted for it. That's how I feel.

Q. At some point you began to believe or understand that the information -- at least the important points --
A. Yes.

Q. -- were not truthful?
A. Yes.

Q. When was that?
A. About two weeks after I gave that statement. And I called NCIS and told them to take it out of it and they haven't.

Q. All right. That's what I want to focus on. You said you called NCIS.
A. I called the guy that did that two weeks afterwards and told them exactly what I told them yesterday.

Q. Periard?

A. Yeah.

Q. Special agent -- the name Jason Periard, is that who you think you called or you're not sure, but you called someone?

A. Yeah. I might even actually still have the phone number in my phone.

Q. You contacted NCIS?

A. Yes.

Q. All right. And this was about two weeks later?

A. Yes. When I -- when all -- when I had time to think of all these memories.

Q. And tell me about that. What took place during that conversation?

A. I told him that all the stuff about me seeing the individual on the sidewalk and all that was a different incident. It didn't have anything to do with what pertained to that night.

Q. And what was the -- let's say agent. You believe it was the agent you spoke to?

A. Yeah.

Q. What was the agent's response?

A. He said something. I couldn't tell you exactly what he said, but --

Q. Did he have you come in and do a new statement?

A. No.

Q. At that time, do you feel like you had taken care of the situation?

A. Yes.

Q. I mean, you know what I'm getting at?

A. I thought he'd take care of what I asked him to take care of?

Q. And what did you ask him to take care of?

A. To take that out of that statement, because it wasn't about that night.

Q. The portion about walking over the ditch and the shooting -- the shooting portion?

A. Yeah. All that. Yeah. The whole seeing people --

individuals on the sidewalk and next to the vehicle.
That whole section right there.

IO: Counsel, any additional questions in light of mine?
Trial counsel?

GC (Capt Gordon): No, sir.

IO: Defense counsel?

CC (Mr. Faraj): I'm not questioning anything you're saying --
you're truthfulness, but you're sure you called him?

A. Yes, I'm positive.

Q. Okay. So if he were called here and he says you never
contacted him again, he would be lying?

A. Yes. I made it a point to call him.

Q. And you have a number actually that you called him on?

A. I --

Q. You don't need to pull it out, but you remember having a
number?

A. Yeah.

Q. Okay.

A. Because I had his number before that so we could meet.

IO: Let me just clarify when you say "his," are you sure
it's Periard who you called back?

WIT: No, I'm not sure it's Periard.

CC (Mr. Faraj): Give me the number, please. Give me the number
you called that you remember calling.

A. If I have it. I'm not sure if I do to tell you the
truth.

Q. You did call the guy that you gave the statement to
though?

A. Yeah. The guy that -- yes.

Q. And why do you know that that's the guy you called?

A. Because --

Q. Where'd you get the number from?

A. When he called me the first time, he gave it to me so we

could meet, because I had my work schedule and everything that he had to work around.

Q. And you used the same number to call him back?

A. Yes.

Q. Did he answer it?

A. Yes.

Q. Was it -- do you know if it's a cell phone or an office number?

A. I couldn't tell you. I'm pretty sure it's a cell phone.

Q. Okay. And then he answered and you said what?

A. That this is Russell and introduced myself to where he knew who I was. And I told him that there was things in that statement that I gave him a couple of weeks ago that wasn't true and in that night.

Q. And when you said this is Russell, he recognized who you were?

A. Who's Jason?

Q. That's him. Jason Periard?

A. That's who I have. I have Jason NCIS.

Q. Okay. Give me the number, please.

A. (760)208-8078.

CC (Mr. Faraj): Thank you very much. I don't have any more questions.

GC (Capt Gordon): Sir, I just ask that he repeat that number again. I didn't copy it all.

IO: I think it was -- could you repeat the number one more time?

WIT: Yeah. Let me pull it back up.

IO: I think it was (760)208-8078.

DC (Maj Workman): That's what I got.

IO: Okay. (760)208-8078.

GC (Capt Gordon): Copy, sir. Thank you. No further questions.

IO: All right. Mr. Russell, are you going to be in the California area for the immediate future?

WIT: Yeah. Well, what do you mean by immediate?

IO: Well, the next couple of months you don't have any --

WIT: I might go see my family up in Washington.

IO: For summertime?

WIT: A week or two, yeah.

IO: Okay. But other than that, you're available if needed?

WIT: Yes.

IO: All right. I'm going to give you instruction. Don't discuss your testimony today with anyone except for the counsel, defense counsel and trial counsel. If anyone wants to discuss with you what you testified to or what you would testify to in the future, just stop them and give a call to the government counsel, the defense counsel. Just alert someone that someone is attempting to talk to you.

Do you understand that?

WIT: Okay. Yes.

IO: All right. Thank you very much.

WIT: Thank you.

IO: You're excused. Thank you.

[The witness was warned and departed the courtroom.]

GC (Capt Gordon): Sir, we'd like to keep pressing. I believe we have one more -- or another witness that can go that's out there.

CC (Mr. Faraj): We can press. We excused Captain Baehr. I don't know if you need to put that on that record.

IO: Okay. Captain Baehr is excused, Major Card?

CC (Mr. Faraj): Major Card knows and he agrees.

IO: All right. Next witness. How long do you anticipate the witness is going to go? You told me 15 minutes before on one and it was three hours. I'm just wanting to --

GC (Capt Gordon): Sir, we can only control half of it.

CC (Mr. Faraj): I will stipulate that every witness they're going to call is going to go about like this if they want to go that way.

IO: Who's the next witness you're going to call?

GC (Maj Goode): Sergeant Cotton, sir.

IO: All right. Let's go. We'll take Sergeant Cotton.

GC (Capt Gordon): Sir, are you ready to proceed?

IO: Yes, I am.

Sergeant Ty G. Cotton, U.S. Marine Corps, was called as a witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the government:

Q. Can you please state your name, spelling your last for the record?

A. Say again?

Q. Can you please state your name, spelling your last for the record?

A. Sergeant Ty Gatewood Cotton, C-O-T-T-O-N.

Q. And what's your -- you're currently a sergeant, active duty, United States Marine Corps?

A. Yes, sir.

Q. What's your current billet and duty station?

A. I'm an equipment specialist assigned to Systems Command, Marine Corps Logistics Base Albany.

Q. And how long have you been there?

A. A little over a year, sir.

Q. When did you -- when did you join the Marine Corps?

A. In 2002, March 24.

Q. Can you give a brief wave top on the things you've done in the Marine Corps and places you've been?

A. I've got four deployments in Iraq. First one was OIF-I during the war. Two deployments under the Division Jump. And then one deployment under 13th MEU. And a short stint on recruiting duty.

Q. And what's your primary MOS?

A. 2147, LAV technician.

Q. And at one time, were you a member of the Division Jump team?

A. Yes, sir.

Q. When was that?

A. First one was in '04, General Mattis.

Q. And were you a member of the jump team on 7 June 2004?

A. Yes, sir.

Q. All right. Do you recall the IED blast from that day?

A. Yes, sir.

Q. And you recall the events leading up to it as having done route recon, going to Snakepit, and then taking an alternative route back --

A. Yes, sir.

Q. -- that went through Two Tits?

A. Yes, sir.

Q. And then -- okay. So can you please start from there? Describe what you remember on that route -- on that route back from the Snakepit.

A. On the route back it was a typical neighborhood road. One of the concerns was low power lines.

[Captain Baehr entered the courtroom.]

WIT: And then of course an insurgent threat. It was around dusk. Still daylight out, but starting to get dark. And then I don't know what else, sir.

Q. And then what happened?

A. We'd hit an IED. We had a complex ambush.

Q. And which vehicle were you in?
A. I was in Jump 3 in the C-square.

Q. What was your duty in that vehicle?
A. Just security and platoon mechanic.

Q. So what happened when the IED blast went?
A. The IED went off. I looked towards the front. There was a big smoke ball of a cloud. Lost sight of the HMMWV and the lead 25. And then went back to my sector of fire. And then the trail 25 went to the front, which left me with the rear security.

Q. So where -- you were focused on your sector of fire in the rear?
A. Yes, sir. After the trail 25 had moved to the front to pick up the front security.

Q. So how were you positioned?
A. The rear of the C-square and the last hatch that's able to be popped up out of and then sitting in my chair, upright.

Q. Was that focus -- was your sector of fire focused on the road that you had just traveled?
A. Yes, sir.

Q. What do you recall observing?
A. Not a whole lot to the rear. There was a guy on a motorcycle. He left the motorcycle on the side of the road. Right to the rear of the vehicle to the right, there was an alleyway that the trail 25 used to move up front. Two houses. The houses were a little far back on the left side. But the right side, we had houses all the way down the road. Other than that, not a whole lot of traffic. The road was actually pretty clear to our rear.

Q. What did you observe in the way of hostile forces other than the IED blast obviously?
A. Right after the IED blast, I heard AK fire and then I heard return fire from U.S. weapons of course. And then there were vehicles approaching from our right side on a side road. Sergeant Gutierrez engaged them with ROEs with his 240, sending rounds across the hood. There was a total of three vehicles that tried that. Two were disabled. One was able to go the other direction -- turn around and go the other direction.

Q. How sure are you that you heard AK-47 fire?
A. Pretty sure, sir.

Q. Is it purely because of the difference in sound?
A. Yes, sir.

Q. Did you -- what dismounted insurgents did you observe, if any?
A. Well, at the time though, when I looked to the front right before the IED blast, I saw two gentlemen Iraqis down in the little bushy area to the right of the vehicle. Thought nothing of it. Went back to my sector of fire. IED blast. Went back and, you know, a ball of cloud so I didn't actually see any insurgents shooting. I just heard the fire. My main focus was not towards the front of the vehicle. It was maintaining my sector of fire to the right and then when the trail 25 took off, it was to the rear. So that's where my main focus was.

Q. Who were those two Iraqis that you saw on the side of the road? Did you ever find out?
A. No, I did not, sir.

Q. Did you ever see them again?
A. No, I did not, sir.

Q. You don't know if they were KIA or --
A. Well, I mean it was afterwards when the after action reports came out. I think it was -- if I can remember correctly, I think it was two insurgents and, like, eight civilians or something of that nature.

Q. That what?
A. That were KIA.

Q. Were you required to fire on anything while you were providing security?
A. No, I was not, sir.

Q. All right. How long do you recall the -- whatever engagement that took place, how long did it last?
A. I really couldn't begin to tell you, sir. I mean it was quick. To give a time would be pretty hard.

Q. How quick? Are we talking minutes? Hours? Seconds?
A. Minutes. I mean, we were there for hours, but the actual attack I would say 10 minutes from the first --

from the IED blast till it was all calm minus the cars trying to come in our convoy.

- Q. How long after the IED blast did you hear the AK fire?
A. It was almost -- it was almost right after it. I mean, it's -- you know, there's a moment of time where you lose your hearing and then you gain it back. You know, it was around that time. It's just a -- it's a brief second. So I would say almost immediately after the IED blast went off.
- Q. And how long did you hear the AK fire for?
A. It wasn't long at all. Just a few bursts and then the return fire.
- Q. And after the return fire, you didn't hear anything --
A. No, sir.
- Q. -- any return enemy fire?
A. No, sir.
- Q. What other hostile acts did you see after that?
A. As in enemy, sir?
- Q. Enemy hostile acts.
A. Other than the vehicles. But I have no idea whether or not they were, you know, insurgents or people just trying to get away from the contact. Other than that, nothing, sir.
- Q. Were you in a position where you were observing the vehicles being engaged?
A. Yes, sir.
- Q. Do you recall seeing a vehicle in the field?
A. No.
- Q. That its end resting place was in the field?
A. I believe that was the second vehicle that was engaged.
- Q. What's your understanding of that?
A. Well, it was disabled and that's where it coasted to a stop. And is that the one we're talking about? I mean, there were three vehicles total. Two were disabled. One rolled into the field. But there wasn't one in the field prior to, you know, any of that.
- Q. Who occupied the -- that vehicle that was disabled that

rolled into the field?
A. I have no idea, sir.

Q. Did you ever see the passengers?
A. No, sir.

Q. All right. So what happened after -- well, when did you -- when did you cease providing security in your sector?
A. When the QRF showed up, because then they had our rear security.

Q. And so -- and during your -- during the security after you heard the AK fire and after you heard the vehicle being engaged, what other observations did you have before the QRF showed up?
A. Before the QRF? I heard an individual moaning off to the right of the convoy.

Q. Where would you estimate that the moaning was coming from?
A. I'd say about 15, 20 meters to the 1 o'clock position of my vehicle of into the right into the bushes.

Q. Would that be the field area?
A. Yes, the field area. Yes, sir.

Q. And how far -- how far off the road would you say would that be?
A. I'd say maybe 15 to 20 meters. Not far, I mean.

Q. What did it sound like?
A. It sounded like an individual moaning in pain.

Q. How long did you hear this for?
A. I heard it for -- not that long actually. I heard the moaning, I looked over to my peripherals. I saw two individuals, couldn't make them out who it was because it was dark -- getting dark at that time so they were just silhouettes. Out of anger, I yelled "Let the mother fucker die." And then I heard two shots and then the moaning stopped.

Q. All right. And you yelled, "Let the mother fucker die"?
A. Yes, sir.

Q. And we'll get to your statement, but you previously said in your statement that you recalled hearing it from

Q. somewhere else potentially?
A. Yes, sir.

Q. But potentially then Captain Card, correct?
A. Yes, sir.

Q. And you then realize that it was actually you that said it?
A. Yes, sir.

Q. But nonetheless, how long did you hear the moaning before it stopped?
A. Minutes. I mean, it wasn't long at all, sir.

Q. All right. So can you describe exactly what you -- what you recall observing with the shots and the moaning stopping?
A. Other than I just -- I saw the silhouettes of individuals, you know, side by side. I looked back to my sector, heard the shots, and then that was it, sir.

Q. Who was in the vicinity before the shots went off?
A. It would have to be individuals from the HMMWV, from the second vehicle. I mean, I -- it's hard telling, sir.

IO: Let me interrupt. Did you say shot or shots?
WIT: Shots. Two, sir.

IO: Thank you.

Q. And you said you recall them being like a hammer pair, right?
A. Yes, sir.

Q. What weapon did it sound like it was?
A. It was either a 9 mil or an M4. At close range, they sound similar.

Q. Who carried the M9?
A. Let me see, our vehicle commanders carried them. Staff Sergeant Tucker, Sergeant Hyman, Major Card -- or Captain Card at the time, and Gunnery Sergeant Beall and Doc Slaughter.

Q. And Tucker, he was injured, right?
A. Yes, he was, sir.

Q. And Major Card, he carried an M9?
A. Yes, sir.

Q. Do you recall where he carried it or how he carried it?
A. I want to say he had a chest rig, but I'm not a hundred percent sure, sir. I don't remember.

Q. Who carried the -- who carried the M4s?
A. Our vehicle commander's once again and Captain Card -- or Major Card. And a couple of our scouts, but I don't remember which ones had them.

Q. So what happened after you heard the shots and the moaning stopped?
A. The QRF showed up.

Q. How long after?
A. It was about 10 minutes, 5 to 10 minutes. I mean, it was shortly after that, sir.

Q. Now did you see what was being shot at with that hammer pair?
A. No, I did not, sir.

Q. Was it because it was too dark or was it --
A. Yes, sir.

Q. -- something -- was it too dark?
A. Yes, sir. And my focus was going back to my sectors of fire.

Q. Where exactly were they standing in relation to the road and the field?
A. I'd say around the vicinity of the moans to the front, the 1 o'clock position of my vehicle. Probably about 20 meters.

Q. Do you recall how tall the grass was?
A. No, I do not, sir. I just recall the bushes. I remember bushes being there.

Q. Are you aware of what happened to -- well, is it your understanding that there was a body that was being shot at?
A. At the time, no, sir.

Q. And this has been since this is all coming about that you realize that perhaps there was a body there?

A. Yes, sir.

Q. So what happened when the QRF showed up?
A. I gave the first individual a quick brief of where everybody was for what was going on, and then they linked up with -- I want to say it was Gunnery Sergeant Beall and that was it, sir.

Q. And then you guys left?
A. They went out and did their thing. You know, I stayed in the vehicle the whole time, sir, except for jumping out a couple times to talk to Sergeant Phillips.

Q. Now, do you recall seeing any dismounted insurgents rushing or ambushing anyone in the unit?
A. No, sir.

Q. After the -- after the vehicles were taken down and -- well, let me back up. When do you feel that you were no longer at that extra heightened level of security, I suppose, after the IED blast and whatever firefight ensued?
A. When we returned to Blue Diamond, sir.

Q. So it was -- you guys were --
A. We were still in a combat zone, sir. You know, it's natural to maintain it.

Q. At some point people are smoking cigarettes, right?
A. Yes, sir.

Q. And at that point, it was -- maybe it was a little less -- the hostile threat was gone?
A. When the QRF showed up, it was -- I mean, with guys smoking cigarettes, I mean, I guess they relaxed a little bit. But at that time we had air on station. We had lums rounds going off. We had QRF there. It was -- there was quite a bit of security there.

Q. And understanding you have that heightened level all the way until you leave. When was the actual end of the hostile threat?
A. I'd say after that last vehicle was engaged, the ones trying to come into our convoy.

Q. Do you recall any other -- any other engagements or hostile -- hostile acts or anything after that?
A. Other than the moaning and the shots being fired, I

mean.

- Q. So those two -- were those two hammer pair -- or that hammer pair, was that the last shots that you heard --
- A. Yes.
- Q. -- before you guys went back to Blue Diamond?
- A. Yes, sir.
- Q. Now, what efforts did the jump team make to search the area or search the vehicles, search the persons that you're aware of?
- A. I'm not aware of any of that, sir. I lost sight of the scouts when they moved to the front.
- Q. Is it possible that someone from the jump team made a sweep and looked through the vehicles or would that normally have been handled by the QRF?
- A. It would have been handled by us, sir. I mean, that's just standard procedure.
- Q. Are you aware of it happening?
- A. No, sir. I was not.
- Q. Who do you think would have done it?
- A. The -- Sergeant Hyman's crew. The head scouts there.
- Q. So that was Jimenez and --
- A. And Russell.
- Q. Russell.
- A. And Richmond and Custudio.
- Q. All right. So what took place when you got back to Camp Leatherneck -- or Camp Blue Diamond?
- A. Camp Blue Diamond, sir. We pulled into the CP, were met by General Mattis, the chaplain, and Master Sergeant Ruis[ph] from the chow hall. We gathered up our things and headed over to the chow hall.
- Q. And then what?
- A. We just kind of sat there in silence. The chaplain did a prayer. Don't remember any of us actually eating anything. Then we went and got on the vehicles and took them back to their station area, then we went to bed.
- Q. Do you recall any conversations about what took place any time after?

A. It wasn't until I would say the next day, that evening -- the next evening. I just recall one conversation and I can't remember who it was with though. I just remember the words being said that insurgents got what they deserved. We're not going to talk about it anymore. Let's continue on with our mission.

Q. You were at some point properly trained on ROE, escalation of force, things of that nature?

A. Yes, sir.

Q. You say you never saw the body of any of the dead Iraqis?

A. No. Of the dead -- the only bodies I actually saw was the gentlemen and his child that was to the left of the vehicle in the white truck that were killed by the IED blast. And as far as bodies go, those were the only two.

Q. Were you aware of any hostile threat when you saw -- when you saw those two shots fired?

A. I was not, sir.

Q. And is it your understanding of the then current ROEs that shooting an Iraqi who is wounded on the ground would be a violation? Is that your understanding?

A. Yes, sir.

Q. But you don't have any knowledge of what the actual status of that individual who was shot was?

A. No, sir.

Q. Do you recall making a statement to NCIS?

A. Yes, sir.

Q. When was that approximately?

A. I was on recruiting duty. I think in November of '08.

Q. Do you recall who the special agent was?

A. No, I do not, sir. There were two of them. I don't remember their names.

Q. In fact, do you recall handwriting your statement?

A. Yes, sir.

Q. Have you had a chance to review it --

A. Yes, sir.

Q. -- since then?

A. Yes, sir, I have.

GC (Capt Gordon): Sir, I'd like to show the witness his handwritten statement.

IO: You can show the witness.

Q. Is this the statement that you recall making?

A. Yes, sir.

Q. Will you flip to the back page. Is that your signature?

A. Yes, it is, sir.

Q. And is that signature swearing that the statements that you made were truthful to the best of your knowledge?

A. Yes, sir.

Q. And were they in fact?

A. Yes, sir.

Q. Do you still believe that they are?

A. Other than chaining what I said.

Q. The let the mother fucker die?

A. Yes, sir.

Q. Other than that, everything else is true to the best of your knowledge?

A. Yes, sir.

Q. And were you forced or coerced into writing that statement?

A. No, sir.

Q. You did that of your own free will?

A. Yes, sir.

Q. Thanks. I'll take it back.

A. Yes, sir.

GC (Capt Gordon): Sir, I don't have any further questions.

IO: Defense counsel, questions?

CROSS-EXAMINATION

Questions by the defense:

Q. Sergeant Cotton, good afternoon.
A. Good evening, sir.

Q. Good evening. Time stops when you're sitting here.
A. I understand, sir.

Q. Kind of like combat, but not quite as intense.
A. Roger, sir.

Q. I see kind of a frown on your face when you were asked the questions. How do you feel about being here?
A. I mean, I kind of have to be here, don't I, sir? I just -- I'm tired. My body -- my biological clock is four hours ahead of your guys'. I'm tired.

Q. So you're just physically tired?
A. Yes, sir.

Q. Do you have any feelings one way or the other about having to testify in this case?
A. Not really, sir. I mean, I do what I'm supposed to do, I guess.

Q. That's what I'm talking about. What you're supposed to do.
A. Yes, sir.

Q. Do you feel like you're supposed to do something?
A. Come here and testify and say what I saw.

Q. Okay. Let's talk about the time you -- how you came to give this statement to the NCIS. You said you were on recruiting duty?
A. Yes, sir.

Q. You were in your office?
A. Yes, sir.

Q. When did they contact you?
A. My CO contacted me first and notified me that they were coming up to do a routine archive investigation. They set up a day and a time. They called me about an hour out. They were trying to find my office.

Q. Which city were you in at the time?
A. Petoskey, Michigan.

Q. And when they said archive investigation, did that lead

you to believe -- to make any assumptions about the investigation they were doing?

A. Honestly, sir, I mean, just something clicked in my head and I knew it probably had something to do with Ramadi.

Q. Why is that?

A. Because out of all my deployments, that was the only time that something just wasn't sitting right.

Q. Okay. Why wasn't it sitting right?

A. It's just with Lance Corporal Bohlman dying and, you know, the major being sent away quickly after that, it just made me think that something wasn't right. Something bad didn't -- you know, something wrong happened.

Q. At the time you were contacted though, although you were thinking about Ramadi, you weren't thinking that there was any crime committed at the site of the IED?

A. No, sir.

Q. You believed that Major Card may be responsible for some failure that led to Bohlman's death?

A. Yes, sir.

Q. Okay. So at the time you were contacted, nothing in your brain, nothing in your mind focused on, yeah, there was a crime committed that day and here it is?

A. Yes, sir.

Q. And you've already testified that you would -- you would -- understand that if someone was killed when they were no longer able to resist or if they were a POW or if they were wounded, then that would be a crime?

A. Yes, sir.

Q. You understood that then?

A. Well, from OIF-I, sir. I mean, it was standard practice. It's -- you know.

Q. When I refer to then, I mean June 7, 2004. You knew that then?

A. Yes, sir.

Q. That you couldn't kill --

A. Yes, sir.

Q. -- people that aren't resisting?

A. Yes, sir. A noncombatant, yes, sir.

Q. And you know that today?

A. Yes, sir.

Q. That hasn't changed?

A. No, sir.

Q. Okay. And so had you believed that that had happened that day, okay, you would know it's a crime?

A. Yes, sir.

Q. And when NCIS contacted you recently, it's reasonable to conclude that your mind would have focused on that because it certainly focused on Ramadi?

A. Yes, sir.

Q. Right?

A. Yes, sir.

Q. Now, when they finally showed up, their purpose became clear?

A. Yes, sir.

Q. There wasn't an archive investigation. This was something completely different?

A. Yes, sir.

Q. All right. So when they said archive investigation, that wasn't true? They lied --

A. Yes, sir.

Q. About their purpose? Would you agree with that?

A. Yes, sir.

Q. Okay. Now, you had to take an oath and tell the truth but I'm assuming that you would tell the truth anyway?

A. Yes, sir.

Q. Do you expect Marines to do that?

A. Yes, sir.

Q. Do you expect Marines not to lie?

A. Yes, sir.

Q. Do you know Periard is a Marine?

A. Say again, sir?

Q. Do you know that the NCIS is actually a Marine?
A. I didn't know that, sir.

Q. He never told you he was a Marine, did he?
A. No, sir.

Q. Staff NCO at that.
A. [The witness nodded his head.]

Q. Now describe -- set the scene for me when they conduct the interview. This is in your office?
A. Yes, sir.

Q. Is this a private office or is it shared?
A. It's a private office, but the inside wall was all glass. You could see in it, but you couldn't hear in it.

Q. Okay. And did you invite them in?
A. Yes, sir.

Q. Did they come in?
A. Yes, sir.

Q. And what happened after that?
A. They came in. They closed my door for me and had me sit on my couch. I had a couch.

Q. They directed you to sit at the couch?
A. Yes.

Q. Okay.
A. They seemed pretty straightforward.

Q. They took charge of the scene or the situation?
A. I guess you could say that, yes, sir.

Q. Well, I'd like you to say that?
A. Well, yeah -- I mean, they just seemed, like, on a mission. You know, purpose, intent.

Q. Well, they did shut your door and direct you to sit at the couch?
A. Yes.

Q. Okay. Did they advise you of anything like you don't really have to talk to us? You have the right to ignore our questions or anything of that nature?

A. I don't recall any of that, sir.

Q. They just --
A. It was --

Q. You assumed that you had to answer their questions?
A. Pretty much, sir.

Q. Okay. And how did -- you said they seemed to be on a mission?
A. Yes, sir. They were -- like I said, they were pretty straightforward. I wouldn't say demanding but pretty straightforward with, you know, hey, you know, we need to know what happened in Ramadi.

Q. Okay.
A. They relaxed their posture once I started to get into the details, started talking about what happened in Ramadi. And then it was just -- it was just a flowing interview at that point.

Q. That's fine.
A. But their initial -- you know, they were -- they were pretty straightforward.

Q. When you say they were pretty straightforward, I want to get into how you were feeling at that time.
A. I was feeling on the spot.

Q. Intimidated?
A. I wouldn't say intimidated, sir.

Q. What were you feeling?
A. I mean, I don't know. I just felt on the spot. I don't know how to really explain on the spot means. Kind of like this right here.

Q. I know what on the spot means. That's fair enough.
A. You know.

Q. Is there anything else that would describe how you felt?
A. No, sir.

Q. Okay. Now let's talk about Ramadi. You were in a trail vehicle?
A. No, sir. I was in the third vehicle back.

Q. I'm sorry. You were in the C-squared and you became the

trail vehicle --
A. Yes, sir.

Q. -- when the LAV-25 moved up?
A. Yes, sir.

Q. Okay. Do you remember what the road that you were on looked like?
A. Yes, sir.

Q. Okay. Using this grid coordinate -- and this is the grid coordinate you were in, have you seen this before?
A. No, sir.

Q. Would you draw for me the road? Would you get up here and draw the road for me as you remember it?
A. Okay. No problem, sir.

Q. And let me -- you know what? I'm going to show you a map. And that way that will sort of direct you a little bit. Okay. This is a zoomed in, a Google Maps map. Do you recognize this?
A. Yes, sir. This is the field area. This is the IED blast.

Q. So I would say, we want the road to look like this.
A. You want direction of travel that way?

Q. Go ahead and mark the IED blast on there.
A. I'd say right in here.

Q. Now, I'm just going to have to have you go back and forth Sergeant Cotton.
A. Okay.

Q. Now based on where the IED blast is, tell me where your vehicle would have been distance wise.
A. Okay. Let's see.

Q. First of all, give me an estimate of the distance. About how far away were you from the IED blast?
A. It seemed really close.

Q. Using a football field. Let's go from yards and meters.
A. So about a thousand yards, maybe 200 yards.

Q. Okay. So about 200 meters. Maybe that far?
A. Yeah, somewhere in there.

Q. Okay. Go ahead and draw the vehicle for me.
A. [The witness did as directed.]

Q. Excellent. And that's the C2?
A. Yes.

Q. And where would you have been oriented after the LAV-25 moved out of the way?
A. I had this sector of fire here.

Q. Okay. So that's your sector of fire?
A. Yes, sir.

Q. So put here -- put "C and C" so we know that this is for Cotton. That's your sector.
A. [The witness did as directed.]

Q. Okay. And is it fair to say that you remained oriented on there?
A. Yes, for the most part, sir. Once they left after the IED for about 90 percent of the time.

Q. Okay. What was the next vehicle in front of you?
A. It was Jump 2 I believe.

Q. Okay. Place that on the road, please.
A. [The witness did as directed.]

Q. And of course the IED blast sited where the third LAV was?
A. Yeah. It coasted into this vicinity here.

Q. That's fine. Please go ahead and draw that. Label it with an "IED." Or let's label it with "LAV" actually. LAV. Just put a one in there.
A. [The witness did as directed.]

Q. Yeah. That's fine. Thank you.

A. Now, where was Sergeant Phillips, do you know?
A. Sergeant Phillips was in the lead 25. He was the gunner.

Q. Did you see him?
A. Afterwards. He came back to provide rear security with myself with a 240.

Q. Did you see him before then?

A. No, sir.

Q. Okay. Now, you said that you observed some people in the field?

A. Yes, sir.

Q. From where your vehicle is, where do you think the people in the field were? Go ahead and draw a stick figure.

A. Let's see.

Q. And then of course based on estimates of distances.

A. Right in here.

Q. Okay. Do you remember if the person was oriented that way with their head sort of to the --

A. I didn't see them. I just [inaudible] --

Q. You just heard --

A. Based off the other [inaudible] and the reaction, sir.

Q. Okay. Did you ever see that person?

A. No.

Q. Now, when you heard the two shots, you said you saw some Marines in the area?

A. Yes, sir. I could just see out of my peripherals two Marines, just the silhouettes of them walking in this direction.

Q. Okay. Do you know if any of those two Marines was Captain Card at the time?

A. No, sir.

Q. Did you recognize any of those two Marines?

A. No, sir.

Q. Okay. You may go ahead and resume your seat.

Actually before that, go ahead and draw a dotted line in the direction that the Marines were headed.

A. [The witness did as directed.]

Q. Okay. We're not done yet. We're not done yet. You may need to go up there. Go ahead and have a seat.

A. [The witness did as directed.]

Q. How close at the time -- the last time you observed the

Marines before the shots, how close were they to the man in the weeds or in the grass?

A. I wouldn't have any way of knowing, sir. I didn't see the guy in the grass. It was just that general direction towards the moaning.

Q. Okay. As you sit here today, do you have any idea or any clue as to where those shots were fired?

A. No, sir.

Q. Now we've heard references to something called a hammer pair?

A. Yes, sir.

Q. What does that mean?

A. It's just two quick shots.

Q. Okay.

A. That's pretty much what it is, sir.

Q. Okay. When you say two quick shots --

A. Like a pop, pop is what it is.

Q. Is that how fast it would go?

A. I wouldn't say that fast, but it was --

Q. So give me a pop and then another pop about the time that it would -- the second pop would go.

A. It's a pop, pop.

Q. So about a second in between?

A. Yeah. Sure.

Q. All right. When you heard those two shots, did you turn around to look?

A. No, sir. I went back to my sector of fire.

Q. Okay. Before the shots or after the shots?

A. Right before the shots.

Q. Okay.

A. I heard the moaning, glanced, seen the two Marines, went back to my sector of fire, heard the shots.

Q. Okay. And you -- but you didn't see the two Marines pull out a gun?

A. No, sir.

Q. You didn't see -- do you know if the shots even came from the Marines?
A. I mean, it was a U.S. weapon, sir.

Q. Okay. Do you know if it came from those Marines though?
A. It came from that direction. I don't know if it came from those two Marines.

Q. Okay. Do you know that there was a man who got up and -- are you aware of anyone -- of the two men that were in the field getting up and walking away?
A. No, sir.

Q. You have no awareness of that?
A. No, sir.

Q. Okay. Is that -- is that something like something -- you've never heard of that before?
A. No, sir.

Q. Okay. Now, when you said you testified and you clarified that for me yesterday -- and thank you for that -- that you said "Let the mother fucker die."
A. Yes, sir.

Q. What led you to put that in your statement? Because I don't think you -- well, what led you to put that in your statement?
A. For the initial time with NCIS?

Q. Yeah.
A. I mean, they wanted details and that's what I remembered.

Q. Okay. But --
A. Other than, you know, it was actually me.

Q. In your statement -- well, did they write this statement for you and they just had you --
A. No, they did not, sir.

Q. You wrote it?
A. [No audible response.]

Q. Did they tell you what to write in here?
A. No, sir.

Q. Okay. I'm looking at your statement. There's a bunch

of questions and answers.

A. Yes, sir.

Q. How did -- were you dictating their questions and then writing answers? How did this statement come to be written this way?

A. They asked me to write it and write down in detail what I remember. And then at the bottom I think that's where the questions and answers come in --

Q. Yeah.

A. -- toward the end of it. They, you know, had questions and I answered them.

Q. So they would ask a question and then they'd make you write it out?

A. Yeah.

Q. And then they'd make you write the answer?

A. Well, the answer to the question -- my answer to the question.

Q. So when you say did you ever hear of Captain Card shooting an Iraqi civilian since the attack on the convoy, you say no one since I was told today?

A. Yes.

Q. And that was your memory at that time?

A. Yes, sir.

Q. All right. And they told you that Captain Card shot somebody?

A. They said he was alleged. He was being accused of it.

Q. Okay. I'm jumping back and forth. Sorry, I apologize.

A. That's fine, sir.

Q. You remain oriented to the rear of the vehicle, did you at any time come off your vehicle?

A. Yes, sir.

Q. When?

A. To talk to Sergeant Phillips and to let him know that the QRF was on their way.

Q. Okay. Did you get back in your vehicle?

A. Yes, sir.

Q. And did you reassume your orientation to the rear?
A. Yes, sir.

Q. I think you testified that once the QRF arrived you re-shifted?
A. Well, of course. I mean, they were to my rear.

Q. Sure.
A. Then they had rear security.

Q. Okay. So between the time that you got back in your vehicle after Sergeant Phillips got there -- Corporal Phillips at the time --
A. Um-hm.

Q. -- and the time the QRF arrived, did you remain in your vehicle the entire time?
A. Yes, sir, other than talking to Sergeant Phillips.

Q. Right. After you got back on.
A. Yeah.

Q. You remained in your vehicle?
A. Yes, sir.

Q. Does the vehicle normally -- do you keep the vehicle running when you're in that kind of situation?
A. Normally, yes, sir.

Q. Would it have -- did you keep it running that day?
A. It was at that point when QRF came up, it was shut down.

Q. Okay. Before QRF arrived.
A. It --

Q. Everything I'm asking about is before QRF arrived.
A. It was running until -- let's see. I want to say until Sergeant Gut engaged the last vehicle -- disabled the last vehicle, and then we shut it down.

Q. Okay. Do you know who shut it down?
A. It would have been the driver, Lance Corporal Wike.

Q. Do you have a memory of it getting shut down?
A. I remember it not running, sir.

Q. Okay. Do you have a -- do you have a helmet on when you're in the back of the vehicle?

A. I had a Kevlar on that evening, sir. Well, actually I was swapping in between Kevlar and a CVC helmet.

Q. So you were putting on a CVC helmet?
A. Yes. Flipping in and out between the two.

Q. Okay. And the CVC helmet allows you to communicate?
A. Yes, sir.

Q. But it also shuts out quite a bit of noise?
A. It has an external microphone, sir, to be able to hear outside noises.

Q. Oh, it does.
A. Yes, sir.

Q. Okay. So was the external mic on?
A. Yes, sir.

Q. How do you know to switch back to the radio frequency?
A. Because you can still hear the radio through it. I mean, it just amplifies the sound outside the earmuffs.

Q. Got it.
A. Yes, sir.

Q. We've come a long way.
A. Did Sergeant Phillips fire his weapon in the rear?
No, sir.

Q. Describe Sergeant Phillips' demeanor when you saw him?
A. He was upset. I mean, he seemed upset. He was pissed off.

Q. At whom?
A. Well, actually at me. He yelled at me.

Q. For what?
A. Because I told him before I got down off the vehicle, I told him that the QRF was coming from the rear. And he said, Well, how the fuck am I supposed to see them. I don't have NVGs. And I said --

Q. So it was dark by that time?
A. Yes.

Q. Okay. Were there street lights?

A. A few.

Q. Okay.

A. Not a whole lot.

Q. But the street lights weren't enough to see a QRF approach?

A. Yes, sir.

Q. Okay. Was he upset about anything else?

A. Not that I was aware of, sir.

Q. Did he discuss anything with you --

A. No, sir.

Q. -- about anything that he may have seen?

A. No, sir.

Q. Do you know if Sergeant Phillips had a habit of confiding in anybody in the platoon?

A. No, not really, sir. I mean, he was -- he was a tough cookie, so to speak.

Q. Okay.

A. Rarely showed any emotions.

Q. Okay. Would you -- we're almost done, but I need you to write your name on that and the date, please.

A. [The witness did as directed.]

Q. I'll take that. Thank you very much.

How long was the NCIS interview with you?

A. I want to say about four hours, sir. It took quite a while.

Q. Really?

A. Yes, sir.

Q. Why?

A. Just writing the statement and everything. Trying to be as detailed, remember as much as I could at the time.

Q. Okay. Did you remember more then than you do today?

A. Really it's about the same, sir, other than the words that I had said.

Q. Is there anything that we didn't cover today?

A. Not that I'm aware of, sir.

Q. In fact, I think we covered more because they didn't ask you about Sergeant Phillips and his demeanor?

A. No.

Q. As you sit here today, do you know or believe -- do you know if a crime was committed on June 7, 2004?

A. Do I believe?

Q. Do you know?

A. Do I know? No, I do not, sir.

Q. Okay. At the time on June 7, 2004, based on your understanding of the ROEs, did you believe that a crime had been committed that day?

A. No, sir.

Q. And your understanding of the ROEs is at any time you shoot at someone unarmed or someone unable to resist or who doesn't present a hostile intent or a hostile threat would be an unlawful killing?

A. Yes, sir.

Q. I failed to ask you a few things. Have you been diagnosed with PTSD?

A. Yes, sir.

Q. Do you know how that came about?

A. From -- it actually started after NCIS came and interviewed me.

Q. And why is that?

A. It was kind of like a flood gate, sir. Like I said I got four deployments and bad things happen on every deployment. So just kind of everything came back at once.

Q. And did you suffer any consequences as a result of that?

A. I wouldn't really say consequences. Bad timing. I got passed over on a promotion board because my intent to reenlist was not at Headquarters Marine Corps because I was going through the Medical Review Board. But then I got put back on full duty and reenlisted. And here I am today, so.

Q. Okay. How does an interview with NCIS trigger a relapse of PTSD?

A. You'd have to ask the therapist that, sir. I don't know why, but it did.

Q. Okay. Was their approach -- was their approach in their interview to you, was it the interview that caused the relapse or the triggering of the PTSD?

A. Yes, sir.

Q. How do you know that that's what triggered it?

A. Because I started having nightmares after that incident or after that interview.

Q. Okay. And none of the nightmares -- well, I don't want to get into nightmares or anything like that.

A. Thank you, sir.

CC (Mr. Faraj): I apologize. All right. That's all I have.

IO: Trial counsel -- excuse me. Government counsel, any additional questions?

GC (Capt Gordon): Real quick.

REDIRECT EXAMINATION

Questions by the government:

Q. Sergeant Cotton, what do you think happened? Taking into consideration all the circumstances, what you saw, what your observations were, what do you think --

CC (Mr. Faraj): How is that relevant. I mean --

GC (Capt Gordon): We've been eliciting a lot of opinions.

CC (Mr. Faraj): He knows what happened or he doesn't know what happened or he doesn't remember. How is that relevant?

IO: It's not very helpful to me and I'd like to stick to the facts here.

GC (Capt Gordon): That's fine, sir. I think we've elicited opinions from everyone that's stood there so far.

IO: Got it.

GC (Capt Gordon): But if it's not helpful to you, sir, then they don't need to answer.

IO: It's not helpful. I'm not going to base, you know, my recommendations on the opinions.

All right. Sergeant Cotton, I just want to clarify a few things.

EXAMINATION BY THE INVESTIGATING OFFICER

Questions by the investigating officer:

Q. I read through your NCIS statement and aside from the one comment --

A. Yes, sir.

Q. -- that you made not then Captain Card. There's nothing in the statement talking about you seeing two Marines in the field. From your testimony, I take it that you did see two Marines in the field?

A. Yes, sir. Walking into the -- yes, sir.

Q. Two Marines walking into the field?

A. Yes, sir.

Q. Was this before or after you heard moaning?

A. It was before the moaning, sir.

Q. If I understand, you don't --

A. Or around the same time.

Q. So there's moaning --

A. Heard the moaning, glanced over, and seen the Marines.

Q. Moaning, then Marines?

A. Yes, sir.

Q. You don't know who those Marines were?

A. No, sir.

Q. How do you know they were Marines?

A. Just the silhouette, sir. Kevlars are pretty distinctful.

Q. Do you believe that they were near or going to the direction of the moaning?

A. I would say yes, sir.

Q. How far were you away from the moaning?

A. I would say about 15 to 20 meters, sir.

Q. Fifteen, twenty meters. From the time that you saw the two silhouettes until the time you heard two shots, how long was that?

A. Seconds, sir.

Q. Any moaning after the shots?

A. No, sir.

Q. Again, I understand your focus is toward the rear of the vehicle.

A. Yes, sir.

Q. This is all sort of periphery or just you turning your head here and there?

A. Yes, sir.

Q. At the time, what did you make of the moaning and the shots and the lack of moaning, if you recall? What was going through your head?

A. I didn't really think much of it, sir. More focused at providing my security.

Q. After this incident but before the NCIS interview, did you give this situation, what happened on that June day, did you give it much thought?

A. No, sir.

Q. You just kind of closed it out?

A. Yes, sir.

Q. Do you think that the fact that you had sort of closed out the memories and then was opened by NCIS that that caused you some issues?

A. Yes, sir.

IO: Counsel, any additional questions in light of mine?

Trial counsel?

GC (Capt Gordon): No, sir.

MJ: Defense counsel?

CC (Mr. Faraj): Briefly.

REXCROSS-EXAMINATION

Questions by the defense:

- Q. The relapse of the PTSD, is it fair to say that it wasn't because you all of a sudden remembered Captain Card doing something bad?
- A. No, sir. It was all the deployments combined. No, sir.
- Q. Just the combined combat experiences?
- A. Yes, sir.
- Q. You are not a fan of Captain Card?
- A. Not -- what do you mean, sir?
- Q. You're not his buddy? You don't --
- A. No, sir. He's a major.
- Q. There's no -- no relation -- there's no feelings one way or the other with respect to Captain Card?
- A. No, sir. I mean, he -- no.
- Q. What I'm getting at is if he did something wrong, you would have no reservations about coming in here and saying I saw something bad?
- A. No, sir.
- Q. Is that right?
- A. Yes, sir.
- CC (Mr. Faraj): Okay. Major Card, I guess. Not Captain Card.
- MJ: Trial counsel, any additional questions?
- GC (Capt Gordon): No, sir.
- IO: All right. Sergeant Cotton, are you going to be available if needed over the next couple of months?
- WIT: Yes, sir.
- IO: Any I guess deployments anticipated?
- WIT: No, sir.
- IO: And you're currently -- if I understand, you're at Marine Corps Logistics Base Albany?

WIT: Yes, sir.

IO: Okay. Thank you. One quick instruction, please don't discuss your testimony with anyone aside from the numerous either government counsel or defense counsel in the case.

WIT: Aye, sir.

IO: If anyone wants to talk to you about what you testified to today or you may testify in the future, just stop them and give someone a call, preferably Major Goode or Captain Gordon or even defense counsel.

WIT: Aye, aye, sir.

IO: Okay. With that, I appreciate your time and your testimony today.

WIT: Thank you, sir.

IO: Take care of yourself.

[The witness was warned and departed the courtroom.]

IO: All right. My eyes are starting to cross.

Who do you anticipate calling tomorrow? I guess, what's game plan for getting through witnesses tomorrow.

GC (Maj Goode): First off in the morning, we'll call John Stephens because he'll be coming off of his night shift.

IO: Okay.

GC (Maj Goode): Again, he's the telephonic. Then we have Gunnery Sergeant Duran. He will actually be pretty brief I imagine. Tim Kadrie. Major Leach, who's telephonic. Andy Tipton, who will probably be a long one. And then if he shows up, because we're having problems with him, Phillips.

CC (Mr. Faraj): Periard?

GC (Maj Goode): And in light of all this, I guess we will be calling Special Agent Periard as well.

CC (Mr. Faraj): Can we warn him tomorrow since he's a Marine?

Beall?

GC (Maj Goode): Beall we're going to follow up on.

What I might do with First Sergeant Beall, sir, is just put him on the stand, have him assert his rights if that's what he wants to do, and then --

CC (Mr. Faraj): Just -- are we on the record?

IO: Yeah. Do we want to go off the record?

CC (Mr. Faraj): Yeah. We don't need to capture all this.

GC (Maj Goode): Yes.

IO: Okay. We'll go off the record.

[The Article 32 investigation recessed at 1814, 19 April 2011.]

[END OF PAGE]

[The Article 32 investigation was called to order at 0827, 20 April 2011.]

IO: This investigation is called back to order. All parties that were present yesterday are once again present.

GC (Maj Goode): For our next witness, sir, we'll be calling J. D. Stephens.

IO: Okay.

GC (Maj Goode): Are you in a position where you can give testimony and not be disturbed for the next, say, 45 minutes to an hour?

WIT: Yeah. It's as good as it's going to get. You know what? I've got another number that I can call and it will be on speakerphone for me if that's --

GC (Maj Goode): Whichever's more convenient for you. I mean, we can hear you fine.

WIT: Okay. All right. We'll just use this. This is fine.

John D. Stephens, U.S. Marine Corps, was called as a witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the government:

Q. Please state your full name, spelling your last for our court reporter.

A. John Dean Stephens. And that's S-T-E-P-H-E-N-S.

Q. And where are you currently located right now?

A. I'm in the middle of nowhere, Oklahoma, outside of McAlester by about 30 miles.

Q. What is your current occupation?

A. I'm an oil site leader for BP.

Q. At some time you were -- and BP, like, British Petroleum?

A. Yes, that's correct.

Q. At some time you were in the United States Marine Corps; is that right?

A. That is correct.

Q. And what period were you in the Marines?

A. I joined in 2000 on December -- December 6, 2000, is when I was off in OCS and then I got out July 2006.

Q. And can you give us kind of a brief description of your career while you were in the Marine Corps?

A. I went from second lieutenant to captain and I was an infantry officer, 0302. And I spent the majority of my time with 2d Battalion, 4th Marines as a platoon commander.

Q. And at some point in June of 2004, were you deployed to Ramadi, Iraq?

A. I was.

Q. All right. And I want to focus your testimony then on June 2004. What was your unit and billet out there?

A. I was weapons platoon commander -- actually that's -- I was part of Weapons Company. The group, actually, was a Mobile Assault Platoon, what was considered to be old school CAAT team, so heavy guns and HMMWVs.

Q. And what were your duties?

A. I was platoon commander and served as QRF raid force and just all around problem solver.

Q. All right. Now, on 7 June 2004, do you recall being called to assist the Division Jump after they had been hit by an IED?

A. I do.

Q. How do you remember getting that call?

A. It was late afternoon and a lot of commotion on the radio. Jump COC had hit an IED. They were -- I believe it was the eastern part of Ramadi, kind of on the outskirts. And they needed assistance, but it wasn't making a whole lot of sense over the radio exactly what the problem was. We just had the impression that they had a downed LAR and needed assistance. So I was told to go grab a tank retriever from the Army base and go out there and just see what I could do for them.

- Q. And how far away were you, like, physically located from where the IED was?
- A. Originally when it went off from the base?
- Q. Right.
- A. 8 miles, tops.
- Q. From the time that you received the call on the radio to the time that you actually got out there to the IED's site, how long of a time are we talking about?
- A. I'd say about 40 minutes. Most of my time was killed. I had to go over -- like I said, over to the big red one and pick up a tank retriever so -- and then escort that tank retriever with an Army QRF force of four I believe over to the site. So about 40 minutes but no more.
- Q. When you drove out to the IED site, which direction were you coming from?
- A. I was heading towards the east, coming from the west.
- Q. When you rolled up onto the scene, I guess the vehicles on scene were facing a particular direction. Like, did you roll up on the scene, like, in the same line of travel that they had been traveling or from the opposite direction?
- A. There was a number of -- number of vehicles, but I believe the direction they were traveling -- they were headed west and they ended up turning -- some of them turning I think a little bit north towards the river if I remember correctly.
- Q. When you got there, was it dark?
- A. Not at the time. It was light out still, but it was -- the sun was going down.
- Q. All right. When you first got onto the scene, what did you observe?
- A. A lot of vehicles. Tons of vehicles. We had -- like I said, you had jump COC's LAR/Vs, and I think a couple of HMMWVs. And then I had a QRF team with me and I believe another react force platoon -- a QRF platoon from my Weapons Company was also there. So a lot of vehicles and a couple -- a couple Marines standing around and a foot patrol also of Marines.

- Q. Now you just said that you saw a bunch of Marines standing around. Did it look like there was still a hostile threat at that time when you arrived?
- A. No, not at all.
- Q. What was the demeanor of the Marines that were standing around?
- A. A little -- well, the ones standing around, I had a group that was leaving so they were just trying to organize and picking up and headed back to their combat outpost. I had a couple of them still holding security on the position as normal. And when I say standing around, it was more my react group, both the platoon I came out there with and my -- the guy's already there. Just kind of figuring out what was going on, getting the lay of the land.
- Q. Now did you make contact with the members of the Division Jump?
- A. I did.
- Q. And how did that go?
- A. The best I remember, the first person I talked to -- about the only person I talked to that time -- was the officer on the scene. It was a captain at the time. And he was on the radio, and he was coordinating basically I want to say indirect fire and air support. He was also calling for potential illum, depending on how long the situation lasted so that we could see as the sun went down.
- Q. You said he was on the radio. Was he on the radio from the vehicle?
- A. Yes, that is correct.
- Q. Do you recall what type of vehicle it was?
- A. It was a HMMWV.
- Q. How did the captain appear to you? What was his demeanor like?
- A. Pretty spun up, excited. He was on -- like I said, he was on the radio trying to coordinate a couple things at times. I don't know how much success he was having with some of the stuff he was requesting. So finally, when he got a break in the conversation, we briefly spoke. And about the only thing at that time he asked me is if he could retain tactical control of the situation which I obliged. And I just told him when he got an

opportunity, I was here with the tank retriever to pick up his downed vehicle. And if he could let me know ahead of time where he wanted that taken and if there was anything else I could do, just let me know.

Q. What, if anything, did he tell you when he got a chance about the situation and what had happened to them?

A. It was some time after that I believe we spoke. And he had basically told me that they had been ambushed, obviously an IED had gone off, and they had been ambushed. And he pointed out a couple places that he'd taken fire from. And then spoke of an individual on the ground that was dead, Iraqi, native I guess you want to call them. And he said that he had shot that individual as he exited his vehicle in the middle of the ambush.

Q. All right. Let's first talk about him telling you that they had been shot at from a couple different directions. Did he point out the directions where he said he received fire from?

A. He did. One was basically -- where they were located was partially residential area on one side, I would say more towards the southwest. And then going towards the north you had -- basically, it was kind of like a roundabout street and it was a big open area a little bit -- not quite a palm grove but an open area that was undeveloped. We'll put it like that. And then the river was only a couple hundred yards from that.

And he pointed out that some of the houses he had taken fire from. There was a lot of courtyards and walls and stuff like that. And he pointed out a large building, the largest in the city, that he had taken fire from and I just went ahead and let him know that that was the hospital. And it seems almost impossible that he would, because we had a squad of Marines at the top of that hospital at the time.

Q. And he also told you that he had shot and killed a body that you saw on the ground. Can you describe the condition of that body? Did he point at the body?

A. I don't know if he really pointed at the body. We were standing right by it. It was not far from his vehicle and where we initially met. And the body was on his -- laying face up towards the sky and brains shot out the back of its head so it's kind of -- as it was laying there on the ground, it basically looked like his brains were a pillow. We'll put it like that.

- Q. And what specifically did the captain tell you about that body?
- A. The captain indicated that when he exited the vehicle, that he had shot that individual at point blank range.
- Q. Any further information?
- A. That was about it. He just said that as he exited the vehicle -- right now, I don't know if he specifically said he used his 9 mil, but that was the impression that I understood that he used his pistol as he came out and shot him at point blank range.
- Q. Did you get a good look at the face of that body? Did you see an entrance wound?
- A. I remember a lot of things about it. I don't -- I could not specifically say that I saw an entrance wound to the face and then -- but there was definitely an exit out the back of the head. No doubt about that.
- Q. Do you recall what that individual was wearing?
- A. You know, we called them man dresses. I'm not a hundred percent sure that the gown or whatever that they normally wore over there was exactly what they -- what he had on.
- Q. All right. And to the best of your recollection, could you recall seeing any other wounds or blood on the body?
- A. No, I was pretty focused on the head.
- Q. All right. Other than talking to the captain that was on scene, what else did you and your Marines do while you were there?
- A. Well, upon arrival, I talked with all my section leaders, which I had two, and my platoon sergeant so technically three people and just let them know that when I was going to go assess the situation and find out who was in charge and talked to him. I wanted to tuck the vehicles away and kind of stand relatively close to them. I was worried that a lot of people on location, a lot of guns, and if we had taken fire from anything outside regardless of who it was, that we potentially could run into a situation where we shoot each other just out of confusion. A lot of people. A lot of trucks and stuff.

After that, like I said, I spoke with the captain. He wanted to retain tactical command. We had a very brief conversation. When he was back on the radio, I kind of

walked around with my platoon sergeant and met up with, at the time it was Staff Sergeant Cook. And we just briefly discussed, kind of -- kind of the situation. As we walked around, one thing I noticed was a lot of brass on the ground, on the road and everything else. I mean, everywhere you walked, you kicked shell casings.

We searched for some enemy weapons out in that unconstructed or undeveloped area where we found a Suburban. It was a black, four-door, you know, GMC Suburban that you see built kind of like in the '90s. And it had been blown up from -- the shrapnel pattern looked -- the majority of it was an IED. So we just kind of concluded that they had been following behind the vehicle.

- Q. Where specifically was that Suburban? Was it on the road?
- A. No. It had run off the road. I think it originally was on the road. And it was definitely out in the ditch or the -- like I said, if you had a picture of it, it was undeveloped right off the road and it had run off into this kind of ditch, low area --
- Q. Where do you --
- A. -- about -- it was about 20 yards probably from the HMMWV and the road.
- Q. All right. And did you see any evidence in or around that vehicle of enemy weapons or any other evidence of insurgent activity?
- A. No. None whatsoever.
- Q. And you said earlier that while you were walking, you were kicking a lot of shell casings. Were you able to determine if those were friendly shell casings or enemy shell casings?
- A. Everything that I picked up was ours.
- Q. And how could you tell that?
- A. 5.56 rounds. It just -- 7.62 rounds that they used were a little bit shorter, the brass. But everything looked like it came from us.
- Q. Now you said that the captain on the scene had told you he had taken fire from a couple of places -- or three separate places kind of across the field from buildings. Did you have an opportunity to go check out those areas?

- A. I didn't walk -- no. No. The only place that I went to was in and around the Suburban. I'm not real sure if any of my guys went into the homes or searched the courtyards at this time. I've kind of forgotten, but I did not personally go over there, no.
- Q. Other than the dead Iraqi that we talked about earlier, did you see any other dead bodies?
- A. I believe there was -- there was another one not far from the Suburban or in the Suburban area. And then we ended up finding a wounded individual that was playing dead not far from the Suburban that was actually shot in the leg. And then I believe there was a couple more dead bodies sporadically around in the roads and cars. They had shot a number of cars in the intersection, so --
- Q. Those vehicles --
- A. I didn't take an inventory of them, but there was a couple more people, yes.
- Q. And those bodies were in vehicles?
- A. The best of my knowledge, yes -- or recollection, I should say. Yeah.
- Q. All right. Up to this point, how long had you been in Ramadi?
- A. A couple months. I had -- we had arrived early March, late February.
- Q. And how many complex ambushes had you seen or observed in that time period?
- A. At that time, at least a dozen where we were engaged well over a couple hours.
- Q. And from your experience of being in those complex ambushes, what do you expect to see at the end of one?
- A. A large collection of weapons sporadically everywhere, around the corner, laying on the ground. Weapons ranging from RPGs to standard AK-47s. They had -- loved their medium machineguns every once in a while set up. And then usually what you would find in the near proximity would be a home that would serve as a cache where they would usually get their resupply from which would be stockpiled with everything from medicines to RPGs to their P4 grenades. A lot of paperwork, and stuff like that and usually food supplies, too. Oh, and swords. For some reason they always had swords there.

Q. All right. So based on your experience in Ramadi up to that date, when you arrived on scene at this IED site, did you see any evidence that they had been attacked by a complex ambush?

A. No. None whatsoever. The only thing it looked like to me was an IED had gone off that they planted.

Q. Did you see any evidence that the Iraqi that you saw whose head had been essentially shot could have posed a threat?

A. I wouldn't say posed a threat. But that being said, since I'm on the record, every individual over there that I ever fought with wore similar clothes, such as -- if you want to give me the technical name for it so I don't keep calling it a man dress -- but they either wore a man dress or, like, an Adidas running suit, like a soccer wind suit. So I mean, they didn't wear uniforms.

Q. When you got back to the -- to FOB that night, did you ever report your observations?

A. I had mentioned it just kind of briefly what had happened, but I didn't go into detail about it.

Q. And who did you mention it to?

A. Major Harrel[ph], which was our OpsO at the time.

Q. And why'd you feel the need to even talk to him about it?

A. Well, it involved -- you know, in the beginning we'd go on patrol. It was always one of those things, you go back and give a big intelligence dump. And after you do enough time out in town, if you didn't see anything that was out of the ordinary, you don't really go back and talk about it.

But this particular situation did have a lot of people's attention just because, one, it was Blue Diamond's jump. Two, it was somebody else in our area -- I mean, obviously it's the Marine Corps and we work for them, but it was technically 2/4's city and they were passing through. And the other thing was, you know, it did involve a shooting.

So I went back and just kind of checked in with battalion when I got back. And he just caught me in passing and asked if everything was alright and I just kind of briefly said, you know, looked like an IED went

off. A Marine got killed. It was an unfortunate event. And it looks like in some confusion, they did some shooting at an intersection and some people got hurt.

Q. Were you asked to write a statement about it?

A. Not at that time, no. Not that evening.

Q. When were you?

A. The next morning I was woken up. I don't know if it was Major Harrel personally, but it was somebody from battalion asking me to come over to the battalion COC. And I was informed there that Colonel Dunford at the time -- I believe he was Chief of Staff to General Mattis -- had requested my presence over at division to speak with General Mattis and explain to him why I had turned loose an enemy combatant.

Q. All right. We didn't really cover that earlier. So what incident is this referring to?

A. Well, after my platoon sergeant, myself, and Staff Sergeant Cook had kind of walked around and surveyed the situation, the captain in question had gotten off the radio and he was kind of milling around and his Marines were too. And I'm not sure if I spotted it or my platoon sergeant did, but we found an individual that was -- looked like he had come from the Suburban -- laying out in the field not far from the Suburban, wounded. Like I said, shot to the leg. And he was playing dead.

When we found out he was alive, I called to the corpsman with the jump COC to render first aid. And at that time, that particular corpsman refused to. This didn't make me very happy, so I had some choice words. My platoon sergeant kind of settled me down and at the same time Staff Sergeant Cook grabbed his company -- or his platoon corpsman and that doc jumped on it and got him patched up.

And then I went ahead and grabbed the police -- the local police that is. They didn't speak any English, but they understood what I wanted. I had them escort the person shot in the leg over to a car that had taken fire. And they had their lights flashing. And if I remember correctly, they had some kids in the car, I believe who were shot. But the man, himself, that was -- or the man at the car was fine, unharmed, but they were afraid to leave just due to the shooting so

they stayed put. And I had them escorted by police outside of our lines. And the idea is they go to the hospital and take the individual with the gunshot to the leg to the hospital.

Q. All right. And why did you feel like you could let this wounded individual just go to a hospital before being I guess interviewed by a HET team?

A. Well, I don't know. I just didn't see enough -- okay, at this time, IEDs constantly went off in the city. But if you look at the pattern, they're always in -- nine times out of ten -- unpopulated by foot traffic that is. It was always on the edge of town and on the main arteries coming into it. There was only about so many -- about two main roads that actually kind of funneled you into Ramadi and then you could take a series of alleys and stuff like that.

So anyway, they normally put IEDs out there and very, very seldom did they get foot traffic in it. But every once in a while, they would get somebody passing by in a car or something like that when they tried to target us. For me at the time, that's what it looked like. It was -- you know, it was a target of opportunity with the LAR pieces going by. It was pretty tight. It started with their big vehicles. And I thought that that Suburban that had been blown up behind it was just a vehicle going by in traffic, got caught behind the convoy, and was just collateral damage. So nobody at the scene I deemed as an enemy combatant. I just felt they were collateral damage.

Q. All right. Now going back to the statement that you wrote. Or you said that you were asked to go talk to Colonel Dunford about letting this individual go. What happened with regards to that incident?

A. Well, that morning when I was told what I was requested for and that I was going to have to explain why I had released an enemy combatant. I thought the whole situation was absurd. And my OpsO at the time, Major Harrel -- I believe it's Major Harrel. I don't think that I was talking to my XO at the time. Had said, you know what -- before you go over there, why don't you go ahead and write a statement and get your platoon sergeant, have him write a statement. And I believe they had Staff Sergeant Cook write a statement also.

- Q. And we have here what we've marked as Exhibit 20 for our record. But we have here a summary of action that you wrote on 8 June 2004. Is that what you would -- the statement that you wrote with regards to this incident?
- A. I turned the statement over -- I don't want to say yes, because I can't see it. I turned the statement over to NCIS. And if that's who you received it from, then more than likely that's it.
- Q. And to your recollection, obviously I can't show you the statement since you're not here, but to your recollection what did you put in that statement and what was it about?
- A. It was pretty heated. I was pretty angry at the time, so it just covered the events leading up to it. A little interaction between myself and the captain. My thoughts. I gave my opinion in that statement of what I thought happened in the -- what happened previous to me showing up. And then I probably stated that -- well, I know I stated that it was absurd that I needed to go over because basically it was nothing more than an IED that went off. Some civilians that got caught in the crossfire and the confusion. And it wasn't an ambush as the captain thought it was.
- Q. And to the best of your recollection, was everything that you wrote in that statement true to the best of your knowledge?
- A. Yes.
- Q. Now eventually you went and talked to -- or were approached by an NCIS statement to give another statement. Do you recall that?
- A. Yes.
- Q. What were the circumstances under which you talked to this agent?
- A. I was informed that the captain in question -- I don't really know how to phrase this -- basically why we're having this conversation. Some Marines had said that he had executed somebody and that I was a witness after the fact. I was more of a witness to the scene after the fact. And they would just like to -- for me to tell my story, essentially. And so I met with NCIS agent. I talked to him on the phone, I would say two or three times prior to that. And then I met with him north part of Austin out in Texas about a little over a year ago.

- Q. And to the best -- you had an opportunity to read this statement that came out of that interview; is that correct?
- A. I'm sorry. The interview?
- Q. When you sat down, you interviewed with NCIS. Did you have an opportunity to write a statement with him?
- A. To be honest with you, I don't even recall. We met in a hotel with a table. I probably wrote some things just to say I confirm it. But I'll be honest with you, I really don't remember that part of it specifically.
- Q. Okay. From after you redeployed after that deployment in Ramadi, did you ever talk about this other than with the agent and of course in the days leading up to this? Did you ever talk about this incident with anyone?
- A. Yeah. Yeah. Well, you know, I get back with, you know, friends now. But it was, you know, my fellow platoon commanders that would understand a story like that. And every once in awhile, we meet up every year or so. You know, we go over the same story we cover every time we see each other about our time over there together. And on occasion, I think once or twice I got a phone call from one of my Marines that said that they had ran into the captain in questions, that he was still in the Marine Corps. And that was about it.
- Q. Now why would that be something worthy of a phone call?
- A. Well, because I guess the whole situation was absurd. And it stands out in my mind, you know, as one of those things that I really don't know how to put it now. But it's a day that maybe I don't get the details, but I won't forget what they looked like.
- GC (Maj Goode): All right. Thanks. I have no further questions, but I'm going to pass you off to the defense counsel right now. So please stay on the line.

WIT: Okay.

IO: Defense counsel.

CROSS-EXAMINATION

Questions by the defense:

- Q. Good morning, Mr. Stephens.
- A. Good morning.

Q. My is name is Hatham Faraj. I am an attorney. I represent the accused in this case?
A. Okay.

Q. Do you know who the accused is?
A. Now a major but was a captain.

Q. Do you know his name?
A. It hasn't crossed my mind again, no.

Q. How did your Marines call you and tell you about the captain you were just talking about that you don't know his name?
A. How did they tell me?

Q. How did -- didn't you just test --
A. How did they remember his name?

Q. So what did they say? They just call you up and say remember that captain? What?
A. If I remember correctly one of them ran into him on a rifle range, if I remember correctly.

Q. Well you remembered correctly earlier. So do you remember correctly or don't you remember correctly?
A. I believe the conversation was they ran into the captain in question on the rifle range.

Q. What did they tell you? What is the captain in question? Did they say captain in question when they told you they ran into him?
A. They'd say, Hey, sir. Remember that captain that was there, that was in charge of jump COC. And I said yep. When they say I ran into him the other day. He's still in the Marine Corps. Well, that's outstanding.

Q. What is the name of that Marine that called you?
A. Does that matter?

Q. Sure.
A. Okay. I believe it was Sergeant Hardin. Now a staff sergeant.

Q. Staff Sergeant Hardin? H-A-R-D-I-N?
A. That's correct.

Q. And he was with you that day?
A. He was.

Q. Did he meet the captain?
A. I'm not sure.

Q. Well, you were the person in charge of your unit that day. How many people besides you interacted with the captain?
A. That day when we were in Iraq?

Q. Yes.
A. I had about 28 guys out there with me. I mean, they might have all talked to him for all I know.

Q. Was it normal for your Marines to go up to officers and engage them in conversation or talk to them?
A. If the officer addressed them or if the situation permitted, yeah.

Q. Do you know if the officer addressed any of your Marines?
A. Probably not.

Q. What was Staff Sergeant Hardin's rank back then?
A. He might have been a corporal. He got promoted when he was over there. So he was either a corporal or a sergeant.

Q. Okay. Well, do you know if corporal -- then Corporal Hardin walked up to a captain to have a conversation with him?
A. No, I don't know.

Q. All right. And you're sure that he said he saw him on the rifle range?
A. I'm not a hundred percent.

Q. Okay. So if the captain had not been to the rifle range since 2001, would your Marine, the former Marine that you knew be telling the truth or be making stuff up?
A. Well, he could have just run into him somewhere else and --

Q. Well, you said rifle range.
A. -- [inaudible] that he ran into him.

Q. I just asked you if you were sure he said rifle range and you were pretty sure that it was rifle range.
A. Yeah. I said I was pretty sure. I didn't say I was positive. You're right.

Q. Do you remember 100 percent he said that?
A. No.

Q. All right. So are you as pretty sure that it wasn't a complex ambush as you're pretty sure it was rifle range?
A. Yeah. Because I wasn't there, so I'm pretty sure.

Q. All right. You said you were in 12 or a dozen -- to state it correctly -- a dozen complex ambushes?
A. Yes.

Q. Does that mean that your unit had been ambushed 12 times?
A. Yep.

Q. Okay. Which unit was this?
A. 2d Battalion, 4th Marines.

Q. Okay. And were you on the ambush when the 2d Battalion, 4th Marines was ambushed?
A. Yes.

Q. So when -- just to be clear, when we're talking about your unit being involved in complex ambushes, we are talking about you being on the site where the ambush takes place?
A. Oh, yeah. I was on site.

Q. Okay. All right. Now, how did those complex ambushes begin?
A. Well --

Q. Or just give me an example of a complex ambush and how it begins.
A. On April 6, we were driving through --

Q. What year, please?
A. April 6, 2004.

Q. Okay.
A. We were driving what's considered or called the Sophia District, which is a small kind of outskirts, suburbs, I guess you could say, of Ramadi on the eastern side. And we were responding to another ambush with dead and wounded Marines. We were going to reinforce them.

As we drove up the road, we had a number of people out. And the road is about a little bit bigger than one lane. Brick walls, cement walls lining it. The court yards and stuff. So it's kind of -- looks like -- a little bit like an alley.

As we drove down, a lot of people out in the streets. Kids, women, children, old people. And as we drove past, then they kind of got nervous, a little bit scattered, which wasn't too big of a surprise because there was already gun fights going on in the town. And we hit basically like a trip line. Every once in awhile, they'll put out bricks, rocks, whatever they can find to just kind of mark an ambush area. And as we hit that, you saw everybody scatter. They just went running inside. They ducked behind walls.

And as soon as they did that, they fired machineguns. One was on my left in an alley. One was on my right. Not necessarily in that order. But first machine gun was on my right. Second one that we past by was on my left and they proceeded to fire. And as we hit the kill zone, even deeper into it, they went ahead and fired RPGs. Came down -- we basically went through the kill zone, came back around and then started shooting. And they got us in an engaged firefight at that point in time.

Q. Okay.

A. They used cars -- when we killed them, they actually used cars to pick up their dead and wounded. That was something that caught us off guard. We didn't think they were that organized. They tended to drop grenades. I don't -- I did not personally get a grenade dropped from the roofline on me on this one. But they did use a coordinated attack that had RPGs, medium machineguns and AK-47s.

Q. Okay. And when you -- when your unit took fire, did your Marines return fire?

A. Yes.

Q. And they returned fire at the -- in some cases, I'm sure, at the cyclic rate?

A. Yes. [inaudible] --

Q. Machineguns opened up?

A. That is correct.

Q. Okay. And when they were returning fire because you were in a civilian area, is it fair to say that there's always a possibility of collateral damage that may injure or kill civilians?

A. Yes.

Q. In fact, the enemy does that specifically so that they can blame collateral damage or civilian kills on the U.S. military for propaganda purposes, correct?

A. I wouldn't say specifically. I'd say it works to their convenience.

Q. Okay. Well, they do use it for propaganda purposes, do they not?

A. You would know that as best as I do.

Q. Okay. I'm asking you if you know. If you don't, you can say you don't.

A. They have in the past, yes.

Q. Okay.

A. Yes.

Q. And after that ambush, did anyone walk through, kick the brass around, and check to see if there really was any enemy brass intermingled with your brass?

A. Like, did I have a team come up behind me and investigate what had happened? Is that what you're asking?

Q. I'm not asking about a team. I'm saying did anybody come in and make decisions or judgments whether the brass from your Marines had any intermingled brass to indicate whether you were genuinely engaged or not?

A. No. We just took the weapons that were -- we picked up -- as we killed people and their weapons were on the ground, we actually collect them up. So I had a hole stack of weapons and enemy stuff that -- ordinance that wasn't expended. Did we pick up the expended ordinance --

Q. -- I'm not -- my question is not that. I'm saying did anyone come around and look through your brass and try to determine if there was enemy brass intermingled with it? I'm sure you picked up weapons and I have no doubt that you were genuinely engaged and you were in a combat situation.

A. Right.

Q. I'm just asking you if your brass was check to see if it was intermingled with enemy brass?

A. No. Not specifically, no.

Q. All right. During the 12 complex ambushes I'm sure your unit responded when they took fire, correct?

A. Yes.

Q. Do you know if your unit was responsible for any civilian deaths during those 12 ambushes?

A. Specifically?

Q. Yeah.

A. No. I'm not sure of it, no.

Q. Okay. You said when you arrived on the scene of the IED blast. There was -- it appeared that the Marines had fired their weapons at a high rate of fire as -- and [inaudible] --

A. They had shot a lot, yes.

Q. And you made that -- you came to that conclusion based on the brass that was on the scene?

A. That is correct.

Q. All right.

A. As I walked through it, yes.

Q. Okay. And you said at the time this -- the blast went off, that you were 8 miles away?

A. Approximately, yes.

Q. Could you hear -- are you able to hear small arms fire from 8 miles away?

A. On a quiet day, you might could. That day, no, I did not.

Q. Okay. So as you testify today and as you had been on the scene back then, you can't say the rate of fire that those Marines received? The Marines that were --

A. Received or shot?

Q. No. Received. You can't testify about the rate of fire that the Marines received from enemy. If any enemy existed or not, you can't say one way or the other.

A. No, I cannot.

- Q. And regardless of the rate of fire, if a unit is taking fire and they can point or identify the direction of fire, there is nothing that requires them to use restraint in returning fire?
- A. Nothing that requires them -- I don't think that there's a requirement, but there was when we initially went over there, what we called an escalation of force. So that being said, if an enemy used a bat on you --
- Q. We're not -- we're not talking about escalation of force. We might get to that. We're already talking about receiving fire. You've got an enemy location identified. They are firing at you.
- A. Okay.
- Q. Nothing in the rules of engagement or anything that we teach the Marines require Marines to return fire at the same rate that they are receiving fire. Let's ask it that way. Right?
- A. Well, we're --
- Q. If someone is firing at you with an AK-47 one shot at a time, nothing prevents you from turning a 240 Golf on them and blowing them away, does it?
- A. No, it does not.
- Q. Okay. Nothing prevents a unit with four vehicles from -- in fact, I don't know of any techniques to get Marines once oriented on the enemy besides a normal ADDRAC order to not fire on someone that they are taking fire from, right?
- A. No. That is correct.
- Q. So normally a unit takes fire, people that are assigned to those sectors, orient on the enemy. Once they observe the enemy, they begin to engage, correct?
- A. That is correct, yes.
- Q. All right. And then they cease fire once the threat is eliminated or once they receive an order to stop firing?
- A. That is correct.
- Q. All right. Do you have any reason to believe that those Marines at the IED site had any less training than your Marines did that you led that day?
- A. Had less training?

Q. Yes.
A. No.

Q. Do you have any reason to believe that the Marines that guarded General Mattis had any less discipline than your Marines did that day?
A. I have an opinion but no. The answer to your question is no.

Q. Do you have any reason to believe that the Marines that were hit by an IED that day are liars?
A. No.

Q. So as a former small unit commander, will you agree that Marines normally act properly when they're in combat and normally follow their orders?
A. Yes.

Q. So it's difficult to pass judgment on a unit's conduct if you don't know exactly what that unit faced during an engagement?
A. Yes. It is very difficult, yes.

Q. And then when you arrived, the engagement was all but over. You were assessing consequences of the engagement?
A. Yes.

Q. And sometimes -- it's unfortunate, but sometimes there is collateral damage when you're in war?
A. Yes.

Q. Okay. You said that the enemy's TTPs -- one of the enemy -- the enemy -- you didn't say TTP. The enemy did not normally set off IEDs where there was civilian traffic; is that right?
A. That is correct. At the time. At the time.

Q. At the time. I understand. We've seen them do some horrible things after that. But in June of 2004, it wasn't common that there would be foot or civilian traffic in an IED blast area, correct?
A. I'm sorry. Could you repeat the question one more time?

Q. In June of 2004, the enemy's TTPs or the enemy's tactics did not have them setting off IEDs in areas where there was civilians?

A. The majority of IED blasts were in very, very low populated areas.

Q. Very well.

A. -- or populated by civilian areas. Yes, that is correct.

Q. Okay. So it wasn't common that they would try to take -- that they would -- unlike what we've seen recently, normally IEDs back then targeted military units only?

A. That is correct.

Q. Okay. So when the jump CP is driving down the road and an IED goes off with vehicle traffic around, that is nothing new in June of 2004?

A. It was unlikely at that time, but it had happened before, yes.

Q. But -- well, it's unlikely. I think you just said that, correct?

A. Yes. Right.

Q. So this is a new tactic or it's a developing tactic, correct? An evolving tactic?

A. Yeah. I mean, it -- or you could just say that it was -- I really don't even know how to phrase this to answer your question. It wasn't common, but it had happened, yes.

Q. All right. Do you know if the enemy is capable of setting off IEDs or command detonated IEDs from vehicles?

A. Command detonated IEDs from vehicles. Do I know if they were doing that?

Q. Do you know if they are capable of doing that?

A. They had to have been. All of the IEDs they put in were command detonated.

Q. And command detonated IEDs --

A. Are we talking wireless or with a wire at this time by the way?

Q. Well, I'm guessing -- I'm going to ask you if they were -- do you know if the enemy is capable of setting off command -- wireless command detonated IEDs?

A. Yes, they are capable at this time. Yes.

Q. How about vehicle?

A. Yes.

Q. And they can do that using cell phones, correct?

A. That is correct.

Q. All right. Now, it was common practice -- it was understood by almost all Iraqis that when a U.S. convoy was on the road, to stay several hundred feet back, correct?

A. I wouldn't say several hundred feet away, but they would -- they usually gave us our space.

Q. Okay. Do you know if there's a standard effective casualty radius for an IED?

A. No. They will build an IED out of anything they can find that will explode. We've seen P4 put in a standard bicycle in the pipe. All the way up to, you know, at that time putting triple stack and 1.55 shells on top of each other. So usually whatever they can find, they'll arm it and hope -- they always, I'm sure, hope for the bigger the explosion, the better.

Q. So there is no standard way to determine what a casualty rate for an IED is? And often -- let me ask both questions together -- and often, the enemy himself didn't know how much damage his IED was going to cause even if it was going to even go off?

A. No. That --

Q. Okay.

A. I'm -- correct. That is correct.

Q. So just because a vehicle happens to maybe take some shrapnel from an IED, does not necessarily eliminate it as the trigger source?

A. That is possible.

Q. Correct?

A. Correct.

Q. So it's very possible that a vehicle could follow a convoy with someone ready to detonate a device at the appropriate time based on where that convoy -- when that convoy gets to the location of the IED?

A. It is possible, yes.

Q. So, again, as you sit here today and you think back about those days or when you were on the site on June 7, there is no way for to make a judgment decision on the tactical situation that the Marines faced at the point of the IED explosion and immediately -- and in its immediate aftermath?

A. No.

Q. What time did you -- when did you bring the 88 on the scene? How long after the IED? I think you said 40 minutes, right?

A. About 40 minutes. The actual -- the exact time of day, I don't remember.

Q. Okay. And so you don't know if the Marines on the scene had already picked up weapons or not?

A. No, I do not.

Q. You didn't get your Marines on line and walk across the empty field to determine whether there were -- I don't want to say empty field -- across the open field to determine whether there were any weapons that were dropped in that field?

A. No, I did not.

Q. Now let's talk about the man that was discovered in the field.

A. Yeah.

Q. Do you have an opinion as to why someone would feign death?

A. Yeah. They were scared.

Q. Well, there was a car with two older gentlemen and two little kids, and they didn't feign death.

A. That's correct.

Q. Okay. But you believe that man was scared?

A. Yes.

- Q. When did you have that conversation with him when he told you he was scared?
- A. It would be more -- there was no verbal conversation. It was all -- what do you call it? -- your body -- your facial expressions. Stuff like that. Posture.
- Q. Okay. All right. Could he be scared because he thought he might get arrested for doing something that was bad?
- A. Yeah, he could of.
- Q. So I can appreciate that you can read a person's fear. I have no doubt about that. But your ability to read a person's fear doesn't also include an ability to determine what caused that fear?
- A. No. Absolutely not.
- Q. Okay. All right. So while you concluded that he was an innocent man caught in a crossfire and so he was afraid, just as reasonably conclusion could be that he was attempting to approach the convoy to do something bad; and when you found him, he was afraid of being caught?
- A. That is possible, yes.
- Q. And so if the Marines on the scene believed him to be an enemy combatant based on what they observed and you arriving 40 minutes later believed him to believe a scared civilian, then their commander's report that he thought you let a bad guy go should be given as much credibility as your later report that it was a civilian caught in the crossfire?
- A. Yeah. Except for the fact that nobody on the scene did anything to stop me or argue with what I did.
- Q. Okay. But you would agree that that report should get as much credibility as your report?
- A. That he potentially was an enemy combatant?
- Q. Yes. We already agreed that we can't determine one way or the other. You may have been right. He may have been right. But both reports deserve equal credibility at this point, correct?
- A. Other than the fact that, like I said, he didn't make any attempts to stop me.
- Q. I understand. He had just lost a Marine, had two injured, and was, as you said, pretty uptight and nervous.
- A. Yes. Yes.

Q. Right. Okay. And so --
A. So, yeah, I guess, the assessment later, one could say that -- right. On equal -- yes.

Q. All right. But given that he was the guy that was involved in the ambush and was there from the beginning, wouldn't you want even more credibility if you were in his shoes? Or not -- I don't want to say credibility -- wouldn't you want people to believe you even more because you were the man there making the decision?
A. Yes.

Q. So you would agree that if you were in his shoes, you'd be pretty upset that someone was second guessing you?
A. Well, at the time it didn't appear like I was second guessing him.

Q. All right.
A. Like I said, he made no attempt to stop me or anybody else on the scene.

Q. Okay.
A. I didn't -- just for the record, I did not hide what I was doing from anybody.

Q. I read the statement and I know you didn't.
A. Okay.

Q. But that's not what we're talking about.
A. Okay. Just throwing it out there.

Q. All right. Let's talk about the man that you saw who's head appeared to have been -- well, who appeared to have been shot.
A. Yes.

Q. Okay. Now, how close was this man to the vehicle?
A. Five, ten yards towards the back of the vehicle.

Q. Okay. And how far was this vehicle away from the IED blast?
A. The HMMWV or the vehicle that the individual I think came from?

Q. No, I'm talking about the HMMWV.
A. The HMMWV? When the HMMWV had -- where it was located when I got there, it wasn't far from the blast site.

Q. So if you were walking there and the blast had gone off, what -- do you think based on the damage to the LAV -- it took out an LAV and killed a man inside and injured two Marines -- do you believe that that blast would have affected that person?

A. Oh, yes. Yes.

Q. Okay. But I think you testified that he came from the vehicle?

A. The dead man?

Q. Yeah.

A. Yes.

Q. Why would a dead man come from a vehicle and approach a convoy that had just got blown up?

A. Based on my experience and my opinion, the reason I think what happened is any time something like that happens, a lot of times what you do is you get out of your vehicle. I don't know -- it's kind of a natural reaction to get away. And if your vehicle is down, you just try and get away. I don't think that the man at the time just with a blast like that really thought about which direction he was headed. I just think that he was trying to get out of the vehicle.

Q. Excellent. Okay. So --

A. That was my opinion.

Q. All right. Let's assume that. Let's assume that this man was -- suffered some shock as a result of a blast while he was inside his vehicle, got out, and I think what you're saying is began to run away. But instead of running away, he ran towards the convoy.

A. Correct.

Q. All right. So you have Marines in a convoy -- you Lieutenant Stephens -- you have Marines in a convoy, an IED blast goes off, the vehicle stops, a man gets out wearing the same type of clothing that you've noticed other insurgents wear, and begins to run towards your convoy, what do your Marines do?

A. They would react and stop them. And that could be -- that would normally end up in deadly force, yes.

Q. Okay. Great. Thank you for saying that.

And we've given him the benefit of the doubt on this one, right? We said that he got shocked by the blast and began to run towards the convoy instead of away, right?

A. That is correct.

Q. Okay. But when you saw him, he was even closer to the convoy?

A. He was close. Yes.

Q. Okay. Now, you testified that when the captain who was on the scene was pointing out where he was taking fire from, you -- well, I don't want to put words in your mouth. Please tell me what you thought at the time when he pointed to the hospital?

A. Well, he pointed towards a large building that unmistakably was the hospital. It was the --

Q. And I'll grant you, it is the hospital. It was the largest building in the area, right?

A. That is correct.

Q. Okay.

A. And I just said, That's the hospital.

Q. And you believe that you had a platoon up there?

A. About a squad size at the time.

Q. Okay. And this was --

A. It's basically --

Q. This was from 2/4?

A. Yes.

Q. Okay. Is -- now, 2/4 is familiar with the laws of armed conflict, right? The laws of war?

A. That is correct.

Q. Are you sure that 2/4 placed combatants in an area that's protected in a structure that is protected under the Geneva Convention?

A. Yes. And we will eventually have them taken down some time after that, because of that exact reason right there.

Q. Okay. Were there other buildings between the hospital and the location of the IED blast or was it a direct line of sight?

A. Residential buildings. No bigger than two to three stories high.

Q. Okay. So, again, I want you to put yourself in that scene. You're the convoy commander and you're taking fire from that general direction. And you don't know that that big building is a hospital.

A. Right.

Q. Based on your training and experience as an infantry officer, it is very -- it would be very easy to assume that the largest building would be the source of the fire that you're taking?

A. Yes, it would.

Q. Right?

A. Yes.

Q. Okay. And of course 2/4 apparently didn't understand the laws of armed conflict and the enemy often understands them and doesn't abide by them. So there's no reason for him to doubt that maybe he took fire from there even though there may not be fire coming from there?

A. That is correct.

Q. Because there are buildings in the way and fire could be coming from those buildings, correct?

A. It is correct. But I think 2/4 is well spun up on the articles of war. I'm sure there's some bigger picture reason why we were there. But I just want to throw that in there.

Q. All right. Well, no worries. You do agree that the insurgents didn't always abide by the laws of war?

A. Oh, yes.

Q. Okay. And so --

A. That is correct. I do agree.

Q. So whether the officer on the scene that day knew it was a hospital or not, he knew that -- you all knew that the insurgents sometimes use hospitals as a place to attack U.S. forces?

A. Attack and hide, yes.

Q. Okay.
A. Yes.

Q. And do you recall speaking to a Marine by the name of Sergeant Jordon that day?
A. Yes, that's my vehicle commander.

Q. Do you recall telling him that the man you saw appeared to have been shot by a bush master?
A. The dead man?

Q. Yeah.
A. With the brains out the back of his head?

Q. Yeah.
A. I don't recall if I said that he was shot by a bush master, no.

Q. If Sergeant Jordon remembered you saying that would -- well, let me ask you this: Do you believe Sergeant Jordon to be a truthful person?
A. Yes.

Q. And so if Sergeant Jordon remembered you saying that, do you think that his memory would be accurate?
A. Yes. It is very possible that that's what he heard me say.

Q. Okay. And Sergeant Jordon never went to see the man, so he didn't make that conclusion based on his own observations? It came from you?
A. I'm not sure of that.

Q. Okay. Well, back to the question then, if Sergeant Jordon remembered you saying that, it would probably be accurate?
A. Yes.

Q. And what is a bush master?
A. A 25 millimeter cannon.

Q. Is it a 25 millimeter cannon that's mounted on an LAV-25?
A. Yeah. Okay. 25. 20 or 25.

Q. All right. Well, that's what the LAV-25 is called an LAV-25 for, right?
A. I guess so.

- Q. All right. Now, you testified that on questions by the trial counsel, you were asked something about did you talk to anybody upon returning to your unit and you said yes. Do you recall that line of questioning?
- A. Yes.
- Q. But, in fact, I think I heard you also testify that he approached you -- it was Major Harrel that approached you and said what was going on, correct?
- A. As I walked into the battalion building, we ran into each other.
- Q. All right. So he came to you. It wasn't that you necessarily went to him. He began the questioning?
- A. Right.
- Q. And, of course, that's important. Because if you'd observed something, you'd seek him out or you'd seek someone else out. Perhaps the XO, even, or your company commander. But in this case, he was just the OpsO trying to get an after action on what had happened out there?
- A. Correct.
- Q. That's what -- that's what OpsOs do?
- A. That is what OpsOs do.
- Q. So would it not be accurate for me to assume that at the time, had you believed that something inappropriate had happened, you would of sought somebody out to report it?
- A. That is correct.
- Q. And the letter that you drafted later that morning was drafted as a result of an accusation of alleged misconduct by you?
- A. I would say a rebuttal is possibly what could have happened.
- Q. No. Without commenting on the appropriateness or the allegation. I'm not saying you did something wrong. I'm saying that statement was written because someone had directed an allegation against you and you are rebutting it?
- A. Correct.

Q. This letter was never drafted because at the time that you returned, you, officer of Marines, had observed something wrong and felt you need to report it?

A. Correct.

Q. I need your opinion as a former infantry officer on something, Mr. Stephens.

A. Okay.

Q. What is -- what is a definition of an ambush?

A. I'd say --

Q. If you remember. I don't know.

A. -- an --

Q. I'm not looking for the [inaudible] or whatever definition. But what -- based on your experience.

A. It could range from anything but something hiding that you'd run into that would do harm to you or an attack. That was it --

Q. Okay. So let me give you some facts and tell me if you have an opinion as to what it is. Assume that a unit is attacked by an improvised explosive device, then receives small arms fire from several different directions. Would that fit into the definition -- or your definition of an ambush?

A. It would.

Q. Okay. And, in fact, based on the doctrine that was being taught by the Marine Corps, the term complex ambush meant exactly that; that you take an IED attack and then you receive small arms fire or even maneuver -- you have units maneuvering through vehicles to try and gain an advantage on your unit. Isn't that correct?

A. I would use the word coordinated. But I think complex could probably be used in that. And the answer is yes, I would think so.

Q. Okay. So when you were asked on direct about it being an ambush, you testified that it wasn't an ambush. And that wouldn't be accurate, would it?

A. I think an ambush could be just an IED along the side of the road that is blown on you.

Q. All right. And I thought maybe you didn't hear the question. I specifically wrote down what you said and you said it wasn't an ambush. But you would agree that an IED and small arms fire is exactly that, an ambush?

A. I think at this time I -- how do I phrase this? It was an ambush, yes. Do I think it was -- do I think -- is my opinion that it was a coordinated ambush with enemy personnel attacking with small arms? No, I did not. [inaudible] --

Q. All right. Well, you've already told me --

A. -- I believe they both start and end with an IED is my opinion.

Q. Okay. And you -- you already told me that you had no reason to believe that any of those Marines in that unit, in jump CP were liars, right?

A. No, I have no reason to think so. No.

Q. And if I were to tell you that several of them are ready -- have reported and testified that they had people moving at them and they were receiving fire, would that change your opinion?

A. I'm not going to argue with them, because I wasn't there.

Q. Thank you very much. I think that's what -- that's what they want also. Not to be -- not to be second guessed when they were the people receiving the fire.

A. No. I understand that.

Q. Okay. Now let's talk about your tour in the Marine Corps. You said you served 6 years at 2/2?

A. 2/4.

Q. 2/4.

A. No, not six years, but right up at three with 2/4.

Q. Okay. What did you do the other three years?

A. About a year of it was spent in training from Officer Candidate School through the Basic School to Infantry Officer Course. That was all about a little over a year.

Q. What was the source of your commission?

A. The source of my commission was OC -- or yeah. Officer candidate selection notice.

Q. Officer Candidate Course?
A. PLC -- no. Not PLC. You've got PLC and you've got Naval Academy and they you just have me that signed up.

Q. Okay. Where did you go to college?
A. Texas State University.

Q. Okay. And so, did you join the Marine Corps right out of college?
A. That is correct.

Q. And you went to OCS, TBS, and then IOC?
A. That's correct.

Q. Then you reported to 2/4?
A. That is correct.

Q. You became a platoon commander?
A. Yes.

Q. How long were you a platoon commander?
A. I think it was about two and a half years. I'm trying to think of dates.

Q. Let's break it down. What type of platoon commander were you?
A. I was an infantry officer, like a straight leg platoon commander in a helo company?

Q. So you were a rifle platoon commander?
A. Rifle platoon commander, yes.

Q. Which company were you in?
A. Echo Company.

Q. Okay. And how long were you a rifle platoon commander?
A. Eight months -- right at 20 months and then I did a short time with Echo Company as their weapons platoon commander in a matter of two months. Then I moved up to Weapons Company as their CAAT team commander which was then turned into the Mobile Assault Platoon commander for right at a year, little over a year.

Q. How many mobile assault platoons were there?
A. Well, initially by T/O, there was two. It was the CAAT team split into two. And it was myself and another lieutenant. But in the end, the entire weapons company was turned into a Mobile Assault Platoon and there was five platoons total.

Q. Okay. So the mortars, the 51s, and the 52s all became Mobile Assault Platoon?
A. Yes.

Q. Okay. And Weapons Company -- correct me if I'm wrong -- has at least three or four lieutenants, right?
A. We do, yes.

Q. Okay. So did you have staff NCOs as platoon commanders as well?
A. We did. We had two.

Q. Okay. And you were a platoon commander to one of those platoons?
A. Yes.

Q. And how long were you a Mobile Assault Platoon commander?
A. Right at a year. A little over a year.

Q. How large was your Mobile Assault Platoon?
A. We started with six trucks, moved down to five. I had right at 28 to 32 guys.

Q. You discussed -- did you ever discuss this matter with Staff Sergeant -- then Staff Sergeant Cook?
A. Yes.

Q. When did you talk to him about it?
A. When we were on the scene.

Q. Did he discuss brass with you?
A. I can't really remember our conversations exactly, no.

Q. All right. When you spoke to NCIS in person how long did that interview take?
A. I don't think it was more than an hour.

Q. Hold on one moment, please, Mr. Stephens.

Mr. Stephens?

A. Yes.

Q. Was there ever a conversation with the Iraqi man who was feigning death?

A. No conversation, no.

Q. Did anyone speak to him?

A. Other than the Iraqi police, no.

Q. Did the Iraqi police communicate with you what he was saying?

A. No.

Q. I want to focus you back -- and I'm sorry, I jumped around. I want to focus you back to the man that was lying on the ground dead.

A. Okay.

Q. Or appeared to be dead based on what you saw. I'm guessing he was dead.

A. With the brains?

Q. Yeah.

A. That person.

Q. Yeah.

A. Yes, he was dead.

Q. Would you give me -- I'd like you to give me as full a description of what that man looked like as you can please.

A. I would say late 40s, early 50s. On his back.

Q. Was there blood behind his head?

A. There had to have been. But like I said, my focus was -- and most descriptive thing about it was the fact of the brains out of the back of his head.

Q. I need you to think about it, please.

A. Yes.

Q. The head or the brain matter. As you think about it, do you recollect -- I'm guessing you would remember it if it was a big pool of blood. But do you remember any blood beneath the head? I know you said it had to be, but I need you to try and remember if there was.

A. Actually, no.

Q. Okay.

A. Just brains was all I really, vividly remember.

Q. All right. And what about -- what about his dishdash. Did that appear to have any bullet holes or blood? The man dress.

A. Yeah. No, I'm thinking. Didn't really focus on it. I can't picture it in my head right now. So I'm going to say not to my recollection, no. No blood.

Q. Okay. So you don't recall -- was it white? What he was wearing, was it a white garb?

A. You know, I would tell you yes, but it would just be based on statistics that that's normally what they wore.

Q. Yeah. I'd rather you --

A. I can't confirm officially.

Q. I'd rather you tell me -- if you don't remember, it's okay. But I don't want to --

A. I don't remember. Don't remember.

Q. Okay. And you don't -- as you think back on it today, you don't remember if there was any blood on it?

A. No.

Q. Okay. This was in June, so it was pretty hot, right?

A. Yes.

Q. Or warm, I should say.

A. Very, very warm, yes.

Q. They tend to wear white garments in the warm season and the darker ones in the winter?

A. Yes.

CC (Mr. Faraj): Okay. I have no more questions for you, Mr. Stephens. Thank you for being available.

IO: Trial counsel, any questions?

GC (Maj Goode): No, sir.

IO: Mr. Stephens, thank you very much for your testimony today.

WIT: Okay. Thank you.

[The witness was excused and the telephonic connection was terminated.]

CC (Mr. Faraj): I need a head call, Your Honor.

IO: All right. Let's take ten.

[The Article 32 investigation recessed at 0947, 20 April 2011.]

[The Article 32 investigation was called to order at 0959, 20 April 2011.]

IO: All right. The investigation is called to order.
Government, next witness.

GC (Maj Goode): Yes, sir. The government is going to call Gunnery Sergeant Duran, sir.

Gunnery Sergeant Carlos A. Duran, U.S. Marine Corps, was called as a witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the government:

Q. Can you please state your full name and rank, spelling your last?

A. It's Carlos A. Duran. And I'm a gunnery sergeant. And my last name is D-U-R-A-N.

Q. What is your current billet and duty station?

A. I'm the staff NCOIC for recruiting substation in Redondo Beach.

Q. How long have you been there?

A. I've been on recruiting duty for about two and a half years.

- Q. And before that, can you just kind of give us a brief, you know, highlights of your Marine Corps career to date?
- A. Joined in '98. Right after boot camp, went to MCT. Did that thing. Went to radio operations school. Transferred over to 2d Battalion, 7th Marines. Was there from '99 to about 2001, 2002. I was the battalion commander's radio operator there. Transferred over to 7th Marine Regiment. Was the regimental commander's radio operator there. Did a deployment with him out to Iraq, OIF-I 2003.
- Got back from 2003 -- at the end of 2003, went on leave. Got orders to Camp Pendleton to be General Mattis' driver on base. And did that for I'd say probably about two months. And then transferred over to Iraq 2004 down at Camp Blue Diamond. And did that deployment. Came back August, September. Went on leave and transferred over to Military Police Company. Went over there as a radio operator and picked up company gunny there. Took them out to Iraq from 2005 to 2006.
- Came back from there, transferred over to Headquarters Company there at 1st Marine Division. Was a company gunny from 2005 to 2008 till I came on recruiting duty. And this is where I'm at today.
- Q. It sounds like you've done about three deployments; is that right?
- A. Yes, ma'am.
- Q. I want to focus your attention on your second deployment when you were out there with the Division Jump.
- A. Uh-huh.
- Q. What were the time frames of that deployment?
- A. I think it was February to August or September. I believe August or September is when we came back. End of August, maybe early September.
- Q. And what was your billet with the jump?
- A. I was the driver for the OIC's vehicle, for Lieutenant Thompson at first and then Major Card.
- Q. And was that vehicle a HMMWV?
- A. It was a hummer, yes, ma'am.

Q. And I want to focus your attention to 7 June 2004, which was of course the day that Lance Corporal Bohlman died.
A. Right.

Q. Do you recall going out on a convoy that day?
A. I do. I recall going out that day some time in the afternoon. I think it was a route recon. I think we were taking the general out the next day. We were doing a route recon out to -- I forget what the outpost name was. I remember handing out teddy bears on the way, getting to the outpost, talking to some lieutenant or captain. I can't remember who it was. Sat there for a little bit and then we jumped back in our vehicles.

Maybe -- maybe five minutes, ten minutes into the convoy, we were hit. The LAV in front of me was hit with an IED. Not sure where it came from or -- I think it was from the right side.

Q. What time of day was this?
A. I think it was late afternoon, ma'am. Late afternoon.

Q. Was it starting to get dark yet or not quite?
A. It was starting to get late. It was probably four, five, 6 o'clock. Around that time frame.

Q. And did you notice anything unusual in the moments leading up to the IED?
A. No. No, ma'am, I didn't.

Q. Okay. You said earlier that you were the driver for the HMMWV which --
A. I was right behind the vehicle that got hit, yes, ma'am.

Q. Who else was in that vehicle?
A. Major Card was in that vehicle and if I'm correct, I think our interpreter was in that vehicle also. The corporal. I forget his name. Corporal -- he was -- I think he was Egyptian. Corporal "A"? Corporal "A"? I remember we used to call him Corporal "A."

Q. All right. You said you were right behind the LAV so you were the second vehicle then in the convoy?
A. I believe so, if I recall, yes, ma'am.

- Q. How much distance did you have between your vehicle and the LAV?
- A. I remember during the city, our protocol was to ride not too close but not too far away. Maybe 75, 150 meters. 100 meters away from the vehicle.
- Q. What do you recall specifically in those moments immediately following the IED strike?
- A. I remember as soon as the IED went off, I jumped out. Major Card jumped out. It looked like there was -- all this smoke was going up and it sounded like rounds were going off. I'm not sure if they were friendly or enemy rounds. We got out, fired in the direction to the right, and when we all jumped out, I think everyone was firing in that direction and you could see, like, silhouettes off to the right. So we weren't -- we weren't sure what -- if they were enemy or -- but they looked like they were coming at us.
- Q. Now you said they were silhouettes. Is that because of the smoke?
- A. Yes, ma'am. I mean, the smoke was still up in the air. The silhouettes. Our HMMWV was still up in smoke. And then once that -- that ended off to the right and then we started treating our wounded.
- Q. About how long did that period last where there was the smoke and the silhouettes and the gunfire?
- A. I mean, the smoke was up in the air for a good while. How long that lasted? Maybe a couple minutes if that. I mean, when you're in a situation like that, it almost seems forever, but it's probably not forever. It's probably a minute or two if that that we were engaged in that.
- And then we started treating our wounded. I remember treating Sergeant Tucker. I remember he had a big gash on his face and big gash across his back. And I remember treating him during that.
- Q. When you were treating the wounded, was there still gunfire?
- A. Gunfire started again when there was a vehicle that tried to -- if I recall, from the right -- from the right there was a vehicle that tried to go through our little checkpoint. And we started firing at that and we all started -- as soon as the firing started, we all started firing at it and then eventually it stopped.

Q. Did you engage any other individuals or vehicles during that time?

A. No, ma'am. Not that I recall.

Q. All right. After treating your wounded, what do you recall doing next?

A. Treating our wounded. I remember treating our wounded and then going back inside the HMMWV. And obviously I think our -- after that our rear LAV pulled up. I think Hyman -- it was Hyman's LAV that pulled up to the front. And I remember there was a truck off to the left of us. And I think there was, like, one or two dead guys in it. I guess maybe shrapnel from the IED caught these two guys to the left that were inside this truck on the left.

And I remember one of the kids. One of the kids from the -- one of the scouts. I think it was Johnson. I think Johnson came up -- I'm sure if he was in the lead LAV or not and said there was noise off to the left in the building. He was trying to go in there and clear it by himself. Like, no, dude. Don't go in there. Don't go in there and clear that by yourself. We kind of stayed back.

Our interpreter came out and the people came out. I remember them crying and sitting there. Like, what happened? And when you look in the vehicle, it looked like this guy caught -- I don't know what it was to his head, but it looked like a pretty big gash to his head on the left. And after that, I can't remember. Went back -- went back to the vehicle, was on the vehicle, and then I remember I was on the handsets. And then I think Major Card started walking around the right side.

Q. You say when you went back to the vehicle, you're referring to the HMMWV?

A. Yes, ma'am.

Q. At this point, has it started to get dark yet or is it still fairly light?

A. I think it was starting to get dark. I can't remember, ma'am. But it was still light out. It was still getting dark. I remember Major Card going off to the right.

Q. What was on the right of the HMMWV?
A. It was a vehicle -- the vehicle that we were -- when everything went off, there was a vehicle off to the right and that's in the direction we were firing at when we first got hit.

Q. Was this vehicle on a road or in a field?
A. It was like in the field, ma'am. Yes, ma'am.

Q. Do you recall what the vehicle looked like?
A. I can't recall what the vehicle looked like. Or maybe some [inaudible]. I can't recall what it was.

Q. Okay. And you said you saw Captain Card head out in that direction?
A. Yes, ma'am. He headed out in that direction. I had the handset because I was calling in -- I was giving SitReps every minute or so to our command. And he went out and then came back and then we had to sit there and wait for the QRF and the vehicle that was going to tow our LAV back.

Q. All right. Let me back you up a little bit. When he went out into that field, did you hear anything unusual from that direction?
A. No, ma'am.

Q. Did you have any idea what he was walking out towards?
A. No, ma'am. I mean, I was guessing he was going to look at to see who we were firing at. But I never heard anything from that direction.

Q. Did you see if he had a weapon out?
A. He did. He had his 9 mil in his hand. I do remember that. He had his 9 mil in his hand and he was walking around. Like I said, he came back to the vehicle and that's the last thing I recall.

Q. Do you recall anybody going out with him into the field?
A. No, ma'am.

Q. Did you recall hearing or seeing any shots at that time?
A. No, ma'am, I don't.

Q. After when the QRF arrived or even before the QRF arrived, did you guys take any time to police the area and retrieve any enemy weapons?

A. No, ma'am, not that I recall. I know I didn't. Not that I recall. I can't speak for anyone else, but I don't recall us going out and policing anything up.

Q. Do you recall seeing any bodies other than the bodies of the two individuals you said were in the car?

A. I recall seeing -- out of my HMMWV, I recall seeing a guy or two on the sidewalk.

Q. Okay.

A. They were on the sidewalk, but that was it.

Q. How close was that -- those two bodies on the sidewalk to the HMMWV?

A. I don't know. Maybe 50, 100 yards away.

Q. And you said you saw two bodies?

A. I think it was one or two. I'm not sure, ma'am. I can't recall what -- I know there was one for sure. I think there was one or two over there.

Q. Do you know how those bodies got to the sidewalk?

A. No, ma'am. Not whatsoever.

Q. Did you ever talk to any of the guys and ask them, Hey, who are those two dead bodies?

A. No, ma'am.

Q. All right. At some time later on when you guys got back to Blue Diamond, did you and the other Marines ever talk about what happened out there?

A. No, ma'am. No one ever talked or -- about anything. The first time I heard about this was when the NCIS agent contacted me and told me we're doing this investigation.

Q. And what is your memories of when the NCIS agent called you? How did that go?

A. I remember he called me. I was at -- I was recruiting at Mission Viejo and he called me and told me, We need you to come in. And I said, For what? Said, We're doing an investigation on the jump team. I said, Okay. I'll come in. And came into Del Mar and talked to them there. And I was in there for I think a couple hours talking to them about, you know, everything that happened that day. But that was it.

Q. When you were talking to them, did you know why -- or I guess I should say, at what point did you know what it was that they wanted you to talk about?

A. When he started mentioning that, Well, the reason why you're here is because Captain Card is being accused of shooting someone. I was like, What? What do you mean? Shooting someone like during a firefight? What do you mean?

So he started getting into the whole details of I guess what other people said and things of that nature. No, sir. I never saw him do that. With my own two eyes, I never saw him fire his weapon what you're putting together here.

Q. At the end of that interview, you wrote a statement. You handwrote this statement; is that right?

A. Yes, ma'am.

Q. Did you an opportunity after writing that statement to read it and verify that it was all true?

A. Yes, ma'am.

GC (Maj Goode): Can I approach the witness, sir?

IO: Yes, you may.

Questions by the government (continued):

Q. I'm handing you a copy of that statement. Is that the statement you remember writing?

A. Yes, ma'am.

Q. Is everything in that statement still true?

A. Yes, it is, ma'am.

Q. And I notice there's one thing in that statement that -- you've testified pretty consistently with that statement except for one issue.

A. Yes, ma'am.

Q. You stated in that statement that you recall hearing moaning in the field right before then Captain, now Major Card went out into the field --

A. Yes, ma'am.

Q. -- and then you heard the moaning stop?

A. I recalled hearing moaning and I recalled -- and when I told the NCIS agent, I didn't know it was before he went out or -- because I know we could here moaning even from -- I think it was from the vehicle that tried to go through our checkpoint. So I wasn't too sure what -- where that moaning was coming from.

Q. So the best of your recollection, Gunny, you recall hearing some moaning at some time. You just don't know the timeline --

A. Just don't know the timeline. Don't know where it was coming from. Don't know where it stopped or -- I remember when he was walking out and he came back, eventually the moaning stopped at some point after that.

Q. All right. Thanks, Gunny.

A. Yes, ma'am.

GC (Maj Goode): I have no more questions.

IO: Defense counsel?

DC (Maj Workman): Yes, sir.

CROSS-EXAMINATION

Questions by the defense:

Q. Good morning, Gunnery Sergeant.

A. Good morning, sir.

Q. Gunnery Sergeant, you said you're a recruiter at Redondo Beach?

A. Yes. Yes, sir.

Q. Not at a bad duty, huh?

A. It's there, sir. Somebody has to do it.

CC (Mr. Faraj): Need an assistant?

Questions by the defense (continued):

Q. All right. I want to draw your attention back to when you were first notified or called in by NCIS.

A. Yes.

Q. Do you recall where you were when you got that phone call?

A. I think I was at my office in Mission Viejo. I think he called the office.

Q. What did he tell you when he first talked to you?

A. He mentioned something like that. That we're investigating something so -- what do you mean investigating? What are you investigating? Well, it's something about the Division Jump Team. Okay. Well, I come back in. That was it.

Q. So when he mentioned investigating the Division Jump Team, what went through your mind?

A. I just went through my mind, like, everything we did throughout that deployment is did we do anything wrong? I mean, that's the first thing that went through my mind. I just went through my mind and I couldn't think of anything we did wrong during that time.

Q. Nothing came to mind?

A. No, sir.

Q. Did you get the idea that it was some sort of a wrongdoing investigation?

A. I got the idea that it was something that was getting investigated. Maybe a wrongdoing or something like that. Yes, sir.

Q. Do you recall what gave you that impression?

A. No, it's just -- obviously it's just -- I mean, common sense. Something's getting investigated. Something wrong's happened.

Q. Did any other law enforcement agencies contact you before that?

A. No, sir.

- Q. So how long between -- between that initial phone call and the time that you met with NCIS transpire, do you recall how much time went by?
- A. I can't remember. It was -- I think he set an appointment a couple days later. I can't recall the actual time frame of --
- Q. Gunnery Sergeant, during those couple of days, did anything come to your mind that might have --
- A. No, sir. No, sir. Just the whole time thinking what did we do wrong? Just thinking, did we do anything wrong? Like, no, sir.
- Q. Nothing ever came to mind?
- A. No, sir.
- Q. And you said you met NCIS at Del Mar?
- A. Yes, sir.
- Q. Right here on Camp Pendleton?
- A. Yes, sir.
- Q. Is there an NCIS station down there or where did you meet them there?
- A. I met them in -- it was like a barracks room in the barracks. I met them -- I don't know if it was a station or not. I mean, it was a room. I remember they had the little camera and that was it. It just had like a little -- a head. I mean, when you walk into a barracks room. It was like -- there was a -- you walk in, it's like the open room. And then I recall there might have been an open room to the right. And then it goes to a little hallway to the back room. And then the head was in between if I recall right.
- Q. They had a camera set up?
- A. Yes, sir. I remember they had a little camera and I remember asking the guy, You recording this? He said yes. It's our protocol. I was like, Okay.
- Q. Now at some point, did they bring your attention to why we're here today?
- A. Yes, sir.

Q. How did they do that?

A. He started talking, Well, I need you to tell me what happened on this day when kind of like the major asked what happened on this day. Well, we did this. We did this. And gave them as I recall -- what I remember from that day, gave him the whole thing for that day. That's pretty much on my statement.

And then he said, Well, you're not telling me -- something along the lines of you're not telling me what I need to know. You're not telling me what I need to know or -- and then he went off about, Well, there's a reason why we're here. And trying to get something out of me that wasn't -- that's not there. Because I never -- I never saw the incident that apparently happened.

And I remember just thinking afterwards, this is just the most unprofessional guy. I mean, threatening me with -- threatening me with my career. I remember at the time my wife was pregnant. He even asked me when is your child born -- when is your child due? Pretty much getting me -- to threaten me to tell him something that I didn't -- I don't recall seeing.

And I remember telling my wife that this guy was just threatening my whole life, my whole career, trying to guide me in the direction that he wanted me to go in.

Q. So where did he want you to go?

A. He wanted me to admit that I saw Major Card shoot someone.

Q. How do you know that's what he wanted?

A. Because he mentioned that -- he mentioned that during the interview process -- this is why we're here because Major Card apparently shot someone. I said, Well, I never saw him. I never saw him do that. I know during the firefight when we first got off, yes, we were all firing because our orders were -- I mean, he carried a magazine with tracers and he always took the first shot. And I know orders were -- you know, if I fire these tracers, then you guys fire in that direction. And that's what the orders were at the time.

Q. Was there a point where it appeared that the agent got what he wanted and was ready to move on?

A. No, sir. I mean, I was -- I was in there forever. I mean, I was just in there and he kept coming back. And I mean, just continuously -- you know, I'm going to do -- if you're lying to me, I'm going to do everything in my power to come after you with everything I have. I'll come after you. And pretty much insinuating that he was going to try to ruin my career, my life, and all that, sir.

Q. You said that you were in there forever. How long do you think you were in there in terms of hours?

A. I was in there for at least four or five hours, sir. At least. I remember being in there forever. Being in there, he talked to me. I told him, Sir, I just can't remember. I don't remember. I can't recall me seeing anything with my two eyes that you're trying to get me to say. I don't remember seeing this. I don't remember. I was sitting there forever. And then he got up and went somewhere. And I was maybe in there for you know, 15, 20, 30 minutes. Then he came back and then just kept going at it again.

You know, I got a feeling you're not telling me the truth. Because what happens is when you guys -- you guys -- something about when you're afraid, you peel out. Or something around those lines. If you're afraid, you're always going to peel out and you're going to say no, no, no, no, no. No, sir. I'm not afraid. I'm telling you the truth. I'm telling you truth and what I know happened that day in my eyes.

Q. What was your relationship like with then Captain Card?

A. I remember at first it was -- when he first took over, I mean, he wasn't I would say the most popular guy there just because of his -- I mean, he was a strict guy and we were used to Captain Thompson. Captain Thompson was -- at first he was a little strict, then he kind of mellowed out. You know, we kind of knew Major Card's background; where he came from. He led like a company in combat and things to that nature. We knew he was a good officer obviously to be up there working for the general.

But I mean, he was just -- no one really -- I wouldn't say like. You don't have to like someone to work with him. We respected him. But we really -- we really

didn't agree with his -- I would say his -- not his attitude or anything like that. Just -- just the fact that we were used to Captain Thompson always talking to us and things like that. And when Major Card first got there he wouldn't -- I mean, we'll do debriefs and he'll go back to his office and do his -- I mean, I know he had a handful out there, you know, double tapping with jobs. But we just -- I mean, after awhile, we just rolled with it and it was what it was, sir.

Q. Is it safe to say that his style was a lot different than Lieutenant Thompson or Captain Thompson?

A. Most definitely. Night and day, sir. Yes, sir.

Q. And Captain Thompson or Lieutenant Thompson, was he popular with the Marines?

A. He was pretty popular. I think more so because he was a lieutenant, a little younger, a little less seasoned as the major. So I think experience played a big role in that. But, I mean, you know, Lieutenant Thompson was I would say more popular with us.

Q. And why did Major Card or then Captain Card replace Lieutenant Thompson?

A. Because my vehicle got hit with an IED on mobile and we got hit with -- I forgot what it was. It was a 55 gallon drum. It hit us pretty good. I mean, I'm still surprised to this day we're all still alive from that. But it took the lieutenant -- excuse me -- it took the lieutenant -- he took most of the blast, the shrapnel. He -- I remember putting him on the vehicle. He had -- I mean, his upper arm, tricep was pretty bad. He caught some shrapnel in the area. And I remember -- I think his leg was broken because of shrapnel through the floorboard. He was pretty badly hurt. I remember sergeant major was in the back. He passed out for a little bit. And that's what happened as far as why he left.

Q. So in addition to a difference in personality, you also had lost your previously lieutenant? Not KIA, but certainly wounded in action?

A. Yes, sir.

- Q. How were you selected for the Division Jump? I think you said earlier that you were General Mattis' driver?
- A. Yes, sir. I was coming from -- Sergeant Major Bell knew who I was. And General Mattis knew who I was, because I used to -- I used to pick him up from Twentynine Palms and kind of drive him around when they'd come around Twentynine Palms. So they already knew who I was because I worked for the regimental commander at that time. And he found out I was getting orders to -- I don't know how it happened between my sergeant major and his. He found out I was getting orders to Pendleton. I think I was supposed to go to, like, Comm Company or something like that. I found out beforehand -- before I went on leave that I was going to be the general's driver.
- Q. What about the other members of the jump team? How were they selected as far as you know?
- A. I don't know, sir. I don't remember -- I have no idea how they got selected. I think it was just random. I never -- I never even had met the guys till I got in country. Because I remember walking in the barracks and it was like -- it was awkward. Like, Who are you? I'm General Mattis' driver. They're like, No, you're not. The lance corporal here is General Mattis' driver. I didn't know at the time that General Mattis rolled around in a C-squared. I was like, Well, I guess I'm someone else's driver.
- But I don't know how they got picked. I know that Sergeant Major Bell handpicked me to come up there. I don't know how the other guys got picked.
- Q. All right. Focusing your attention to 7 June of 2004, why were you on that particular mission, do you recall?
- A. I think we were doing a route recon because we were going to take General Mattis out the next day on that same -- to that same -- I believe that same outpost.
- Q. What was the -- what was the selection process for that particular route, do you recall?
- A. No, sir. Selection process as far as what, sir?
- Q. As far as why you're going to recon that route opposed to some other route. Do you remember -- do you recall any of the analysis that went into choosing that route?
- A. No, sir. I don't recall any of the analysis.

- Q. Do you recall any feelings anyone had about taking that particular route?
- A. I remember we had -- we kind of had a bad feeling that day. Later in the day everyone was, like, Why are we going out? I mean, it's late in the day. This is around the time when insurgents are a little active. I mean, we kind of had a feeling that we were going to get hit. It just -- we kind of had that feeling already and that's why a lot of the guys were a little upset that day.
- Q. Did they manifest that they were upset to you?
- A. No, it was just kind of general talk. It was, like, Why are we going out? I mean, Why are we going out? It's late in the day. Why do we need to do route recon? And it was just that, sir.
- Q. Do you remember the name of the route that you were on that day?
- A. No, sir, I don't remember the name of the route.
- Q. Okay. Does Two Tits ring a bell?
- A. Yes. Yes.
- Q. Do you recall why it was called that?
- A. Because it had two big loops -- two big curves in it -- I don't know it was called -- two big curves in it. I think that's why it was called that. Yes, sir.
- Q. Do you recall where you were hit in relation to those curves?
- A. No, sir, I can't recall.
- Q. Do you recall the general layout of the road, the route at all?
- A. I remember we came out, we went into Ramadi the normal way we went. Then we went on the outskirts of it. I believe -- if I recall, we were handing out toys to kids. Went on the outskirts to the right of -- I forget what main road that is that runs through Ramadi.
- Q. Michigan?
- A. Michigan. We went to the right outskirts. We went around and then hit the combat outpost from there.

Q. As you think about it now and as you think about where that IED blast took place, can you picture the general layout of the area? Can you picture where the buildings were and where the open areas were and things like that?

A. I remember there was -- there was an open area. There was buildings off to the right and there was buildings off to the left. I remember there was a house there where those guys came out of on the left where I told you that Johnson was trying to go in there because he heard voices in there. They were -- it wasn't a house. It didn't have no doors or windows, anything like that.

Q. If I -- if I gave you a Sharpie, could you just kind of sketch an overhead view of what you're talking about --

A. Yes.

Q. -- on this poster block --

A. Yes, sir.

Q. -- as best you can?

A. Yes, sir.

DC (Maj Workman): Okay. Gunnery Sergeant -- sir, do you mind if I have him come up here?

IO: Yeah, absolutely.

Questions by the defense (continued):

Q. Gunnery Sergeant, if you can just kind of layout the road as you recall it and then leave room to draw in, you know, buildings and open areas and the other vehicles as best you can recall.

A. Okay.

Q. Just -- maybe just start with drawing a sketch of the road as you remember it.

A. Okay. I remember this road.

Q. Okay.

A. It's just a normal road.

Q. I got to kind of narrate this, because she's taking notes. So when you draw something, I have to kind of narrate what you're doing.

A. Okay. Good to go.

Q. The gunnery sergeant has just sketched a road and he's

actually drawn the width of the road there in the center of the butcher block.

Okay. Gunny, you may proceed.

A. I remember there was another road that came like this.

Q. Okay. He's drawn a road that's curving up towards the top of the paper on the left side of the paper.

A. I remember there was an open area. All of this is open if I recall right.

Q. Okay. He's sketched an open area to the right of that road that curves upward.

A. There was houses out here on the outside.

Q. Okay. All right. He's just made some dashes where there were houses. If I could just have you draw just a -- you know, a little box with a triangle on top that kind of represents a house where you remember houses.

A. Yes, sir. I mean, all this was -- if I recall, was houses right here.

Q. Okay. Just a little triangle to kind of represent a roof, you know?

A. I remember all these were houses.

Q. Okay. So he's drawn some rough houses here towards the top of the butcher block.

Before you draw it on here, what else do you recall, Gunny?

A. There was houses on this end.

Q. Okay. If you could just kind of draw that in the same way, just a square with a little roof on top.

A. [The witness did as directed.]

Q. All right. The witness has drawn a row of houses at the bottom of this main route that runs horizontal across the map.

Gunnery Sergeant, before you draw it, what else do you remember?

A. Where our vehicles were placed.

Q. Okay. One second.

A. We got hit --

Q. How many vehicles do you recall?
A. I can't remember how many vehicles exactly. I know that the two main LAVs -- two LAV-25s, a C-squared, a hummer, and maybe another hummer.

Q. Okay.
A. My hummer [inaudible].

Q. Why don't I have you draw an "x" where that IED strike was.
A. I think the IED was around this area.

Q. Okay. So he's drawn an "x" where the IED is. Why don't you just go ahead and draw the LAV that was hit. And if you can do that, just draw a square and put four wheels underneath it to represent the LAV.
Okay. The witness has done so.

All right. Now, what's the next vehicle that you remember?
A. LAV was there and then we were -- we were right behind it.

Q. Okay. You've just drawn a square. What does that represent?
A. That's our HMMWV.

Q. Okay. Could you just draw two wheels under that to represent the HMMWV?
A. Yes, sir.

Q. The witness has done so.
What other vehicles do you recall?
A. I remember there's a C-square -- General Mattis' C-square here.

Q. Okay. So he's drawn another square with four wheels under it to represent the C-square.
Could you just write C2 in that square?
A. [The witness did as directed.]

Q. And you said that was General Mattis' vehicle?
A. Yes, sir.

Q. I may have asked you this, but was he on the mission

this day?

A. No. No, General Mattis was not with us that day.

Q. What else do you recall?

A. I'm not sure if there was another HMMWV here. I can't recall if we took two HMMWVs out that day.

Q. That's okay.

A. Two or three. And we always -- we always went out with LAV in front and LAV in the rear.

Q. Okay. And he's drawn another square with four wheels underneath it to represent the vehicle in the rear which is to the furthest right on this drawing.

All right. Gunnery Sergeant, who was in your HMMWV with you?

A. It was myself, Major Card, and Corporal "A" -- Corporal "A," our interpreter.

Q. Do you remember his name?

A. I can't recall. Corporal Abdelgawad[ph]? I can't recall his name, sir.

Q. All right. So as you're approaching, how do you sense that the IED has gone off?

A. We didn't sense. You knew it went off.

Q. Okay.

A. I mean, you knew it went off because it completely covered the LAV in black smoke. You could see flames I think when it went off. That's how we knew we got hit.

Q. Okay. Did you hear it?

A. Oh, you heard it.

Q. Did you feel it where you were at in that HMMWV?

A. I can't remember if we really felt it or not. I mean, I can't -- I don't know. After that first time I got hit, I don't think I could feel anything.

Q. What did you do after the IED strike?

A. Once the IED went off, you could see --

Q. Tell me what you're going to draw so I can kind of --

A. You could see the IED went off -- there was a bunch of smoke here in this whole area.

- Q. Okay. And he's indicating a big area that goes all the way down to these houses, around the HMMWV and other to the north, just about as far.
- A. There was a bunch of smoke in this area. And then you see Major Card got out of the HMMWV and start firing in the right direction. And that's when, if I recall right, I think we were all firing. I jumped out of my driver seat. We all started firing in that direction to the right.
- Q. Okay. Could you just draw a little arrow on top of that?
- The Gunny's drawn a line to indicate the direction of fire; just drawn a little arrow on top of that.
- A. Now, what weapon was Major Card firing at this time? I believe it was his M16.
- Q. How did you know it was Major Card that was firing?
- A. Because of his tracers.
- Q. What did that indicate to you?
- A. That indicated to us to fire -- he was the first guy to fire. If he started to fire, we saw his tracers, that indicated to us to lay down some fire in that direction.
- Q. Okay. What was being fired at?
- A. There was a vehicle off to the right here and then there was -- with all the smoke, there was some, like, silhouettes I think. I can't remember if it was two, three people there. Some silhouettes there that looked like they were coming -- in the middle of all the firing, it looked like they were coming at us through all the smoke, and we were firing in that direction.
- Q. Okay. Could you just complete this little symbol you made with a circle just so I know on the record. And could you just write a "v" in there for vehicle?
- A. Okay.
- Q. Thanks. And then you made a couple little tick marks just in front of that indicating silhouettes?
- A. Yes, sir.
- Q. Could you just turn those into little stick figures just so we know what you're representing there?
- A. Yes, sir.

- Q. And with a dotted line, could you indicate what direction they were going?
- A. They looked like they were coming at us. They looked like they were coming at us when we started firing in that direction.
- Q. Okay. At this time, did you perceive that they were armed?
- A. Yes, sir. Most definitely. Because we heard rounds going off. We're not sure if they were friendly or enemy rounds, but you can hear rounds. This is -- this is during a time where it was very common for them to hit us with IED and then ambush us. It was really common out there during this time. So it was something that we already expected.
- Q. You said you could hear rounds going off. And was it your impression that some of the rounds were coming from where you've drawn these stick figures?
- A. It was my impression that some of the rounds were coming at us, yes, sir.
- Q. And what gave you that impression?
- A. It's just the sound of fire, sir. Impression that Major Card started firing in that direction. So we just took his lead and started firing in that direction also.
- Q. How long did the fire continue in this direction?
- A. Until the major -- I mean, it almost felt like eternity but maybe a minute. Two if that. I don't think it was even that long.
- Q. What was the result of the firing that was taking place in that direction?
- A. The result of that fire is obviously whoever we were firing at was probably dead.
- Q. Was this prior to the engagement with this vehicle? Did the vehicle appear to still be in motion?
- A. No, sir. The vehicle didn't appear to be in motion. It was still if I recall.
- Q. And I think you indicated that the vehicles here in what you have indicated is an open area.
- A. Yes, sir.
- Q. As best you can recall, how did the vehicle get in that open area?

A. I have no idea how the vehicle got in that area, sir. I have no freaking idea how the vehicle got there. Maybe from the blast. I have no idea.

Q. Was it on all four wheels at the time or was it like tipped over?

A. I can't remember, sir. If it was on four wheels or tipped over.

Q. How would you describe that vehicle?

A. It was a car, smallish. I can't really remember what the vehicle looked like at the time.

Q. All right. Gunnery Sergeant, so once this engagement with these two individuals you've indicated was over, what happened next?

A. What happened is we started treating our wounded. And then there was a car that came through here. There was a car that came through here -- that came through this area here. And we tried to stop as soon as we saw it. And then we all -- everyone just started firing in that direction.

Q. Hold on a second. Let me just kind of narrate what you've done here. You've indicated that there was a vehicle traveling down this north/south road?

A. Yes, sir. Well, we had --

Q. You've indicated that with some big dashed lines?

A. Yes, sir.

Q. All right. Could you just write "V2" right there in that symbol that you've identified to be the car?

A. Yes, sir. I remember -- before that vehicle had gotten down, these guys had already dismounted and started treating our guys.

Q. Okay. Now at this point, he's indicating this first LAV right here that was the downed LAV?

A. Yes, sir.

And I'm not sure if it was before this or after the vehicle where our guys dismounted and obviously protected the avenue of approach there in the front. And then we fired in that direction to stop the vehicle. And then I remember before that or after that, Hyman came up and took the front lead to cover that area there.

Q. All right. So Hyman -- Hyman took the rear LAV and positioned it up here where there's sort of a fork in the road?

A. Yes, sir.

Q. And is that a fork in the road? Did the road also continue down this way?

A. Yes, sir. The road continued straight down and then it forked off there to the right.

Q. Okay. Now, did you perceive this vehicle as a threat? Is that why --

A. Yes, sir. Most definitely. I mean, it was -- we tried to get it to stop. I remember people yelling at it and it just kind of tried to push through. Honestly, at that point, you're thinking it's a vehicle IED. So you're going to do everything you can to try to stop that vehicle at that point before it goes into our -- into our convoy.

Q. Okay. And did the vehicle stop?

A. Yes, sir, eventually.

Q. Okay. And how was the vehicle stopped?

A. By fire -- firing from us, sir.

Q. Okay. Where was Corporal Phillips during all of this?

A. I remember Phillips got off and he had his --

Q. You indicated he got off the downed LAV?

A. There was nothing wrong with him and he got off his -- his dismounted the 240. I can't remember what weapon he had up there. He dismounted the 240 and he came over -- to this side to cover that area.

Q. Okay. Could you just draw a machine gun symbol right there and orient it the direction that Corporal Phillips had it?

A. Yes, sir.

Q. All right.

A. He had it in obviously that --

Q. Okay. The witness has done so right there in the fork in the road with just kind of a little -- a little square with an arrow pointing northward from there, from the little square.

Now, did he take this position after that rear LAV moved out or did he take a --

A. He took it before immediately, yes, sir. He took it before immediately.

Q. And was he one of the ones that was engaged with Vehicle 2?

A. I believe so, yes, sir. If I can recall, I believe he did engage that vehicle also. Yes, sir.

Q. All right. So once Vehicle 2 stopped, what happened next?

A. Vehicle 2 stopped and then if I recall there was firing up front. The LAV moved up, there was firing up front, because that's the vehicle that was trying to come from the front.

Q. A third vehicle?

A. Yes, sir. Coming from the front that was trying to come through --

Q. Okay. The witness has indicated there was a third vehicle that's off the left of the map that was proceeding on this road that is depicted horizontally. And you said that that vehicle was -- he hasn't drawn it on the map. It's off the map.

A. It was coming towards the LAV. Not sure how far away was it, but I know that the LAV was firing in that direction to try to get it to stop.

Q. When you say the LAV was firing, are you referring to the --

A. Yes, sir.

Q. What weapon on the LAV are you referring to?

A. I think it might have been the 240. I can't remember. But there was firing in that direction.

Q. Was it the 25 millimeter?

A. No, no, I don't think so. No, sir. I don't recall.

Q. You think you would remember that?

A. I would probably -- yes, sir. That would probably cause a little too much damage out there.

Q. All right. So was Vehicle 3 down here, was that stopped?

A. Yes, sir. It eventually stopped and you could see

because I looked around the vehicle and you could see the vehicle eventually just stopped. Yes, sir.

Q. All right. So after Vehicle 3 was stopped, what happened next?

A. Then -- I can't recall. There was -- I think there was a Bongo truck that tried to come this way also.

Q. Okay. Could you just -- just make that a little sharper square and write "b" in there for Bongo?

A. That tried to come in this direction.

Q. Okay. So at the top of the map, the witness has drawn a square with a "b" in it for Bongo. And, again, he's made kind of a little dash line proceeding down that route.

A. Yes, sir. There was a Bongo truck and then we tried to get it to stop also. We fired at it and the Bongo truck went in reverse and took off.

Q. Okay. So after the Bongo truck took off, what happened next?

A. After the Bongo truck took off, we started taking care of our -- we started taking care of our wounded and called the medevac, started taking care of our wounded, called the medevac. Finally -- I can't remember where they came from, but it was actually an ambulance HMMWV. We started taking our guys back there. I remember -- I remember sitting here and then.

Q. And you've indicated here at the HMMWV?

A. Yes, sir.

Q. Okay.

A. Sitting at the HMMWV and then Major Card walked off and -- walked off in that general area over there and then he came back and that was the end of that, sir.

Q. Okay. When you say that general area there, what area are you referring to?

A. Out in this area, sir. You could see him walking around out in this area.

Q. Okay. All right. So the witness has made a line -- could you just -- could you just make some tick marks right there so you can distinguish this line?

A. Yes, sir. Out in this area -- I mean, he was probably obviously going to see if these guys had weapons or what

it was.

Q. All right. So the witness drew a line in a semicircle out around Vehicle Number 1 and those two stick figures.

A. Yes, sir.

Q. And then you drew some little squiggly marks coming off that --

A. Yes, sir.

Q. -- to indicate the route that Major Card walked?

A. Yes, sir.

Q. Okay. And what was his posture when he was out there?

A. He was just walking around. If I recall, he was just walking around and he had his 9 mil in his hand. The next time I saw him, he was back at the vehicle [inaudible] from me. And he started talking to higher and he started -- it was starting to get and he started calling the lume. He made that first contact to call the lume and check on the QRF.

And then after that, I just sat in my vehicle with Corporal "A" -- I think it was Corporal "A." We sat there and just waited for the QRF and the retriever to come back.

Q. Do you recall if Captain Card was carrying his weapon in his right or left hand?

A. His 9 mil?

Q. Uh-huh.

A. He was carrying it in his -- I believe it was his right hand.

Q. You said 9 mil. Was he carrying another weapon also?

A. I'm not sure if he was carrying his M16 or not, but he was carrying his 9 mil in his hand. He might have had it slung but I can't recall.

Q. Did you see him draw his 9 mil from the holster?

A. I didn't see him draw it from the holster. When I looked out, he said I'll be back, he just had his 9 mil. But I didn't see him draw it from his holster.

Q. Okay. Do you recall where he --

A. I can't remember if it was a drop holster --

- Q. That's what I was going to ask. Do you recall where he carried his 9 mil.
- A. No, sir. I can't remember if it was drop holster or on his chest. A lot of us had drop holster but never wore them. We had chest holsters and we all just kind of alternated.
- Q. Okay. Now, as he was out here making this round, did you ever see him utilize his weapon?
- A. No, sir.
- Q. Did you ever see him fire it?
- A. No, sir.
- Q. Did you ever hear any shots when he was out there walking around?
- A. No, sir, I did not.
- Q. Muzzle flash?
- A. No, sir.
- Q. Recoil?
- A. No, sir.
- Q. Okay. And then you said when he came back, he took the radio and called for a lume?
- A. He was calling for a lume because it was getting dark, Yes, sir. Calling for a lume and checking on QRF. Between him and I we just alternated. As he was taking care of the wounded, getting them the medevac and all that stuff, we were alternating as far as calling and giving in SitReps, where's the QRF, where's the lume, calling for a lume. And then just pretty much sitting there waiting to -- just waiting for this tank retriever to come out.
- Q. All right. Gunnery Sergeant, you said on your previous examination with the other major that you saw some casualties, some Iraqi casualties. Can you recall who they were?
- A. There was --
- Q. Before you draw on this, just kind of tell me so I know where you're going.
- A. I remember there was -- I can't remember if it was one or two guys back here.
- Q. Okay. Again, could you just do a little stick figure?

A. Yes, sir.

Q. Okay. So the gunnery sergeant has depicted with a couple of stick figures where some Iraqi -- were they wounded or killed?

A. I have no idea, because I never went back there and checked on them, sir.

Q. Okay. He's indicated that between the HMMWV and that -- the second LAV.

A. I remember when the QRF showed up, I think they went back, and maybe one of those guys was alive. I can't remember.

Q. Okay. All right. So you observed these two individuals?

A. That were there, yes, sir.

Q. You saw them from the HMMWV?

A. Yes, sir. I saw them from the HMMWV. I can't remember what side, but I do remember seeing two -- only two, but I can't remember if it was -- but I do remember seeing some guys there.

Q. How far do you think it was between where you were at this HMMWV and this one or two individuals?

A. The distance of that LAV is 50, 75 feet.

Q. Could you make out what there wounds were?

A. No, sir. I never went out in the field, never went and checked on them. I stayed by my HMMWV the whole time.

Q. And as far as you know, the QRF retrieved these bodies?

A. Yes, sir.

Q. What about -- what about these individuals out here, did you ever see them again?

A. No, sir. Never saw them.

Q. Okay. When Major Card returned from this roundabout, were these two bodies already there?

A. I believe so, yes, sir. I believe so, yes, sir.

Q. Okay. And you never saw how these two bodies got in this position?

A. No, sir.

Q. Anything of note stand out in your mind after this?

A. No, sir. We were -- QRF showed up. They came in and started clearing some of the houses. They started walking around the fields. They saw these two guys there. I remember someone from the QRF said -- I think they said one of them was alive. Someone was alive. And then the tank retriever came out, pulled us out, and then we went on home.

Q. Does anything else stand out in your mind up to this point that we haven't gone over?

A. No, sir.

Q. Any other -- any other depictions that should be made on this map to tell the whole story?

A. No, sir.

Q. Okay. You can have a seat. Thanks, Gunnery Sergeant.

A. [The witness did as directed.]

Q. Gunnery Sergeant, you mentioned something before about debriefs. How did debriefs typically go after a mission?

A. Usually debriefs, we'll stop at the traffic circle when we pulled into Blue Diamond. And we talked about, you know, what we did, what were avenues of approach we could of covered better, and things of that nature. That day when we got there, I remember all of us being pretty upset. I remember throwing my Kevlar towards the LAV. I think I might have almost hit -- I think General Mattis was out there waiting for us. I might have almost hit him. We were pretty upset.

I think the chaplain was out there waiting for us. And I don't remember if we really had a debrief that day. I think the chaplain talked to us and then the general talked to us. I can recall the general saying -- I'm not sure if it was that day or another day where he said never -- never show the enemy a sign of weakness. Pretty much because we were pretty upset and there might have been some guys who were teary eyed. He said don't you ever show the enemy a sign of weakness. And still to this day, I believe that.

Q. All right. Gunnery Sergeant, you know I think it's probably obvious, but why were you so upset?

A. Because Lance Corporal Bohlman was killed. That's why we were upset.

- Q. On that occasion after that day, did you go through a debrief? Did you talk about what you might have done better or differently?
- A. Not that I recall, no, sir. Not that I recall.
- Q. If you would of seen something out of the ordinary, would you have told somebody?
- A. Yes, sir.
- Q. Who would you have gone to? Who would you have trusted in that unit?
- A. I mean, I had an open door with General Mattis. I would of gone straight in and told him if I would have saw something unusual that day.
- Q. You would of felt comfortable doing that?
- A. Yes, sir.
- Q. What if it would have been an officer that did something?
- A. Doesn't matter, sir. I would of went in and talked to General Mattis, because we had an open door policy with him.

DC (Maj Workman): One moment, please.

[The defense counsel conferred.]

Questions by the defense (continued):

- Q. I think we may have covered this, Gunnery Sergeant, but just as a point of clarification, you said that then Captain Card was the one to initially engage vehicle -- what was the first vehicle he engaged?
- A. The one right there, sir, on the right. Yes, sir, that one.
- Q. Vehicle 1?
- A. Yes, sir.
- Q. Okay. Did you -- at that point, did it appear that there was a threat?
- A. Yes, sir, it did.
- Q. Okay. And what would that threat be --
- A. You could see the threat was guys' silhouettes looked like they were coming at us. And there was rounds being fired.

Q. Okay. You said at that time that was -- that was not uncommon for the enemy to engage that way?

A. That was not -- that was very common for the enemy to ambush -- to hit you with an IED and immediately catch you by surprise and ambush you. I mean, they want to use the element of surprise just like we do.

DC (Maj Workman): All right. Gunnery Sergeant, that's all I have for you right now. Thank you.

IO: Counsel.

GC (Maj Goode): No, sir.

IO: All right. Gunny, I have no additional questions for you. Are you going to be in the Redondo Beach area for the near future?

WIT: Yes, sir. I'll be there till about October. Then I'll be executing orders.

IO: Do you know where yet or no?

WIT: No, sir. Don't know yet. Maybe back here to Camp Pendleton or the East Coast.

IO: All right. Brief instruction, don't discuss your testimony with anyone except obviously the counsel involved in the case.

WIT: Yes, sir.

IO: If anyone wants to talk to you about what you testified to today or what you might testify to in the future, just stop them and give Major Goode a call.

WIT: Good to go, sir.

IO: Okay?

WIT: Yes, sir.

IO: All right. Thank you very much.

CC (Mr. Faraj): Gunny, before you leave, could we have your phone number and e-mail address?

WIT: Definitely, Yes, sir. It's -- my phone number is

(310)365-0585. That's my cell phone.

CC (Mr. Faraj): Thank you. And your e-mail?

WIT: It's carlos.duran@marines.usmc.mil.

CC (Mr. Faraj): Thank you very much.

WIT: Yes, sir.

IO: All right. Thank you.

Gunny, you're excused.

Let's just take a quick five-minute break.

[The Article 32 investigation recessed at 1059, 20 April 2011.]

[The Article 32 investigation was called to order at 1113, 20 April 2011.]

IO: Investigation is called back to order.

GC (Capt Gordon): Sir, the government calls Timothy Kadrie to the stand.

IO: Okay. You may proceed.

Timothy K. Kadrie, a civilian, was called as a witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the government:

Q. Please state your name, spelling your last?

A. My name is Timothy Kadrie, K-A-D-R-I-E.

Q. And what's your city and state of residence?

A. Roseville, California.

Q. And you are a former United States Marine Corps, correct?

A. Yes.

Q. When were you in the Marine Corps?

A. I joined the Marine Corps in February of 2003 and I got out in February of 2007.

Q. Can you just briefly tell us what units you were a part of when you were -- in your time in the Marine Corps?

A. Yes. I went to MCRD for boot camp. I went to the School of Infantry. Then went to LAV Crewman School.

And then I was attached to 1st LAR, Alpha Company. We deployed to Iraq. And about halfway through our deployment, we were put on the Division Jump. And we got home and I was sent to the training -- 1st LAR Training Platoon, I guess it was. I don't remember what it was called. But we worked with training the Marines in gunnery and things like that. And then I separated from that assignment.

Q. And you did one tour, correct?

A. One tour in Iraq, yes.

Q. What was your -- what was your final rank that you got out as?

A. I was a sergeant when I got out.

Q. Okay. So when were you on the jump team to the best of your recollection?

A. I think April or May of 2004 to August of 2004.

Q. And you were a member of the jump team during June of 2004 still?

A. Yes.

Q. So we'll focus our attention during that time frame. Do you recall the IED blast of 7 June 2004?

A. Yes.

Q. All right. And the build up to that was you were -- your unit was conducting route reconnaissance for the command general was traveling the next day. You guys went out to the Snakepit, and then you were on your way back when you took the hit. Is that your recollection?

A. Yes, it is.

Q. Okay. When you -- or can you describe the events leading up to the blast? The -- you know, the few minutes preceding it.

A. We had just left the Snakepit I guess it was called. My vehicle was the trailing vehicle in the convoy. I was the gunner. Our turret was facing to the rear for rear security. We were -- we had -- we were taking a different route I remember than we normally would have

taken.

- Q. Why were you taking a different route, do you know?
A. I don't know. I don't know. And yeah, we were taking a different route. And I mean, everything seemed to be going pretty smoothly. You know, there wasn't really anything out of the ordinary as far as I was concerned and we got hit by the IED.
- Q. Were you observant in the few minutes leading up to the IED? You noticed the surroundings? What was going on? The people? The town?
A. I would imagine I was. I always took pride in being very attentive and knowing what was going on. So I would -- knowing myself, I would think I was, yeah.
- Q. All right. Now what happened when the IED blast went off?
A. Well, I remember we were facing the rear, I was looking through the sights and scanning the area. And I just remember this huge explosion. I could feel this pressure wave going through me.
- Maybe a second or two later, Sergeant Hyman told me to swing the turret -- it would be to the left from facing the rear. I remember it -- I had trouble because Russell was standing up in the back of the vehicle and the turret wasn't going over and I didn't understand why. And it was because it was hitting him in the head. And he finally ducked down and then I could get the turret to swing over.
- At that point I couldn't -- Sergeant Hyman had said we were taking fire. I didn't identify any targets. I didn't -- I didn't see anybody, you know, out there shooting at us.
- Q. When you say out there, are you talking the field area that was off to the side of the road?
A. Yeah, in the field. I was looking through the thermal sights and they had a pretty -- a 10-power zoom, so I was kind of looking in a small field of view. But in that field of view I didn't see anybody. It seemed very quickly after that --
- Q. Let me stop you for a second.
A. Okay.

- Q. So as far as your observations out in the field, what did it -- what did the air look like? Was there a lot of smoke? Was it dark?
- A. I remember -- as far as that, I remember seeing like the smoke from the IED blast lingering a little bit, but the thermal sights pretty much cut through. I didn't see anything in the thermal sights that was, like, abnormal, like, smoke or anything. I could see pretty clearly the grass and little rodents, you know, running through the grass and things like that.
- Yeah, from my sights it -- pretty much I could see through the smoke and everything. And I mean, in the turret, I -- Sergeant Hyman usually kept it pretty locked down. Like he had his maps and things on top of my hatch, so it wasn't very easy for me to, you know, pop up and look around. And all I could see was what I could see in my sights.
- Q. So during this time, was it your understanding that you were already receiving fire or the unit was receiving fire?
- A. Yes.
- Q. And that's when -- and that's when you swung around and looked because -- well, at least Hyman, whatever his rank was at the time, believed that you were taking fire from the field?
- A. Yes.
- Q. Is that correct?
- A. Yeah. And he told me to swing the turret to the left towards the field, we're taking fire from the field.
- Q. So what exactly -- describe everything that you recall seeing in the field during that time?
- A. That -- it's hard for me to remember that. I mean, I know I remember seeing grass. And I don't remember seeing any people. But I had -- it was a very short amount of time where I was looking at the field before we maneuvered the vehicle to a new position, so I didn't have a whole lot of time to really scan for targets. It was -- I remember it being a short amount of time before we changed position.
- Q. Can you estimate how much time?
- A. Maybe -- I'd say like two minutes, maybe, at the maximum before Sergeant Hyman made the decision to take the

front of the convoy.

- Q. Was that -- was that field area -- was it so large that it would have been impossible for you to have scanned the entire area during that two-minute time frame or do you feel like you got a pretty good observation of it?
- A. I know I didn't get the -- I didn't see the whole field, no. I think I could have but -- in that amount of time, but I didn't. I was -- Sergeant Hyman told me to focus in a certain area, so I was doing that. I didn't scan the entire field.
- Q. Was that area that he had you focus on where it was believed the fire was coming from?
- A. Yes, it was. But it's kind of hard. He sees something different from his perspective than I do down in the turret. So, you know, it takes a while to both get on the same page of where he wants me to be looking and where I'm actually looking. So I think I remember that being a problem. Like, you know, he would tell me, Okay. Bring the turret over here, scan this area. And I would think I was in the right spot looking, and he'd -- then he'd adjust it again and again until we finally moved position.
- Q. So he's basically guiding where you're aiming based on his assessment as he was viewing the field?
- A. Yes.
- Q. What, if anything, did you engage in the field?
- A. I did not engage anything.
- Q. No vehicles?
- A. Not in the field, no.
- Q. What happened after that -- that two-minute window? Or I'm sorry. One more question. What do you recall hearing during that time frame?
- A. I remember hearing the first LAV hit an IED, Sergeant Hyman telling me, Okay. Bring the turret over in the field. Him giving me instructions on where he wanted me to search. I don't remember hearing a whole lot about like -- you know, as far as casualties or wounded at that point yet. I don't remember anyone assessing the downed vehicle at that point. I think at that point I just remember hearing kind of everyone trying to still figure out what had happened and what we needed, you know, as far as the flares and lighting and just trying

to just kind of get on -- you know, it was a mess. And we were trying to figure it out still at that point.

Q. Do you recall hearing any gunfire?

A. No.

Q. Either friendly or hostile?

A. No, I don't recall hearing anything like that.

Q. Is it possible that there was and you just didn't hear it?

A. Yes.

Q. All right. What were you wearing on your head at the time?

A. It's an LAV crewman's helmet. It covers both of your ears. In one ear you would here intercrew -- intervehicle communications. And in the other ear you would hear whatever radio frequency you had it set on. So for us it was the platoon frequency. I would hear in one ear and intercrew in the other.

Q. Is that helmet capable of allowing you to hear outside sounds, too, or are you completely blocked off from being able to hear what's going on around you other than the radio events?

A. It's pretty -- it's pretty much -- unless -- it would have to be -- I could hear the IED go off. I could hear when I fired the main gun. But it was very hard to hear small arms fire and small noises. I could probably not hear -- I couldn't hear it. I couldn't hear anything.

Q. If you had someone next to you talking to you, are you going to be able to hear to them?

A. Yeah, if they were yelling. Yeah, I could hear them.

Q. But just regular conversational tone, no?

A. No.

Q. Okay. So what happened after that two-minute window that you were talking about where you were observing the field?

A. I remember Sergeant Hyman made the decision to take the -- since the vehicle was down and out -- inoperable, we were going to move to the front and cover the front sector and provide security for the front of the convoy. We went around to the left and moved into position in front of their downed vehicle.

Q. What'd you do there?

A. There, I started hearing the radio traffic as far as the assessment on what kind of casualties we had in the vehicle, as far as one KIA and the guys that were wounded. We were taking fire from the field and then a vehicle started approaching us at a high rate of speed from the front of us on the road. And we -- oh, we had deployed our scouts as well across -- across the road there to protect the front of the convoy.

A vehicle approached us, we were flashing our lights and trying to get them to stop. And the scouts, I remember that they were telling Sergeant Hyman, Hey, we're yelling at them. We're trying to stop. You know, on the radio I can hear them talked. And the vehicle didn't stop. Sergeant Hyman fired a few warning shots. The vehicle didn't stop, so then they engaged the vehicle. I didn't engage the vehicle because the scouts were in close proximity to it. If I had, it might have hit them also. So I didn't engage it.

After that Sergeant Hyman said, All right. Kadrie, you're taking the vehicle now. I'm going to get off and go help with the downed LAV. He left the vehicle. And as far as that from my perspective, there was -- it was pretty uneventful after that as far as any -- we didn't -- no more vehicles came from our sector that we were covering. There was no more people coming or anything like that. After that, it was just uneventful really from my perspective there.

Q. Okay. Just go back a little. You mentioned you're receiving fires. Can you explain them?

A. Yeah. From my viewpoint in the front of the convoy, I couldn't see anybody firing at us. I remember the fire was coming from that field which was now on our right side because we had moved up to the front. And I remember the other scouts and the guys in the HMMWVs and C-square guys were engaging that, engaging those people over there, and we were told to cover the front. I never saw, you know, anybody engaging them. I was looking in my field of fire, so I didn't ever really see any of that going on.

Q. So at that point, did you see any dismounted hostiles in the field or anywhere else?

A. No. I never saw any bad guys or whatever in the field.

- Q. And so how did you -- how did you have the understanding that someone in the unit was receiving fires?
- A. Just through radio traffic. I remember hearing we're taking fire from the fields. We're returning fire. Sergeant Hyman on the on the intercrew saying they're taking fire. I mean, I never saw it but from what I could tell, we were. It just -- I never saw it but every feeling I got and through radio communication and everything, it seemed like we were.
- Q. Who was making these communications, do you know?
- A. I remember a lot of it was Gunny Beall. He was used generally on the C-square. He did a lot of the communications for us. And I remember he was organizing as far as the artillery coming in for lighting. I don't remember any specific people saying it, but I know -- like, Sergeant Duran, he was on the radio frequently and he was in one of the HMMWVs there. Yeah. Other specific people, individuals talking, I don't really remember.
- Q. Do you recall Sergeant Duran saying that they were taking fire?
- A. Not specifically.
- Q. Do you recall any of the Marines that were on the net?
- A. Gunny Beall.
- Q. Saying that they were taking fire?
- A. Yes.
- Q. Okay. How long -- how long were you positioned in your sector before you finally got moved places?
- A. What do you mean move? Like, from the back to the front or from the front to being done for good?
- Q. After you moved to the front --
- A. Okay.
- Q. -- you maintained your sector?
- A. Yeah.
- Q. You said you were in that position for quite awhile and that was uneventful. How long of a period of time was that?
- A. I don't know for sure. It seemed like a really, really long time to me. I remember -- I can't tell you for sure. I wasn't watching the time really. But it did --

it seemed like a very long time before any -- before they came to get the -- take away the downed LAV. And that's -- the next event I saw was when the -- I don't know if it was the QRF or the people that were coming to pick up the downed LAV to take it away was the next thing that I saw.

Q. Okay. So in the time that you were in your sector, were you still listening to the nets?

A. Yes.

Q. What do you recall hearing? You already discussed taking fire, things of that nature. What else do you recall hearing? Well, let me ask you a more specific question: What do you recall hearing as it pertained to enemy wounded or killed in action?

A. I remember hearing specifically to that I remember someone saying on the net there's still a few left or they're crawling still or something along those lines. Like, they're still alive or they're crawling or something.

Q. Words to that effect?

A. Yes.

Q. Who said that?

A. I can't remember specifically who said that. I remember that Gunny Beall was on the net frequently at that time. It was possibly him. But I don't remember exactly who said that.

Q. And it wasn't -- it wasn't then Captain Card, was it, who said that?

A. I can't -- I don't know. I don't know.

Q. Well, I mean, could it even have possibly been him? Was he on the nets?

A. It could have been. I mean, he had a radio. It could have been.

Q. And so when you heard that, what was your understanding of the situation that was going on out there?

A. My understanding was that this is just based on me listening to the radio and, you know, from what I -- from developing the situation that there was some insurgents, I guess. And they were wounded still. And -- either wounded or had been captured. That's what I got from that.

Q. What was the next radio transmission that you heard?

A. I don't know. I can't remember the exact next radio transmission.

Q. What was the next radio transmission as it pertained to these enemy wounded or killed?

A. It's taken care of. That's what I remember.

Q. What did you perceive that to mean?

A. I didn't really know. I mean, either that their -- I don't know. Just they're taken care of. That we got them prisoner or they're under control. Or I mean, it could of meant a lot of things to me. I mean, at that time, it just was -- it's not my problem right now, so I'm not going to get involved with it.

Q. Who do you believe would have been in a position to see -- maybe you don't know. But if you do, who would have been in a position to see how these enemies were being handled during that time?

A. Well, I know for sure that our scouts were across -- or in front of our vehicle across the street. I know Ojehleto was in the driver's seat. He wouldn't of seen anything. I didn't see anything. I was covering the front of the field of fire there.

From the way that we ran our convoys and the position of the downed LAV, I would think that pretty much everyone else that was there could have seen at least some part of what was going on especially more than I did. I mean, there was the scouts from the other LAV that -- I know some of them were wounded. I mean, they were -- and guys were taking them out of there. I know Corporal Tipton was the driver and he hadn't been injured. I know he was out around there somewhere. Sergeant Duran was driving one of the HMMWVs. He was in that area. I would imagine pretty much everybody else could have seen at least something.

Q. At least had the potential to see that their --

A. Had the potential, yes.

Q. Okay. What happened after the QRF came? Anything of significance?

A. I don't -- I don't remember anything significant happening after they came. I don't -- yeah, I don't remember anything, like, that stands out, like, weird. Honestly, I don't even remember seeing them coming.

They came from behind us, so I never really saw them at all.

Q. And you went back to -- you went back to Camp Blue Diamond right after that?

A. Yes.

Q. All right. Was there anything of significance that happened that evening?

A. I thought it was weird that -- I mean, you know, we all kind of got back and it was really, really late. Everyone was really pumped up and kind of coming down from everything we had just gone through. And that night, no one I remember was really even saying anything. We had done our checks for the vehicles for the night. We shut them down, and we were getting ready for bed. And I remember they gave us -- Doc Slaughter gave us some pills or something to go to bed and then that was it for that night.

Q. How about the next -- in the next coming days, in next few days? Were there any conversations that took place regarding the situation of that night?

A. Yeah. In the next -- yeah. Within the next few days, people started talking as far as, like, the lance corporals and PFCs is who I talked to. I didn't really associate with the NCOs. They had their own area.

Q. You were a lance corporal then?

A. Yes. Yeah, I was a lance corporal.

You know everyone kind of was trying to remember what happened and everyone had their own viewpoint from where they -- what they saw and where they were positioned. And some guys couldn't remember what had happened, you know, even just, you know, the day -- the day after.

And so we kind of all pieced it together, like, you know, what did you see. What did you see. And at that point I remember -- I don't remember exactly who, but I remember starting to hear rumors that there was prisoners or there was injured insurgents, I guess, that were -- we never -- we never brought anybody. We never took anyone prisoner. We never brought anybody anywhere. I mean, so the guys were starting to talk about, you know, what happened to them.

Q. And at that point, as you testified just a little bit

ago, when you heard that net come over, you believed that you were taking prisoners or captured or being taken care of in some other means, right?

A. Yes.

Q. What were your thoughts after you now heard that there wasn't any prisoners taken?

A. To me, I don't know. It was one -- there was a lot of rumors and stuff going on that they had been killed. And that -- I mean, we didn't bring them anywhere. I never saw them. No one else remembered taking them anywhere. So that's kind of what the conclusion that was -- we came to.

Q. Do you remember, it looks like some years later, making a statement to NCIS?

A. Yes, I do.

Q. How was your memory then? Same as it is now? Is it better?

A. It's probably the same.

GC (Capt Gordon): Sir, I'd like to show the witness the statement.

IO: Show the witness the statement. See if he recalls making it.

GC (Capt Gordon): Perhaps I should hand him a copy that doesn't have my highlight all over it.

Have you had a chance to look that over since you made that statement?

WIT: No.

GC (Capt Gordon): Why don't you go ahead and read through it and then just look up when you're done and we'll continue.

WIT: Okay.

IO: All right. Captain Gordon.

Questions by the government (continued):

Q. Did you have an opportunity to read that whole thing back over?

A. Yes.

Q. And is that a fair and accurate representation of what took place?
A. Yes.

Q. Is there any statements in there that you don't feel are accurate?
A. Yeah, there's a couple.

Q. Can you point them out to us, please?
A. The one about -- it's the third page in, the first paragraph there about my conversation with Lisdahl. I don't remember telling him that I -- that they were executed on their knees and that there was more than one.

Q. Okay.
A. But that's all I would change about that.

Q. So what would your answer be?
A. I remember telling him that there was some people that were executed and that's it. I didn't get into detail with him about what happened or -- but it is true that -- what it says that I told him that because I was so frustrated with what was going on at the time.

Q. Okay. What else? The purpose to do this is just to make sure that we have an accurate statement that reflects your true knowledge and beliefs.
A. Yeah. Well, then, if that's the purpose, then that's all.

Q. And can you look to the last page?
A. Yeah.

Q. Is that your signature at the bottom?
A. Yes.

Q. So is this statement true to the best of your knowledge?
A. Yes, it is.

Q. Other than what we -- what we discussed with Lisdahl?
A. Yes.

Q. Okay. I'm taking the statement back from the witness. Thank you.

Now, as soon as -- okay. How did you go with NCIS? How did they get in contact with you?

A. They showed up at my house and I answered the door.

Q. And then what?

A. They told me who they were and I asked to see their ID and I kind of knew, you know, what it was about. And they came in and sat down and we talked for our initial conversation.

Q. What did you think it was about?

A. About this. About what had happened that night.

Q. Why did you think that?

A. Because, you know, I knew that it was -- that a lot of people had known something had gone wrong. And I had never -- you know, if there was one thing that I had been a part of that would potentially be wrong, this was it.

Q. Okay. And how long was the interview?

A. No more than two hours. I don't know for sure, but I don't remember it being extremely long.

Q. Do you feel like you were forced or coerced into making the statement you made?

A. No. Not at that time, no.

Q. Were you discouraged or frustrated with the interview techniques that were being used?

A. No.

Q. Did any of the -- any of the ways that you're being questioned, did that affect or plant any seeds or any memories -- unreal memories, did that plant anything in your head that would of contributed to the statement that you made?

A. Are you asking me about the first time I was contacted or the second time?

Q. Well, which time did you make the statement?

A. The second time.

Q. All right. Then -- well, is there anything of note about that first interview?

A. No.

Q. All right. Then when was the second interview?

A. The second interview was maybe a year later. I don't remember. It was a while later. I met them at the

police station. They called me and asked me to meet them at the police station. I went to meet them. And as far as your other questions about whether I felt guided or false -- you know, they were leading me a certain way or whatever, I felt a little bit like that. Did that change my -- what I told them? It didn't change what I told them. But I felt like they were, maybe, trying to go one way -- you know, a certain way with it.

Q. Were the statements that you put into your -- into your statement that you just read, were those independent thoughts that you came up with on your own?

A. Yes.

Q. Okay. Just a couple more questions. Just to go back, do you recall taking any fires at all on your vehicle or seeing any fires taken on any other vehicle?

A. No, I did not see that.

Q. And you, at one point, took over the vehicle?

A. Yes.

Q. For Sergeant Hyman?

A. Yes.

Q. What were the circumstances with that?

A. He got off the vehicle to go assist the downed LAV and he left me -- just said, You know, if we get another vehicle coming at a high rate of speed or we get any suspicious people, you know, try to stop them. Or basically prevent anyone from coming from the front to the convoy. And he exited the vehicle. And as far as what he told me, he was going to go help out with the downed LAV.

Q. How many times during your tour had your unit or you personally, whoever, gone and swept the area that you just had an engagement in to pick up enemy weapons?

A. I don't remember doing that ever.

Q. Do you recall that happening in this engagement?

A. Not that I know knew of, no.

Q. Are you aware of any enemy weapons that were found?

A. No, I'm not.

Q. Do you know that there weren't any found or you're just

- A. not aware of any?
I'm not aware of any, no.
- Q. Did any of -- when you were -- when you were the vehicle commander when Sergeant Hyman left, were any of the scouts or anyone else in the vehicle dispatched to go find enemy weapons?
- A. Not that I knew about, no.

GC (Capt Gordon): Okay.

Thanks, sir. I have no further questions.

IO: Defense counsel.

DC (Capt Baehr): Yes, sir.

CROSS-EXAMINATION

Questions by the defense:

- Q. Mr. Kadrie, how are you. I'm Captain Baehr. I'm one of the defense counsels in the case.
- A. Nice to meet you, sir.
- Q. Thanks for coming in.
- I'd like to -- I guess I'll go through kind of a reverse timeline here. So we'll start off by talking about this investigation. We'll go back to 2005, then 2004. And we may have to go over some things again just as part of that.
- A. Okay.
- Q. The first time that you were contacted by NCIS, when is the first time that you got the call or when they arrived at your house concerning this issue?
- A. I believe it was in November of 2008.
- Q. And who was it who called -- did they call? What did they do? How did they reach you?
- A. I don't remember their names but I had just gotten off of school that day. I came home. Maybe was home for about 30 minutes. And these two gentlemen showed up at my door. They looked like -- you know, they were wearing suits and everything. I answered the door and they told me who they were. And that's the first time I had ever even heard about this or talked to anybody

about it.

Q. Where were you at that time?
A. At my house.

Q. Where was your house?
A. In Roseville, California.

Q. And you were attending college at the time or school of some sort?
A. I was going to paramedics school, yes.

Q. Okay. Those two gentlemen when they introduced themselves, what did they say to you?
A. They said -- I don't remember exactly. But, Hi. You know, are you Timothy Kadrie? I said yes. We're here from NCIS. They said their names. I asked to see their ID, because they wanted to come in. They showed me their ID, they said we're here about an investigation about Major Card. And I said, All right. Well, come in and we'll talk about it.

Q. So right when they got there, kind of immediately went right into kind of the purpose for being there?
A. Yes.

Q. Which was the investigation of Major Card?
A. Yes.

Q. Did they -- had they tried to reach you by phone before or they just showed up at your house? Do you know if they tried to reach you before?
A. I don't know. But I mean, I never got a message or anything, you know, like that. The first time I had ever heard anything about this was when they showed up at my house.

Q. And how did they know to come to your house? I mean, what -- why were they seeking you out? Do you know why they were seeking you out?
A. No, I don't know.

Q. Okay. At that point did you invite them into your house?
A. Yeah, I guess. I just --

Q. Well, let's -- let's explore that for a second. I mean, were they basically like you got to talk to us or we

need to talk to you. Did they kind of take control or were they allowing you the decision of whether you wanted to talk to them or not?

A. They seemed like I needed to talk to them and it -- they're authority figures, you know, so I wasn't going to tell them no. I mean, it seemed that they really wanted to talk to me and it was very important. So I let them talk to me.

Q. Did they ever suggest that you could be in trouble in any way?

A. I don't remember them telling me specifically, you know, you will get in trouble. But I remember, you know, if you don't cooperate or if you don't help us out with this, you could potentially be subpoenaed or something along those lines. You could be forced to help out.

Q. Okay. Did you think you had a choice in whether or not to communicate to them or help out with their case?

A. No, I didn't. I thought I had to.

Q. Were you eager to help them or were you just kind of like, Well, if I have to, I have to?

A. No. I offered as much help as I could. I mean, you know, I know what I know and I figured, you know, I'll be truthful and help out if I can.

Q. Where did this conversation take place at your house?

A. It was in my living room on our couch.

Q. And was anyone else present besides those two agents?

A. My wife was there.

Q. Oh, she was there as well?

A. Yes.

Q. How long did that conversation take, that first conversation?

A. That was probably two hours. No longer than two hours.

Q. Now at the end of that conversation, you didn't want to write a statement. Do you remember that that day, that you didn't want to write a statement?

A. I don't remember them giving me an option to write a statement or not.

Q. It said Kadrie -- excuse me, is your name pronounced Kadrie or Kadrie?

A. Kadrie.

Q. Kadrie. Excuse me. Mr. Kadrie subsequently declined to make a written statement? Do you remember that at all? Does that jog your memory?

A. No. You know, from you saying that, I can't -- like I just said, I would help out if I could. I can't imagine why I wouldn't want to write a statement if they asked me to.

Q. This initial conversation, do you remember around when it took place?

A. Yeah. I think in November of 2008.

Q. Okay. 27 of October of 2008, I believe.

A. Okay.

Q. So around that time. Did they take anything from you that day?

A. Yes. Well, they didn't -- I mean, they didn't take it. I gave them a list of everyone's name that was on the Division Jump.

Q. Okay. At that point would you say that your memory about the event was good or would you say that you were a little confused about some details?

A. At that -- at that point, I was confused. Yeah, it was hard to remember anything.

Q. Well, let's talk about that. Why -- tell us a little bit about that?

A. Well, for me, you know, just the event itself was -- you know, you're full of adrenaline and I mean, it's hard to remember what had happened -- what happened, I mean. And then, you know, especially for me, it affected me a lot throughout the rest of my career in the Marine Corps. Not just this event but, I mean, all of my time. And then even once I got out, it was affecting my life, you know, every day. And I had tried very hard to not think about it, not remember it, try to put it away, so I -- so it wouldn't bother me anymore.

Q. Subsequent to this, did you have some post-traumatic stress?

A. Yes.

Q. Could you tell us a little bit about that?

A. Yeah. For me, it started probably 5 to 6 months after

we had gotten back. I started getting very angry and just not being able to function in a social setting, you know, where there was a lot of people around. I had asked -- you know, I started getting concerned when me and my wife were at Sea World and we went to Disneyland and I had outbursts in a public area.

I mean, I tried to talk to our command. You know, I wanted to try to get some help for it. There was other Marines -- at that point I was a corporal, you know, and I thought, you know, it was my responsibility to try to get help for these guys and we weren't being allowed to get treatment, so that just kind of -- I don't know -- perpetuated what I was already feeling. It made me even more angry.

Q. Did you ultimately end up getting treatment, getting --
A. Yes, I did. I had to go to a civilian hospital. I went to two different civilian hospitals. And they finally -- they locked me up, like, in a room and they finally shipped me down to Balboa for a week and kept me in the Balboa mental hospital there. And finally, after that -- at that point, I got help finally.

Q. Did you receive medication at some point?
A. Yes.

Q. And are you -- do you still take medication --
A. No.

Q. -- on occasion?
A. No.

Q. Are you now classified under VA disability?
A. Yes, I am.

Q. And what's your level?
A. A hundred percent.

Q. Okay. What led to that? Was that the experiences you had in combat, do you think?
A. I believe it was. Before I joined the Marine Corps, I was fun and I could be social with people. I was happy. I mean, it -- and then after -- I would imagine it was the combat situations that did it. But after I got out and even when I was still in, it -- I was depressed all the time. I was angry. I drank a ton. I mean, it was not like who I remembered being. So, you know, the only

thing that had changed there was being in combat, so I would imagine that's what caused it.

Q. Did you feel that the Marine Corps let you down a little bit in regards to that? Or what were your feelings towards the Marine Corps after that -- after ultimately leaving?

A. After ultimately leaving, I -- you know, when I was in, I loved the Marine Corps. Like, I would -- I'd give anything for it. I was a good Marine. Like, I was successful. I was a sergeant when I was 20 years old. I mean -- and for me, yeah, I did feel let down because I had given so much, you know, to be the best I could be. And then when it was my turn to need some help, it wasn't there for me. You know, after getting out -- and I don't put that all on the Marine Corps itself, you know. There's maybe certain people that prevented me from getting help. But, you know, my feeling about the Marine Corps is I would do everything over again if I could.

Q. During this interview that you had, the agent had written in their record of the interview that you had exhibited confusion recalling the events, but that you denied ever being told that Captain Card had executed an Iraqi. And you had related to them that you had not told Lisdahl that. Do you remember that?

A. Can you say that again, please?

Q. Sure. That -- the line of the report which is the results of interview says, Kadrie denied ever being told Captain Card executed an Iraqi and related he did not tell Lisdahl this.

A. Okay.

Q. Do you remember telling the agent that at that time?

A. I don't remember that, no.

Q. Okay. All right. Later on, when was the next time you got contacted by NCIS concerning this case?

A. It was a while after. I think six months to a year. I'm not exactly sure.

Q. During the intervening time, did you end up talking to anybody about the case or the fact that they had come by?

A. Just my wife. She was there. They had told me don't talk to anybody else in the jump or anyone else about

it, so I didn't. Just my wife was there, so.

Q. And how did they contact you the next time they called?

A. Yeah. They called me and they just asked me to go to the Roseville Police Department.

Q. Was it -- were they the same agents as before?

A. I'm not sure. I don't remember really who it was.

Q. Was -- why did they indicate that they needed a statement if they'd already talked to you? Did they ever say to you what they -- why they --

A. They never -- they never told me that.

Q. They never told you why?

A. They didn't say why they wanted to talk to me again.

Q. Did you know why they -- did you have an idea about why they wanted to talk to you again?

A. No.

Q. So what did you do after they called again?

A. I went to the police station when they asked me to.

Q. Where were you in the police station? Had you been in a police station before for interrogations or questionings or anything like that?

A. No, not for that.

Q. And where were you in the police station? Where did they take you inside the police station?

A. I was in like an interrogation room. Like a real small room with a table in it.

Q. Was it kind of like what you see in the movies?

A. Yeah. I don't remember it having, like, a mirror or anything like that but it was similar to the movies.

Q. And who was -- who all was there?

A. There was two NCIS agents. I don't remember their names exactly, but there was two of them.

Q. And did you recognize them as being the same agents that you saw before?

A. I don't remember.

Q. If you don't remember, that's fine.

You said to the trial counsel when he asked, Hey, did you feel guided or anything like that? That yeah, you felt a little bit guided or at least you kind of knew what they were after. Could you talk about that? Why did you -- why did you feel that way?

A. They -- it just seemed like they were -- they would bring up an event that I had never -- that I didn't even remember until they had -- till they brought it up. Like, so there'd be certain -- certain things that I didn't remember. But then once they said, you know, did this happen, I would say, Oh, Yeah. I do remember that now after they had said it.

And, you know, the way they were asking me questions about, you know, maybe, like, who did this or who saw that or did Captain Card do this. I kind of knew -- it seemed like they were getting at something. You know, they wanted something. They wanted me to say something. You know, a certain thing. I just -- I didn't -- it didn't change, you know, what I said though.

Q. What events -- what were the things that they were using to jog your memory? What were they kind of suggesting?

A. Well, there was the part about there was a civilian -- that a civilian vehicle got hit. There was a part about, like, where they asked me, you know, did you hear someone say kill the mother fucker or whatever it says on there. He'll never plant another IED again. I didn't -- those things I didn't remember at all.

I don't remember specific events, but I do remember at the time thinking, Oh -- you know, Oh, I didn't remember that but now I do after they said something about it.

Q. Okay. I want to go back to actually your interview in October of 2008. At that point, it said the agent reported -- Kadrie reported hearing small arms rounds hitting his vehicle. Did you tell the agent that you had small arms rounds hit your vehicle?

A. I don't -- I don't think I did. I mean, I might have, but I do not remember small arms rounds hitting our vehicle.

Q. Now as you think back on it, you don't remember those small arms rounds hitting the vehicle?

A. No, I don't.

Q. But in 2008, do you think you might have remembered that

- or at least told the agent that?
- A. I might have told him that, yes.
- Q. Okay. So if you told him that, it's reasonable to assume that you did remember it at that time. Would that be correct to say?
- A. Yes.
- Q. Okay. You also talked to the agent a little bit -- actually I think this is in your -- that you had -- you talked to Sergeant Duran after this -- after the firefight and that Duran had told you that he had shot an insurgent a few times and once in the face during the attack on the convoy. Do you remember that?
- A. Yes.
- Q. And do you remember that happening back in -- or Duran conveying that to you way back when?
- A. Yes.
- Q. Okay. All right. So going back to the police investigation -- or the room at the police station. You talked about how you -- they would suggest things and then -- and then ask you about them and whether you remembered them or not. And was that jogging your memory? Was that helping you remember more?
- A. Yes, it was.
- Q. Okay. And you've adopted the majority of the statement that you gave that day except for this portion about what your communications with Sergeant Lisdahl. Who is Sergeant Lisdahl to begin with?
- A. He was -- I don't remember what his -- why he was -- what his function was in our company, but I remember me and him developed a friendship, because he -- he was having physical problems. He was another Marine that was having physical issues, and I was having mental issues. Neither of us were being allowed to see the doctor. And we had developed, like, a relationship because we had that in common and we were both frustrated with that.
- Q. In the statement you said, specifically, I told him that I thought an Iraqi was executed. I told him that our platoon commander did it. I told him that they were executed on their knees and that I thought it was more than one Iraqi that was executed. At this time I didn't believe that there was more than one Iraqi that was

shot. I only said this for shock value to try to get help from the psychologist. Do you remember telling that to the agent at the time?

A. I don't remember telling him about the -- they were on their knees and there was more than one and the platoon commander did it. I remember saying I think these guys -- I think there was prisoners executed when we were there and I can't -- and it's bothering me and I can't even get help for it.

Q. Did the -- were they videotaping the conversation or recording the conversation that you were having with them in the police station?

A. I think so.

Q. So there would be -- there would be a record of that?

A. I think -- I think they were, yeah.

Q. At the time that you said this to them, do you have any reason to believe that they wouldn't of written it down accurately or do think that -- why do you think that that's in the statement?

A. I think -- like I said before, you know, they were kind of pressing me about certain things. And I mean, that might have came out. Like, I didn't even remember I had talked to Lisdahl until they brought it up. And so that's -- that could be part of why I said that if I said that.

Q. But you don't think you told Lisdahl that? Do you think you talked to Lisdahl?

A. I know I talked -- I know I talked to Lisdahl.

Q. At the time that you were talking to Sergeant Lisdahl, this was back in -- what time frame was this?

A. I would imagine beginning of 2005.

Q. And you said Sergeant Lisdahl was going through some of the same problems. Was Sergeant Lisdahl under the same chain of command as you were at the time?

A. I think so, yeah. He was --

Q. And who was in that -- were you talking to folks in that chain about -- did you report to anyone else in the chain the things that you told to Lisdahl?

A. No.

Q. Okay. Were you -- who were the folks in the chain of

command who you were communicating to about your PTSD problem?

A. Staff Sergeant Lepper[ph] was our platoon sergeant at that time. I told him about it. And that's -- I know eventually First Sergeant Porterfield knew about it as well.

Q. Did the captain know about it?

A. Captain Lang? Who Captain Lang?

Q. Did Captain Lang know about it?

A. I'm not sure. I know eventually he did, but I don't know about at that time.

Q. Okay. What -- during that time you were struggling with some of these outbursts you were talking about earlier, what are some of the symptoms of the PTSD that you experienced?

A. One example would be me and my wife were at the Long Beach Aquarium and this was in --

GC (Capt Gordon): Sir, I'm going to object on relevance.

DC (Capt Baehr): Well, I'll direct it a little more if the --

IO: All right. Direct it a little bit more.

Questions by the defense (continued):

Q. Specifically, a couple of times we've talked about this today and in the statements you talked about not -- maybe not remembering. Are your memories impacted by PTSD?

A. Yeah.

Q. Okay. And how would you say your memories are impacted?

A. Well, like I said earlier, I've worked pretty hard to put this stuff behind me and move on with my life. A lot of it is -- I don't remember a lot of that night or even -- not just specifically this night, but a lot of the time I was in Iraq. It's hard for me to remember. You know, and I think as far -- I guess that would be it for as far as how it effects my memory. I try to not remember it.

Q. Okay. Now, I'm going to go back right now and talk about that night. If you don't remember something, please say you don't remember, you know?

A. Okay.

Q. Don't just kind of try and remember things that you don't remember. If you do remember something or think you remember something, you know, convey that as well.

In your statements, you talk a little bit about the approach. And today, you said that you didn't -- you didn't necessarily hear or remember -- or remember small arms fire. Is that accurate?

A. Yes, that's accurate.

Q. Okay. But that first time you talked to those agents, they recorded something about you remembering small arms fire hitting the vehicle. How do you reconcile those two? Do you think that in 2008, you remember that happening, small arms firing hitting the vehicle?

A. I can't imagine I would. I very distinctly remember right now not hearing -- not hearing anything hitting our vehicle. I don't know how -- why it would be different then.

Q. Okay. We've had a couple folks draw up what they experienced that night. Do you think you'll be able to draw a map of the scene and kind of the approach of the vehicles and things like that?

A. Yes.

Q. Okay. Would you come up and --

A. [The witness did as directed.]

Q. Okay. So why don't you draw the road as you remember it. I want to get, like, an overhead view, and the LAVs in the convoy, and kind of your memory of the scene. All right. And we'll walk through this step by step.

A. Okay. I'll put this as like the field over here.

Q. Okay. So this is a pretty -- okay. Got it.

A. I'm not a very good artist. This will be our LAV.

Q. And you were facing backwards?

A. Yes.

Q. And you were approaching west, if this is north?

A. I'm not sure of the orientation.

Q. Okay. So based on our other maps of this -- and we might be able to provide you with an overhead view if

that's the case -- but when you were facing backwards, your position as a turret gunner is to access threats behind the vehicles?

A. Yes.

Q. Did you see any threats before that IED went off behind the vehicle?

A. No.

Q. And specifically, did you see an SUV or anything of that nature or a mysterious looking SUV trailing the convoy?

A. No.

Q. Do you think you would of remembered if you had seen something like that?

A. I would they think so, yes.

Q. Okay. Did you see a vehicle -- did you end up seeing a vehicle in the field when you scanned the field a little bit?

A. No.

Q. Okay. There was no -- there's -- do you not remember a vehicle behind or you just don't remember? What do you remember seeing from behind when you were looking back in that turret?

A. I remember an empty road behind us. I don't remember any vehicle. I mean if -- like I said earlier, I was very attentive. And I would of told someone or, you know, if it was suspicious at all. Anything out of the ordinary.

Q. Okay. And so I want to actually get a bigger view of the scene.

Do we have the Google Map overhead? Unless I want to use this one.

Okay. This is a little too zoomed in for me for now. Let's draw this. So just draw this scenario. If this is the road, Route Michigan's down here, and then this is the intersection down here. Okay?

A. Okay. What do you want me to continue drawing on.

Q. Okay. So just draw this road and then draw the road going up there.

A. [The witness did as directed.]

Q. Okay. And I want to -- first off, your vehicle is the lead vehicle -- the rear vehicle, right?

A. Yes.

Q. But you end up moving to the front?

A. Yes.

Q. So I want to draw the situation as -- when you move the vehicle in the front?

A. Okay.

Q. First off, where were the other vehicles -- where were the other LAVs positioned? Where was the IED blast?

GC (Capt Gordon): Sir, if I could stop this. I'm objecting to the fact that he's using another document not basing it off his memory. That was the whole entire crux of the defense's objection that they were -- that they were being unfairly tainted by looking at our diagram that we were using before.

IO: I guess the question is, Why are we having this witness draw this?

DC (Capt Baehr): Sir, it was just to position everything as he remembers it.

IO: I know, but where are we going with it? I mean, what's the take-away? I think we've heard a dozen witnesses -- what portion of his testimony -- aside from questioning for the sake of questioning, where are we going with this testimony?

DC (Capt Baehr): We want to establish the things that he remembers. And we've got a lot of different memories from that scene.

IO: Then have him draw the map the best that he recalls it. If he doesn't recall it, let him come up with the responses. So if he can draw his own map, then let him do it. Show him the road, that's fine. If he agrees that that's a fair rendition of the road as he recalls it, that's fine. But let him draw the things.

DC (Capt Baehr): Okay, sir. The distinction of course with the government's is that we don't have anything positioned on this map.

IO: Show him the basic geography. If he recalls that, so be it. If he doesn't, then that's that.

DC (Capt Baehr): Yes, sir.

CC (Mr. Faraj): So he's allowing you to use the -- I think --

DC (Capt Baehr): I think you've got --

IO: I think he's got the basic road. I think we've well-established the road. Does that look accurate, the road that you recall there?

WIT: Yes, sir.

IO: Okay. Let him draw it from there.

DC (Capt Baehr): Got it, sir.

Questions by the defense (continued):

Q. First off, position the rear LAV where you would have had it and just draw a rectangle for the LAV and put three wheels underneath it.

A. You want the original position of our vehicle?

Q. Yes, the original position. Right when the IED goes off.

A. [The witness did as directed.]

Q. Okay. And then show where you remember the IED going off to the best of your memory.

A. This is obviously not to scale. It was a little bit back from the intersection here.

Q. All right. And show where the lead LAV would have been at that point.

A. I think it was a little bit in front of -- it got hit and moved a little bit forward and that was where it stopped.

Q. All right. And where was the -- what was the vehicle behind the lead LAV?

A. I don't remember.

Q. You don't remember which vehicle it was?

A. No.

Q. Do you remember what vehicle was in front of your vehicle?
A. Not for sure, no.

Q. Okay. So where did your vehicle -- what was the route your vehicle took when it moved to the front? Would you just draw that with an arrow?
A. Yeah. Okay. There was kind of like an alley or like little access where we could get around here. And it wasn't -- this is not to scale. Maybe we came out more here.

Q. Okay. And then why don't you draw the rear LAV one more time, which is now the position of your new LAV -- of your rear LAV, but now it's in the front.
A. [The witness did as directed.]

Q. Okay. And you said that the scouts got deployed. And where were you positioned? I want to know your -- kind of your sector of fire.
A. Okay. From what I remember, the road continued this way and our sector of fire -- the LAV was more in the middle of the road here -- was looking down this road.

DC (Capt Baehr): Okay. And is that where the -- where did the vehicle --

IO: And pointing in a southern direction?

DC (Capt Baehr): Yes.

IO: Or it would be on this drawing at least.

WIT: Yes, sir.

IO: Down towards the bottom?

WIT: Yes, sir.

IO: Okay.

Questions by the defense (continued):

Q. And what was the -- you talked about the Sedan -- or the first vehicle that approached, where did the vehicle approach from?
A. It approached from here.

- Q. From a southern to northern direction?
A. Yes.
- Q. And where did you disable that vehicle?
A. Before it got to here -- maybe in this area here before it crossed that intersection towards us.
- Q. Who disabled that -- who was firing at that vehicle, do you remember?
A. The scouts -- the scouts had been in position maybe in this area. I didn't see exactly where they maneuver to, but I know they were over here. Sergeant Hyman engaged with the pintle mount and the scouts engaged with their small arms.
- Q. All right. And did you see Sergeant Phillips at that point or Corporal Phillips at that point at all?
A. No, I did not.
- Q. Did you have any visibility of him during the course of this entire --
A. No.
- Q. Okay. All right. So the -- why don't you draw your sector of fire like a triangle coming out from the turret from what you were observing at that point.
A. Okay. I could see down the road and a little bit on the side of the road. It's not exactly how -- I was more like here. I couldn't see this area here or this area here.
- Q. Okay. So your perception during the entirety of this event was pretty much focused down this area?
A. Yes.
- Q. Okay. And your focus during that time period was as it should be on the possible threats coming up from that southern direction?
A. Yes.
- Q. You were not focused on what was going on back here during this time period?
A. No.
- Q. And you were not focused on what was happening in the field?
A. No.

- Q. Did you -- in fact, the only attention you paid to the field was when you spent those two minutes looking at it in the beginning; is that correct?
- A. Yes.
- Q. I think that's all -- that's all we need for you to draw there. After -- could you actually sign the document though to show that you -- to indicate that you -- and please put a date on it as well.
- A. [The witness did as directed.]
- Q. You mentioned on direct that when -- when Captain Gordon asked you about the QRF, that you didn't even notice them arriving. Why didn't you notice them arriving? Was it because your focus was that southern direction?
- A. Yes. From what I remember, they came from this direction and I was focused here.
- Q. Did you talk to anyone in the QRF or anyone come by and say hello to you --
- A. No.
- Q. -- from the QRF?
- A. No.
- Q. Did anyone from the QRF come around and try and kind of boss you all around about you not cleaning out the gear one of the -- on the downed LAV or anything like that as you remember?
- A. No.
- Q. Okay. You can have a seat again. Thanks a lot, Mr. Kadrie.
- A. I want to focus also on the radio comms. Could you describe -- who was -- who had the capacity to listen in on the comms that you were listening in on?
- A. Everybody did other than, I guess, the downed LAV guys. We all had radios in our vehicles.
- Q. Do you remember how many frequencies there were?
- A. Not exactly. But there was quite a few we had programmed.
- Q. And how many folks could have been talking across that radio?
- A. A lot of people.

Q. How many -- how many would you estimate?
A. As many as 40, 50 people maybe.

Q. Would those be people who were just there with the convoy or would they be people who were at the other outposts around the city?
A. People at the other outposts, people in the convoy, the artillery guys. All kinds of different people.

Q. So they could have all been listening to the same things that you were listening to?
A. They could have, yes.

Q. And they also could have been communicating over those radio communication capabilities, correct?
A. Yes.

Q. You talked before about when you felt like you heard somebody say, you know, they're taken care of. And you're not sure if that -- was that Gunnery Sergeant Beall?
A. I'm not a hundred percent sure it was him.

Q. Would elements of the QRF also have been able to communicate across those nets?
A. We had a different frequency for them to communicate on, but they would have been able to talk to us, yes.

Q. Okay. But your estimate is that maybe around 40 people could have heard what was said? Whoever did say it, could have been heard by quite a few other folks that day?
A. Yeah. If people were listening, yeah.

Q. Okay. What net were you on, do you know?
A. I was listening to our platoon net and our intervehicle.

Q. Who else typically would monitor the platoon net, would you say?
A. I'm not sure.

Q. Could it also be monitored by Blue Diamond?
A. Yeah.

Q. Perhaps?
A. Yeah.

Q. Would it always be monitored by Blue Diamond?

A. I'm sure if they did or not, but I know they had the capability to.

Q. Did combat outpost also have the capability to monitor that?

A. Yes.

Q. Would Hurricane Point have the capability?

A. I think so, yes.

Q. So a lot of people could have been listening in on that --

A. Yes.

Q. -- on that?

When you got back that night, you talked about Doc Slaughter giving everybody pills. Do you remember what those pills were?

A. I remember he told us one was a sleeping pill and the other one, I -- he didn't say what it was.

Q. When you first got the pills -- so one was a sleeping pill and one was someone else?

A. Yeah, I think so.

Q. Did you end up taking the pills?

A. Yeah.

Q. Did you think that -- what did you think about those pills?

A. I thought -- I just thought it was weird that we took them and then nobody could remember anything about what happened. I thought that might have had something to do with it.

Q. You thought the pills had impacted your memory?

A. Yeah.

Q. Did you think Doc Slaughter had intentionally given you pills to influence your memory?

A. I don't think he did it on purpose. I mean, maybe he was told to or maybe it was just me thinking that, you know.

Q. So did you think -- what were you thinking?

A. I was thinking that -- when? About what?

- Q. About those pills and the fact that you felt like you couldn't remember things clearly after them.
- A. I thought that they messed with our memory.
- Q. Why would they want to do that?
- A. I don't know. Maybe because it was too stressful for us, or they didn't want us to, you know, have to think about what had happened.
- Q. Did you think somebody was trying to cover something up?
- A. No, not really.
- Q. Okay. And you talked a little bit about how Corporal Phillips ended up leaving the jump shortly thereafter. How quickly thereafter did Phillips end up leaving the Division Jump?
- A. I'm not exactly sure, but it was like a week, two weeks. I remember General Mattis asked us to come in and meet with him, the whole jump. We went in, he asked, you know, it's been a rough, you know, month -- last month or so because we had lost a few guys. He said if anybody would like to leave, you can.
- Q. Did he ask you that as a group or one by one?
- A. As a group.
- Q. And how did he ask you to indicate if you wanted to go? Raise hands or say yes?
- A. I think we raised hands.
- Q. Did you see --
- A. I'm sorry, I'm not a hundred percent sure that that's what happened.
- Q. No problem.
- A. If it was a group or not. Because I remember finding out Corporal Phillips left after the -- after he had sat us down. I'm not sure if Corporal Phillips indicated he wanted to leave right then and there or if it had happened afterwards.
- Q. So was your memory that -- well, you don't remember either way whether he -- whether it was then or later?
- A. I don't remember, yeah, either way.
- Q. Okay. At the time that you -- that you went through this experience in Iraq, what were -- your rank was a lance corporal?

A. Yes.

Q. And as a lance corporal, you don't necessarily have insights into everything that's going on above you and in different levels, would you agree with that?

A. I would agree with that.

Q. What is the lance corporal underground?

A. That is, I guess, like a slang term for the rumors and things that are built up, you know, between the lance corporals.

Q. Part of your statement says that a couple days after you were all standing together trying to piece together what happened. And it says, over time after the incidence, a group of lance corporals -- that somebody had asked you if you heard one of the prisoners was executed and you said, No, I didn't hear that someone was executed. But I did hear on the radio there was someone wounded and that they had been taken together -- taken care of. Piecing together what Jimenez said and what I had heard, it seemed to me this Iraqi had been executed.

Over time after the incident, as a group of lance corporals, based on the group's consensus, that Captain Card had killed a wounded Iraqi. I believe we were able to come to this consensus because usually how it works is one of the lance corporals is friends with an NCO that saw it first hand or has the information, then he tells one of his friends and then it spreads like that. I know that's how this happened.

Would you say that that might be a description of maybe the lance corporal underground?

A. Yeah.

Q. At another point -- at another point you talked at the end of your statement during the questioning period that a couple of the lance corporals had gotten together to discuss the situation. You said at that point no one specifically said that they had any fact based information that Captain Card was the one that shot the Iraqi. Based on ruling everyone else out, we came to that conclusion.

Your perceptions that day alone would not support the idea that Major Card had shot an Iraqi, correct?

A. They would not support that idea, no. I did not see

that happen.

DC (Capt Baehr): Okay. Thanks.

IO: Captain Gordon, any additional questions?

GC (Capt Gordon): Yes, sir. Just real quick.

REDIRECT EXAMINATION

Questions by the government:

Q. As far as your memory goes, it's been discussed that perhaps PTSD effects your memory, are these -- these memories that we've discussed today, are they the same memories that you've had since the incident we're talking about?

A. Yeah, they are. I mean, and then as this has gone on, I've learned more and more and I remember more and more, yeah.

Q. Do you feel that PTSD or anything else is somehow altering your memory or the pills that you took that evening -- anything's altering your memory and making you say things up here that aren't true?

A. The only way is altering my memory is not being able to remember some particular things.

Q. So normal passage of time?

A. Yeah, I guess. Yeah.

GC (Capt Gordon): I don't have any further questions, sir.

IO: Defense counsel?

DC (Capt Baehr): Nothing further, sir.

IO: Do you plan on being at the same phone number and location for the next couple months?

WIT: Yes, sir.

IO: All right. If you move for any chance or any reason, just notify trial counsel, Major Goode.

WIT: Yes, sir.

IO: New address and phone number.

Please don't discuss your testimony with anyone. If anyone tries to talk to you about what you testified to today, what you might testify to in the future, just stop them.

WIT: Okay.

IO: And notify Major Goode as well.

WIT: Okay.

IO: Thank you very much for coming and your testimony.

CC (Mr. Faraj): Sir, before we dismiss him, may we get some contact information on him?

IO: Yeah. We're going to take a lunch break right now. So let's take 1330; 50 minutes.

[The Article 32 investigation recessed at 1240, 20 April 2011.]

[The Article 32 investigation was called to order at 1335, 20 April 2011.]

IO: Investigation is back on the record.

GC (Capt Gordon): Yes, sir. The government would like to call Mr. Andrew Tipton.

Andrew Tipton, a civilian, was called as a witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the government:

Q. Please state your name and spell your last.

A. Andrew Tipton, T-I-P-T-O-N.

Q. And what's your city and state of residence?

A. Bakersfield, California.

Q. And you're formerly an active duty Marine?

A. Yes, sir.

Q. When did you join the Marine Corps?

A. November.

Q. When did you get out?
A. November 2004.

Q. What rank did you get out as?
A. Corporal.

Q. Could you briefly go over the wave tops of your career, what units and deployments?
A. I went to -- obviously -- SOI and then LAR school. I was selected to be an LAV crewman. I went to Delta Company immediately after that, went on a WestPac deployment in 2002. After coming back from that, then we were deployed to Iraq fairly shortly. And then after returning from that I got transferred to Weapons Company in LAR. And then from there, they put me on the Division Jump.

Q. How many deployments?
A. A total of three deployments; two to Iraq, one regularly scheduled WestPac.

Q. And were you with the Division Jump team in June of 2004?
A. Yes, sir.

Q. Do you recall the events of 7 June 2004?
A. As long as that's the -- I mean.

Q. The IED blast that took Lance Corporal Bohlman's life.
A. Yes, sir.

Q. All right. So just quickly leading up to that -- the IED blast -- you guys were doing some sort of route recon for General Mattis, right? And then you went to the Snakepit and you were on your way back. Is that your recollection?
A. Yes, sir.

Q. Is there anything else you want to --
A. We took a separate way back from on the way out there.

Q. What was the point of taking a different route? Do you know?
A. No, sir. Just check out another route so we don't go the same route.

Q. What were your observations in the couple minutes leading up to the IED blast as you were traveling down

the road?

A. We were traveling down the road and I didn't really realize it at the time, but we're driving and there's, you know, kids playing and people out, and then they kind of just disappeared right before the blast. And I only realize that looking back in hindsight. It didn't occur to me at that point in time.

Q. And which vehicle were you in?

A. I was the lead LAV.

Q. What were your duties in that vehicle?

A. I was the driver.

Q. So take me through the blast.

A. I had been driving. We just took kind of a left turn. There were houses off to the left and then an open field off to the right, and then next thing I knew, a lot of sound, saw a flash, my engine panels popped out and hit me in the side.

First, I thought my engine blew up and then kind of -- then I realized what had actually happened. And when I looked out the periscope, there was just smoke. So I hit the throttle, pulled out of the smoke, and then came to a stop after that. Are you wanting -- how far are you wanting me to walk --

Q. That's fine. What do you remember in the executing offense immediately after you pulled forward and then stopped?

A. Immediately, I remember trying to key up over the intercom to talk to the rest of the vehicle, and then trying the radios and none of them working. I remember a vehicle straight ahead of me with two Iraqi police officers parked kind of at the end of the road. The road made an immediate right and they were just parked and stopped right there. And then getting out of the driver's compartment, realizing that Bohlman was dead, then setting up security around the vehicles.

Q. What was your role in the security?

A. At first I kind of went and took a spot behind some concrete barriers across the field. And then after a couple minutes, I ended up coming back closer to the vehicle because it was a little ways away from every one else.

Q. Your sector of fire -- you were fixed on the field?

A. I was actually looking down the road that was kind of parallel to where my vehicle currently was about 50 yards over or so. Maybe not even 50, maybe 20.

GC (Capt Gordon): Okay. I'm trying to say which road.

Sir, I'd like to hand the witness a drawing that he already made.

GC (Maj Goode): It's Number 11, sir.

IO: Number 11. Okay. All right. I see it. Number 11. Hand that to him.

GC (Capt Gordon): All right.

Where exactly are you talking about, where your sector was?

WIT: All right. So here's the lead LAV. There's a road right here. This is --

IO: If you could, describe for us what the witness is pointing at, Captain Gordon.

GC (Capt Gordon): Yes, sir, I will.

IO: I see the --

GC (Capt Gordon): I'm trying to get my bearings on it, too.

IO: Okay. I see the lead LAV.

WIT: Okay. So lead LAV, if you have that at the bottom of the page to the left, there's kind of a -- there's a straight line kind of crossing some longer parallel lines on the other side of the field?

IO: All right. I think my copy's cut off here.

WIT: It's the lead LAV and then here's the field and then over here, this is actually another road.

IO: All right. If you would just point that to defense counsel. Show them what you're pointing at right there.

WIT: So field, lead LAV. There's a field and then there's

actually like another road on the other side of this.

GC (Capt Gordon): Thanks.

WIT: So originally I had gone over here and there was some concrete barriers.

Questions by the government (continued):

Q. By over here, you mean?

A. Over on that side of the road that parallels where the LAV got hit.

Q. Okay. And that's right adjacent to the field and the road, right?

A. Yes.

Q. So it's a road that's touching the field?

A. Yes.

Q. Okay. And then looking at the page, the way it would normally be in a binder, which direction?

A. I would be facing up the page.

Q. Up the page. Okay. Thank you. All right. So did you -- did you have observation of the field?

A. Yes. I mean, to an extent. There was some sort of building in the field kind of farther back from my LAV. I don't remember what it was, but there was something there. It wasn't very big. It wasn't like a house or anything.

Q. How good was your visibility at the time?

A. I would say it probably wasn't that good. It was probably getting pretty close to dark at that point, so -- if it wasn't already dark.

Q. Were you involved in any engagements while you were providing security?

A. Not at that point. When I moved back to the vehicles --

Q. Let's focus on just this part. So when you were -- when you were where you just previously pointed out?

A. No. I was just right there for a couple minutes until I moved back to the vehicle.

Q. What -- besides the IED blast, what other hostile advances did you see during this time then?

A. I saw none. There were vehicles that had kind of pulled up into the area. And then they left. One of them left the vehicle -- like the -- and the people in the vehicle just fled and left the vehicle there. I believe there was another vehicle that pulled up and then kind of backed away. But nothing hostile.

Q. Did you see any dismounted insurgents?

A. No.

Q. What about -- did you notice any small arms fire coming at you?

A. No, I don't remember hearing any gunfire at any point.

Q. Either friendly or enemy?

A. No.

Q. Is that just -- is your testimony that there wasn't any or you just don't remember hearing any?

A. I don't remember hearing any. I couldn't say that there was. Well, okay. There was -- I remember myself firing at the headlights of the vehicle that was left behind because they were shining in our direction. But other than that, I don't remember any other fire.

Q. Who fired that shot?

A. Myself.

Q. And do you think that you would of remembered if you heard enemy -- if you heard enemy small arms fire?

A. If it was after we were dismounted from the vehicle, I would say, yes. If it happened while I was still in the vehicle immediately during or following the blast, I may not have heard it and may not remember.

Q. All right. So what happened after you moved from that location you just pointed out on the map?

A. I went back over to the front of the LAV where Corporal Phillips was stationed. And then after waiting out there for some amount of time, we began to start to prepare and collect up every -- all our material. Made sure we had all our gear.

Q. Who was providing security for you guys when you were collecting up all the gear?

A. I believe we waited until -- I'm not sure at that point. I don't remember the QRF being there yet. Maybe some of the other scouts behind us. Corporal Phillips may have

stayed down for a little while and I started moving around, collecting gear.

Q. How long after the IED blast would you say this is?

A. I'm not sure. I mean anything I say would be a guess. It could be 10 minutes, 20 minutes, 5 minutes.

Q. Do you have a window? No more than "x" minutes?

A. I would say it would probably be nearing 10 or 15 minutes.

Q. And so what -- what -- let me go back. Were you aware of any enemy hostile acts other than the IED the entire duration of this engagement?

A. No. No.

Q. And you yourself, the only thing you engaged was a highlight?

A. Yes, sir.

Q. And how about when you were collecting the gear, were you aware of any hostiles that were still out?

A. No, sir.

Q. What was the atmosphere at that time?

A. I mean, I remember for me it was I felt fairly relaxed at that point because I didn't see anything going on. And I was alive. So I remember feeling more relaxed than I probably would of in any other situation where we're stuck on the side of the road in Iraq.

Q. You said that was about 10 to 15 minutes afterwards?

A. That's what I would estimate.

Q. What were your observations of any Iraqis that were dismounted, whether they were hostiles or civilians?

A. I don't remember seeing any hostiles. The two police officers that were standing near their vehicle ahead of my LAV when I came to a stop were just kind of standing there, and they looked surprised. We kind of pointed out for them to move and, kind of, take security and they did. And then eventually they just kind of disappeared.

The vehicles that the people fled from and there was one that just kind of backed off, they didn't seem hostile. They kind of seemed like they just happened to be there, and then once they realized what was going on they were

trying to back away.

Q. Did you witness any vehicles being engaged?

A. Not that I remember other than the headlight.

Q. What else did you observe? Did you observe any wounded Iraqis?

A. Not when I was up near my vehicle up at the front. Once I -- at some point, I moved from my vehicle towards the back of the convoy towards the HMMWV and the C-square.

Q. What were your observations at that time?

A. I remember there being a dead Iraqi on the side of the road and then that's --

Q. When did you become aware of that Iraqi?

A. I'm not sure. At some point probably talking to Sergeant Gutierrez or Sergeant Duran over in the C-square area.

Q. I guess, can you just -- can you paint the picture of when you got to the C-square, what you heard, what you observed all the way through to when you acknowledged that there was a dead Iraqi there?

A. I remember walking from my LAV up in the front towards the back, stopping and talking to Doc Slaughter. He was saying that he thought I was dead and he's happy I wasn't. I agreed.

And then I was continuing on to the C-square. I don't remember if I had any other purpose other than to go talk to Sergeant Britt for a minute just because I could. And then talking to -- in front of the C-square, talking to I believe Sergeant Gutierrez and Sergeant Duran. Seeing -- eventually noticing the body on the side of the road kind of -- it was sloped right there. I think he was -- I can't remember if he was directly on the side of the road or if he was down in the slope slightly. And so just at some point talking to them.

Q. Did you -- okay. So did you observe this Iraqi before he was dead?

A. No. I feel like I think there were two bodies at some point. There was one near the road that I never saw at any point other than on the side of the road dead. And then there was another one that I helped Sergeant Gutierrez drag up to the road.

- Q. Okay. For that latter one that you're talking about, what did -- what noises, if any -- or, you know, what noises, if any, did you hear coming from the field prior to this Marine -- or this Iraqi being -- no longer being alive?
- A. This is where I'm not entirely sure. I remember these things. The -- when I was speaking with the NCIS investigators, we were talking and I'm not sure if it's me or -- and just overhearing -- if I actually did hear, like, rustling and kind of moaning come from out in the field.
- Q. So you're not sure if you heard rustling and moaning or not?
- A. No.
- Q. What would be -- I guess, what would be the -- obviously you put in your statement -- you've had an opportunity to read your statement?
- A. Yes.
- Q. In the last couple days?
- A. Yes.
- Q. So what -- what's your way to reconcile it back? You put that in the statement, and now you're saying something different?
- A. I would say that I am unclear if I actually did hear the Iraqi moaning and moving around. I never recalled it before ever talking to the investigators. And so part of me is unsure as to if I actually am recalling my own memory or if I'm managing to pull together other things that were mentioned and making a scenario in my head that I could remember.
- Q. We'll address that here in a little bit.
- A. Okay.
- Q. Let's move on. What -- so okay. What happened after? You notice there was a dead Iraqi, then what?
- A. Which one are we talking about, the --
- Q. The one that was in the field.
- A. I was told for me and Sergeant Gutierrez to drag his body up. We walked out, dragged the body up closer to the road. And that, I mean, other than being kind of weirded out that I was touching a dead guy's ankle, I really don't remember anything else about it.

- Q. Who to you -- to -- or who gave you the order to go move the body?
- A. I don't actually remember.
- Q. Could it have come from -- would it have come from one of a couple different people or a few different people?
- A. Yeah. I mean, I would imagine it came from -- it could have either come from -- directly from someone else or it could have been Sergeant Gutierrez was told to get somebody and he got me. I'm not sure.
- Q. You don't know where it came from though?
- A. No.
- Q. Were you able to view the Iraqis removing them?
- A. Yes.
- Q. What do you remember him looking like?
- A. All I remember is an Iraqi dressed in a robe wearing some sort of sandals on his feet I think. I mean, a light colored robe, maybe a tannish or off-white or something like that maybe. And that's -- that's all I actually remember.
- Q. What do you remember about his wounds?
- A. I don't remember wounds.
- Q. Do you remember even general areas where a wound was?
- A. No, I don't.
- Q. What about blood? Do you remember? Sorry to dredge all this up.
- A. It's fine. I mean, it's frustrating that I don't remember. I mean, I know for a fact that I dragged the body up, but I don't recall wounds or blood.
- Q. So if I asked you if he had a chest wound, you wouldn't know either way?
- A. I can say possibly, but I couldn't tell you yes or no.
- Q. All right. What happened after that -- after you moved the body?
- A. Moved the body back up and then I don't really remember anything after that other than at some point we started packing up everything into the remaining vehicles and getting ready to leave.
- Q. Where was Captain Card during this whole time?

A. At this point of me dragging the body, I do not know.

Q. Before -- okay. Then before you were dragging the body, where was he? Were you aware of where he was?

A. I remember him being at the HMMWV before I had been called to drag the body. Other than that, I don't know. I remember that he had to use the radio a couple times I believe. And that's -- that's the only place I can picture where I've seen him during this incident.

Q. Do you -- I apologize, I'm kind of jumping around a little bit. Do you recall seeing him in the field at all?

A. No, I don't.

Q. Who do you recall seeing in the vicinity of where this dead Iraqi was that you were responsible to move?

A. I don't actually remember seeing anyone near it. What I remember is -- I believe I was at the C-square, looking up, talking to Sergeant Britt, and that was when I was called to move the body. I don't remember actually seeing anyone near it.

Q. Do you recall seeing any weapons?

A. No, I don't.

Q. Did he have any weapons, the Iraqi?

A. No.

Q. Would you have noticed if he had a weapon on him?

A. I believe so.

Q. Why do you say that?

A. I believe it was -- be difficult to -- especially an AK-47 or anything, it would be difficult to conceal under a robe and nothing would be very accessible under a robe. Out of the ordinary. It would make a bulge or a mark under the robe so that you would see it. Something would look out of the ordinary.

Q. That's because of the -- or can you explain how the way that the robe is on a person, how you'd be able to see they were concealing some sort of object?

A. I mean, the same as essentially draping over a sheet when someone is laying down. You see if anything abnormal is on that person. It loosely hangs over the skin and can show any abnormal nonhuman form.

Q. What abnormalities or bulges or anything like that do you recall seeing on this Iraqi?
A. I don't recall any.

Q. Are you aware of the actual time that this Iraqi was killed?
A. No.

Q. What was -- or how old do you think he was? Were you able to tell that?
A. No, I don't think I could come up with that. I mean, I could tell you that I remember he wasn't young, but other than being me picturing him older than me, I couldn't tell you an age.

Q. Older than you?
A. Now.

Q. So like twenties or --
A. Twenties or later.

Q. And that could be a wide spectrum?
A. Yes. And he wasn't exceptionally old either, so I would say 20s or 30s maybe.

Q. Is there anything else you remember about him? The way he looked? The way he appeared? Anything?
A. No.

Q. Do you remember the temperature of his body when you grabbed him? Was it cold?
A. I don't recall that at all.

Q. Would you have -- do you think you would have remembered if it was cold?
A. I think I would have. I don't remember it being hot or cold, so I would say it was probably fairly close to the same temperature as myself.

Q. When do you believe the Iraqi was killed?
A. I mean, some time after the IED was set off. Other than that, I have --

Q. How exactly did you and Gutierrez transport him?
A. Grabbed him by the ankles and dragged.

Q. So he had one ankle, you had one ankle, and you dragged him?

A. Yes.

Q. So his body was against the ground from point (a) to point (b)?

A. [The witness nodded his head.]

Q. Where exactly was his body?

A. His body was out in the field. Not an exceptionally long distance from the road, but I remember the road being kind of elevated from the field, you know, maybe by a couple feet -- having to go down and then maybe out 10 yards, 5 yards. Ten probably.

Q. He was about 10 yards from the road?

A. That's what I would estimate.

Q. And where'd you place him?

A. Just up on the side of the road.

Q. Which vehicle -- well, let me go back. When it was in the field, which vehicle was it most near?

A. I remember it being near the front of the C-square.

Q. And then when you pulled it up to the road, which vehicle was it most near?

A. It would have been near the front of the C-square still. So as I recall, it would have been almost a straight shot out from the front of the C-square out to the body and then straight back.

Q. What was the terrain like in the field?

A. I don't really remember that. I mean --

Q. Well, you mentioned a drop down in the road.

A. I mean, I just don't remember. I mean, if it was exceptionally -- I don't remember a lot of shrubs, maybe some small, kind of, dead grass or weeds or whatever it may have been.

Q. How high would you say the vegetation was compared to boot level? Below? Above knees? Waste?

A. I'm not sure. I would say somewhere around boot level, maybe slightly above. But I don't believe it was above knee level.

Q. How dark was it at the time when you moved the body?

A. I don't really remember that. I do remember that before -- immediately before the blast, the sun was

getting ready to go down. So I mean, depending on how long it had been, it could be very dark. I mean, it was at least -- at least dusk, if not past. I think it must have been in the dark after dusk by quite a long time. I know once we finally left, it had been dark for a while.

Q. When did you -- when did you first make eye contact with that Iraqi? Where were you?

A. The only time I would remember seeing him is when I was sent out to get him.

Q. Was it -- okay. So when you were ordered to go get him by whoever ordered you at that point, had you seen the Iraqi?

A. I think at that point I would have seen him from the road. But I mean, I guess I must have seen him from the road in order to walk out there, but I'm not entirely sure.

Q. So it's possible to see him from the road?

A. I believe so.

Q. Would the terrain and vegetation been of such that it would have been impossible to see someone that's laying flat on the ground?

A. I don't believe it would have been impossible, no. I mean, if they were laying a certain way or maybe behind some weeds, they could be concealed. But I don't remember searching for the body when we got out there to drag it. So that would make me believe we could see it from the road. We just knew straight where to walk too.

Q. Are you aware of anyone else that was observing the body at the time?

A. No. I mean, I know Sergeant Duran, Sergeant Gutierrez were near the front of the C-square or around it. Sergeant Britt was on the C-square. But I don't know which direction any of them were looking or, you know, I don't know if they had been looking out there.

Q. All right. So what happened after -- after you picked up all the gear and cleaned up around the blast area?

A. After we collected all the gear and everything, we -- the LAV that was damaged got hooked up to get dragged by the tank recovery vehicle. And then a lot of us loaded up into the C-square. And then I believe some of the scouts got into the other LAV. And then we followed

the -- the downed LAV to where it got dropped off, and then we continued on to Blue Diamond.

Q. All right. So before you vacated the area, did you or did you observe any other -- any other folks in the unit making a sweep for enemy weapons?

A. Not that I remember.

Q. Are you aware of any enemy weapons that were seized?

A. No.

Q. And was there anything of significance that happened that evening when you got back to Camp Blue Diamond?

A. I believe that night General Mattis met us out there and, you know, said sometimes things happen and that you just got to keep going. And then I'm not sure if it was right then or the next day we were offered if we didn't want to be part of the jump anymore, we could leave. That's all I remember afterwards.

Q. Do you recall having any conversations about the dead Iraqi or Major Card or anything like that?

A. No, I don't.

Q. All right. Now you recall making a statement to NCIS?

A. Yes.

Q. And that was some several years later?

A. Yes.

Q. Have you had an opportunity to review that statement?

A. I did.

Q. How long ago did you review that statement?

A. Earlier today.

GC (Capt Gordon): Sir, I'd like to show the witness his statement.

IO: Hand it to him.

CC (Mr. Faraj): Sir, I believe you've already overruled my objection. You're going to let them in. I have a standing objection to all these statements. There is no question posed, so I'm not sure what it's being offered for. If you're going to accept them anyway, we don't need to spend 10, 15 minutes with them reading them unless there's a question that they need to have their

memory refreshed for.

GC (Capt Gordon): Sir, I was --

IO: I'm going to give the government an opportunity to explain this statement. I have it in front of me. I'm going to let the witness explain it the best that he can. Just because I admit it -- his statement, doesn't mean I accept the truth of the matters asserted within that statement.

CC (Mr. Faraj): Very well. But my point is there is no question before this proceeding at this time. So if there's a question, Mr. Tipton can answer it if he needs to have his memory recollected -- or refreshed. And of course, he can ask a question, you said that, explain it. We can go through all that, but to read the statement --

IO: Draw the witness' attention to the portion of the statement -- you can hand him the statement, ask him if this is his signature, if he made the statement. There are portions within that you want to question him about, just draw his attention to that.

GC (Capt Gordon): Exactly what I was going for, sir.

IO: Continue on.

Questions by the government (continued):

Q. Will you look at the back page, please. Is that your signature?

A. Yes.

Q. And -- well, here I'll take that back. Obviously, we've already discovered that there are some discrepancies in this statement, correct?

A. Yes.

Q. All right. Well, let's -- what issues do you have that you believe actually are not true statements?

A. I'm not sure I can say any of them are not true. I would say that before the statement was written, I had been talking to Special Agent Periard and whoever the other man was, and I remember having a very difficult time remembering a lot of things. And then -- so my discrepancies with that statement is that I am -- I'm not certain that all those things are actually pulled

straight from my memory as much as talking about something enough you could easily form a thought about it that seems like it could be a memory.

So -- and after leaving from making that statement, I was thinking about it and I'm unclear if it was actually from my memory or if it's things that I could piece together from things that were said.

Q. Well, let's just address that right now then. When did NCIS contact you?

A. I think it was 2008 according to the statement. December is when I actually saw them.

Q. How did they make contact with you?

A. I must have been in November by phone, because we had gotten a landline installed into our house. And I'm not positive, but I feel that it was within a matter of days that they called. And then I remember discussing with them after that that I felt like they found me quick, because I had just gotten the phone. They made the statement that as soon as you get a phone or something, they can find you. So it -- to me, it sounded like they had been looking for me. Then I bought the landline through AT&T or whoever, and they could find me and they contacted me.

Q. So what happened when they called you?

A. We made an appointment to meet at the Bakersfield Police Department. And then I had to leave work slightly early one day and met them and we went over this.

Q. How many days after that phone conversation?

A. I don't remember. I believe it would have been earlier in the week that they contacted me and that maybe later that Friday. But I'm not positive. It had to have been the week before.

Q. How many times did you receive a call?

A. I only remember once for the initial setup. I mean, we've been contacted since then to say that the case is still ongoing and --

Q. Was there any -- any substance discussed during that initial telephonic conversation or was it purely administrative to set up?

A. No. I had no idea what it was about. I was -- just said they wanted to speak to me about something.

Q. What was something? Did they say something?
A. I don't remember if they said actually something, but they said they wanted to speak to me and did not say what about, so --

Q. What did you think it was about at the time? Did you have any thoughts?
A. I did have thoughts that were incorrect. I thought it was about the route that we decided. I thought it was more about Bohlman's death. That's what I thought.

Q. So how did the -- how was the interview conducted? Where was it conducted?
A. It was conducted, I guess, it was an interview room in the Bakersfield Police Department.

Q. How many people were there?
A. Myself and the two investigators.

Q. How long did it last?
A. I believe it lasted three hours, but it could have been between two and three. Something like that.

Q. Did you feel free to leave?
A. No. I guess I didn't feel like I could just leave whenever, but I -- so no.

Q. Did you feel that your presence was voluntary -- or your participation was voluntary, would be a better way to put it?
A. Yes. I would say that -- well, with what they said, it was voluntary participation. But if I decided not to participate and they decided that they needed me or something, that they can subpoena me or something. I believe that's -- I mean, I believe they said that if I decided not to participate, you know, they could subpoena me.

Q. How was the interview conducted?
A. Well, I remember at first they just had me, kind of, going through the events and I was just recalling what happened up to the -- up to and through the blast that I could remember. And then after I walked them through everything that I remembered, they kind of walked me backwards through some of it. And then they did this repeatedly. And then sometimes they would ask kind of a question that would lead you in a certain direction. And then they would ask questions about specific things,

if I remembered anything about something.

Q. How was your memory going into it?

A. Well, then and now, both, I think my memory is pretty good. But after talking to them, I thought that maybe I really did just forget about the Iraqi and the shooting. I didn't recall dragging the body at first. But after speaking to them, then I did. And then from that, kind of makes you question some of the other things; that if there's more you forgot or if you really didn't see anything.

Q. Well, of the thoughts that occurred to you only after -- only after or during the interview, how much of that -- how much of that do you believe actually occurred and you just needed the refresher?

A. As far as what I think --

Q. For example, dragging the body. Do you believe right now -- although you didn't remember before you went to NCIS and it took that to help you remember -- do you believe right now that you --

A. Yes.

Q. That you did, in fact, drag the body?

A. Yes, I do.

Q. Are there any other memories that you did not have going into it that you acquired during the interview that you still have now you believe might not actually have happened and that they were just a seed that was planted?

A. I mean, about the fact that I actually saw Major Card shoot the man. I don't believe that. I know I actually don't know I remember it, but -- so I'm just not sure of that memory.

Q. Did you make the statement voluntarily?

A. I did.

Q. Were you forced or coerced to make it?

A. No.

Q. And it was at -- at least at that moment in time -- that particular moment in time, that was the truth to the best of your knowledge?

A. Yes, at that time I felt that it was.

Q. Okay. Well, let's make sure that we have all the discrepancies.

A. Okay.

Q. All right. The rustling and moaning out in the field, we've addressed that. Are you comfortable with the way it stands right now in your testimony?

A. That I -- I'm not entirely sure I recall that?

Q. Yes.

A. Yes.

CC (Mr. Faraj): Sir, all these questions are going to be asked and answered. He already testified from memory at this hearing and you have another statement that he made and I think the IO can determine which he's going to believe and which you're not. And actually, I'd like to take a brief recess without the witness being here because I'd like to put something on the record.

IO: All right. Just step out for a moment.

[The witness departed the courtroom.]

CC (Mr. Faraj): It's clear to me -- and maybe this is just defense -- that these men, almost to a person, suffer from severe PTSD. And NCIS used whatever technique they used to either suggest facts, plant facts that have no independent basis in their memory. And the fear I have -- not -- this is not an accusation towards the government, but I just want -- that's the state of these men. So when you begin to suggest other things, we begin to have them adopt facts that may or may not be true. I mean, the best way to get this is to just ask them what they remember and we have other things and you can decide what's true and what's not.

IO: I think the government is entitled to ask them to look at the statement and say go through the statement and either you do have an independent recollection of that or you don't. And they're free to say I do or I don't. The witness recalled many facts, some of which are in the statement. But I think the government has an opportunity to at least go through that and say, What part of this do you have an independent memory as you sit here right now? And it's obvious to me the witness has no problem saying, I don't remember this. I don't remember that. I don't remember the following. But I

think the government can go through it to some degree.
I don't want you to go through the whole statement.

GC (Capt Gordon): Sure.

IO: Obviously the part that I'm looking at is --

GC (Capt Gordon): Paragraph 2 on --

IO: Paragraph 2 on that second page.

CC (Mr. Faraj): My objection is simple. He's already testified to everything he remembers.

IO: Maybe, maybe not. Maybe he did, maybe he didn't. But I'm certainly going to give the government the opportunity to say, Do you recall this part? And he might say, You know what? That is true. I do recall this part. I didn't before I came in here, but I do recall this part. He might say I remember none of it. So be it.

But at least go through that with him. Go through that. I'm going to let you go through the paragraph and he'll either say I do have an independent memory. As I sit here right now, that is the truth. Or like the other -- the moaning -- at the time I thought it was the truth, but I don't have an independent memory right now.

GC (Capt Gordon): Yes, sir.

IO: And if he says I've got an independent memory of that right now, that's certainly an avenue for the defense to question him about.

GC (Capt Gordon): All right. Bring him back in.

IO: All right. That's the paragraph that I'm focused on.

[The witness entered the courtroom.]

GC (Capt Gordon): Go ahead and resume your seat, please.

[The witness did as directed.]

Questions by the government (continued):

Q. Okay. You said in your statement that when referring to the dead Iraqi, he had to be knocked out and was coming around. What did you mean by that?

A. I believe I meant that we didn't notice him or hear from him or see him for however long it took up until that point to hear him.

Q. And you're confident that he was dead when you picked him up?

A. Yes.

Q. Why do you say he was dead?

A. I remember him being dead. I don't --

IO: Let's do this. Give him that paragraph and the statement. Let him look at that. If there's anything in that statement -- there's one paragraph I'm focusing on. If there's anything in that statement as you sit here right now -- and it's the second paragraph on Page 2 of 6.

WIT: Okay.

IO: Just want you to read that statement. Is there anything within that paragraph that as you sit here right now, you have an independent recollection of, underline it or highlight it.

WIT: As in that I'm confident I do remember?

IO: Yes.

WIT: Okay.

IO: As you sit here right now, you can recall in your mind saying I absolutely remember that; this statement is the truth as I sit here right now.

WIT: Okay.

[The witness did as directed.]

MJ: All right. Just if you would, just read me -- if you could, read me the portions so we can all follow them.

WIT: The portion that I highlighted was, It was a male Arabic

of some sort, wearing a whitish or dirty white man dress or robe. I don't remember whether he had facial hair or a headdress. And myself and Sergeant Gutierrez grabbed the now dead Iraqi by the ankles and dragged him up to the side of the road.

IO: So it's the last line of that paragraph -- myself and Sergeant grabbed the dead Iraqi -- which you've testified to -- dragged him to side of the road. And the individual was a male Arabic of some sort wearing a white or dirty white man dress or robe.

All right.

WIT: Yes, sir.

IO: The rest, as you sit here right now, you have no independent recollection of it and cannot verify if that information is true?

WIT: Correct.

IO: Thank you.

Questions by the government (continued):

Q. You mentioned you were trained in ROE, LOAC -- all those things before you deployed?

A. Yes, sir.

Q. Given the situation as you saw it, what is your opinion of the hostile -- I guess, the hostile intent during this time frame after the IED blast when this Iraqi was killed?

A. I felt no hostile intent.

Q. In your understanding of rules of engagement, escalation of force, and the fact that you didn't believe that this Iraqi had a weapon -- when do you believe that lethal force would have been authorized to use on him assuming the fact that he was shot after the blast and wasn't a casualty of the blast?

A. I would feel the Marines would have to feel that one of the other Marines or someone was in danger of being wounded from actions of the Iraqi.

Q. What would be the appropriate way to handle a wounded Iraqi that's laying on the ground?

A. I mean, after you have confirmed that he's not armed or anything, you would get the corpsman over, you know, make sure the Iraqi's in a clear area where he can check their wounds and address them as needed.

GC (Capt Gordon): What do you believe that -- let's say that the Iraqi is laying on his back and you don't know if he has a weapon. What would be --

CC (Mr. Faraj): I mean, are we going to do a bunch of "what if's"? Because he already said that he doesn't remember the Iraqi getting shot by Major Card.

GC (Capt Gordon): Sir, he viewed the body.

CC (Mr. Faraj): And he said he picked it up, he dragged it to the side, and he didn't remember anything else. So we can go "what if's" from now until tomorrow.

IO: I guess, where are you going with it?

GC (Capt Gordon): Sir, at least in our opinion, he's the closest one knowing what the situation is with the hostiles, what happened with the engagement, what the body looked like, whether the body had a weapon.

IO: I know, but why is his answer -- if he said the guy could be out cold surrendering and he shot him, what difference does it make what his opinion is of how they should of handled the individual?

GC (Capt Gordon): Well, sir, I suppose it's just as it relates to this particular person, not necessarily a hypothetical. Just trying to recreate --

IO: Let's stick to the facts, alright? He's not here to establish the legality or what would have been appropriate or not appropriate. That's ultimately up to a trier of fact to determine the propriety of whatever action is taken. His answer, although interesting -- and understanding from his perspective what took place, doesn't assist me. Ultimately, I'm responsible -- or the trier of fact is responsible for evaluating actions taken, not his opinion of what should have been done or what could have been done.

GC (Capt Gordon): Aye, sir.

IO: From both sides, individual responses are helpful, I guess, in evaluating where they're at. But ultimately, it's up to a trier of fact, the legality -- the lawfulness of a particular act, alright?

GC (Capt Gordon): Yes, sir. So in that regard, the government has no further questions.

IO: Defense counsel.

CROSS-EXAMINATION

Questions by the defense:

Q. Good afternoon, Mr. Tipton.

A. Good afternoon.

Q. Did you see one of the two Iraqi men -- the one or the two Iraqi men by the C-square get up and leave eventually?

A. No.

Q. Did you see one of the staff sergeant's from the QRF go down on one of them, rub his sternum, and then one of them get up and walk away or they put him on a vehicle, because he was injured and he was feigning death? Did you know that happened?

A. I don't remember that.

Q. Okay. So now do you remember one or two on the sidewalk at the end?

A. I remember there was one on the sidewalk and then in addition to that one, we dragged another one up.

Q. Great. The one on the sidewalk, do you recall if he had any wounds?

A. No, I do not.

Q. Okay. And you don't recall if the one in the field had any wounds?

A. No, I did not.

Q. Okay. And you already testified to that. Thank you. Based on your experience, is it common for people to feign death in engagements? If you don't know, you don't know?

A. I would say no, but I do know that in one of my previous deployments, we had an Iraqi that we believed was dead

with a head injury and then he just sat up on his own.

Q. Great. And I just want to be clear. As you sit here today, based on your independent memory, you don't remember Major Card, then Captain Card, doing anything illegal that day or inappropriate?

A. As far as -- I mean, no, I do not remember him doing anything illegal. Specifically, I don't remember him shooting someone.

Q. You hesitated. Is there something else you wanted to say?

A. No. I just -- I don't know. I feel like if I say I don't remember him doing anything, you're going to bring something else up that's not what I'm discussing.

Q. I haven't asked you any questions yet -- something illegal or not proper?

A. No, I do not remember anything.

Q. Okay. Have you -- were you told that I'm going to trick you or something?

A. No. I watch a lot of TV.

Q. They're the tricksters. I'm the good guy. I'm kidding.

You were asked a couple of questions about hostile intent. Remember near the end when they said -- they asked you if the Iraqi male was demonstrating hostile intent. You never got eyes on that Iraqi male until later, right?

A. That I remember, no.

Q. And you were asked what would have to happen for somebody to shoot him, and you'd said there has to be hostile intent. Do you recall that?

A. Yes.

Q. Okay. Now, this is not a trick. Early on in the engagement, you fired?

A. Yes.

Q. On a vehicle?

A. Yes.

Q. And no one presented what we commonly believe -- us lay persons here -- you know, if you believe hostile intent to be firing, nobody was firing at you at that time,

correct?

A. There was also nobody in the vehicle.

Q. Okay. Are you sure about that?

A. It was a vehicle that we saw people get out of. I mean, I guess if someone wanted to stay in the vehicle, they could have.

Q. And hide, right?

A. Yes.

Q. But at the time the threat of those lights were sufficient enough to justify you shooting the headlights out, correct?

A. Yes.

Q. Is that fair to say?

A. Yes.

Q. And that's a judgment call you make in the field based on the field circumstances you were facing?

A. Yes.

Q. We don't go around shooting headlights out?

A. Correct.

Q. But based on the circumstances given an IED and a Marine had been killed, you were in some sort of environment that allowed you, based on your understanding of the rules, to do exactly what you did?

A. Yes.

Q. And as you sit here today, you don't believe you did anything improper?

A. Correct.

Q. Okay. I'm going to ask you to get up. I have a pen -- you have a pen? Yeah. Would you please just draw a box representing -- a small box representing your vehicle once you got to the front of the convoy? Would you do that for me on that piece?

A. Once I got to the front of the convoy?

Q. I'm sorry. You were already in the front of the convoy.

A. I was in the front.

CC (Mr. Faraj): Okay. So go ahead and draw your vehicle.

GC (Capt Gordon): Sir, at this point, I'd look to point out that the witness has already drawn a map and if that's what we're doing like we've done with every other witness, perhaps he can adopt his own map and we can call it good.

CC (Mr. Faraj): This is my cross.

IO: I'll let him from his recollection. If there's a discrepancy, I'll allow him to draw his -- what he remembers right now. It could be the same; it could be different.

CC (Mr. Faraj): Or it could be we're going into a different area.

IO: Or it could be we're going into a different area.

Questions by the defense (continued):

Q. Would you draw a cross for me representing the IED initially.

A. So am I drawing the box for the vehicle, or just --

Q. An "x" initially for the IED. And then draw the road if you remember where it would go through that "x" also.

A. I believe it would be something like this. I'm not entirely sure where in the curve it was. It's either towards the end or just past the end.

Q. So what is your direction of march -- of movement?

A. This way.

Q. Very good. Now, where did your vehicle come to a stop?

A. So the road also went like this. It deadended here.

Q. Okay.

A. And then the other road would have been on the other side of the field. Something like that.

Q. Okay. Let's go ahead and write the word "field" where you think the field is.

A. [The witness did as directed.]

CC (Mr. Faraj): And down here --

IO: The IED is the "x" mark?

CC (Mr. Faraj): Yes. The "x" equals IED.

Questions by the defense (continued):

- Q. All right. Now, where did your vehicle come to a stop?
A. So the -- this approximately right here is the -- I know you didn't ask for it, but the Iraqi police.
- Q. Iraqi police?
A. Iraqi police. And so my vehicle came to a stop somewhere --
- Q. Doesn't have to be exact.
A. Somewhere around here.
- Q. Okay. Okay. Let's put a "1" next to it because you were the lead.
A. Okay.
- Q. All right. Now, you came out of the vehicle at some point?
A. Yes.
- Q. Where did you go?
A. So initially, I came out and went somewhere right over here. There were some concrete barriers.
- Q. I want to fast forward through this. Where'd you come to take a position after you returned from the field?
A. It would have just been along the curb.
- Q. So give me a little circle.
A. [The witness did as directed.]
- Q. Where were you oriented as far as sector of fire?
A. We were just -- you want me to draw?
- Q. Yes. Remember how they do sectors of fire?
A. It would have been something like this.
- Q. And what was the -- go ahead and put a box for the C-square where you remember it and put "C2" in it.
A. [The witness did as directed.]
- Q. And then a little stick man for where the -- little stick man for where the man that you moved came to rest after you remember moving him.
A. After moving him?
- Q. Yes. Put "2" next to that for position two.

A. [The witness did as directed.]

Q. And then put another stick where you remember him being in the field and put "1".

A. [The witness did as directed.]

Q. Okay. Is it fair to say then from your position here, you wouldn't have been able to see what was going on back here? You would have no way to see that way, correct?

A. Correct.

CC (Mr. Faraj): All right. May I have that? You can have a seat. Thank you, sir.

IO: You want him to sign and date that, Mr. Faraj?

CC (Mr. Faraj): We may go back to it. But -- eventually we will.

Questions by the defense (continued):

Q. When did you get up from -- you said you got up from that position and went back to the C-square at some point. Had the QRF arrived by the time you went to the C-square?

A. I don't believe so, but I'm not positive.

Q. Okay. Was the recovery vehicle there?

A. No.

Q. What triggered you leaving there and going back to the C-square? Did anyone replace you in that position?

A. I was already with Corporal Phillips up front. And this isn't actual memory but assumption that I think I just said, Corporal Phillips, since you're up here, I'm going to start collecting the gear and making sure we're ready to go.

Q. Did someone call you to do that?

A. I don't believe anyone called me to do that.

Q. All right. You just -- let me back up. Are you remembering this or are you making assumptions at this point?

A. Assumptions.

Q. Okay. So you don't actually have a memory of doing that?

A. I do remember getting up to collect the gear and walking back to the C-square obviously, but I'm assuming why I got up at that point.

Q. Okay. So you have a memory of collecting the gear. Do you remember what gear you decided to collect?

A. Mainly, I ensured that the scouts collected all the serialized gear as in NVGs, the rifles. Because obviously Logan wasn't going to be taking his with him in the medevac vehicle he went in. So I was trying to make sure we had a good handle on all things like that.

Q. Okay. And while you were collecting the gear and during the time you went back to the C-square during the movement back to the C-square when you were walking, did you hear any?

A. No. I --

Q. Go ahead.

A. I was just going to say not that I remember, no.

Q. Okay. Were your ears functioning? I ask that because of the blast.

A. I understand why you're asking. I just -- I mean, at that point I had talked to other people so I could hear.

Q. Okay. All right. Now, during direct examination, we kept referring to the man that you picked up as a dead man, the dead man, the dead man, correct? On several occasions he was referred to as the dead Iraqi man?

A. Yes.

Q. Again, this isn't a trick. But as you sit here today, you can't say for certain that he was definitely dead? And I want you to call upon -- you said you were trained as a paramedic?

A. No.

Q. Are you studying to be a paramedic? Am I mistaking people?

A. I believe you are.

CC (Mr. Faraj): Are you in school?

IO: That was the last -- that was Kadrie.

CC (Mr. Faraj): I'm losing it.

Questions by the defense (continued):

Q. What are you doing now?

A. Right now, I'm finishing up my last quarter at Cal State, Bakersfield.

Q. All right. Can you say for certain that he was dead?

A. I guess, no, I couldn't -- could not. I didn't check a pulse and I don't recall what wounds he had, so I guess no.

Q. Is there anything in what you did in going out to pick up the man whether he was dead or wounded -- is there anything in what you did that would be inconsistent with the laws of war as you understood them?

A. As far as moving the body, no.

Q. Yeah.

A. No.

Q. In fact, if he were wounded, you would expect to move the body to get him aid?

A. Correct.

Q. And if you were dead in Iraq, the QRF or somebody comes in and picks the bodies up or the Iraqi police and they deliver them to the hospital, correct?

A. Correct.

Q. What would have happened if you all had left and didn't tell anyone there was a body out there? Do you know?

A. No, I don't know.

Q. He would have been --

A. He would have laid out there I imagine. Someone would have found him and not been happy with the U.S. military.

Q. Why did you just say that?

A. Well, I mean if you just found a body laying dead and there had been a U.S. military group around, I mean, as an Iraqi, you would think that they just shot them and left them is my assumption.

Q. Okay. I want to move forward a little bit.

A. Okay.

Q. And I want to talk to you about the NCIS interview.

A. Okay.

Q. All right. Those statements that we covered that you say those came from someone else, it wasn't independent recollection from you. Do you remember that?

A. Yes.

Q. All right. I'd like to try and understand how that happened, the process. So I'm going to take you step by step through it.

A. Okay.

Q. You get contacted by the NCIS agents, you meet them in Bakersfield, California?

A. Yes.

Q. Okay. Did you meet in a room?

A. One of the agents met me downstairs in the lobby and then took me in the elevator upstairs into the room.

Q. What did the room look like?

A. I mean, it was a fairly small room. I think there may have been a couch in there, but there was a table close to the center of the room that both agents sat on one side and I sat on the other.

Q. Okay. And they begin to ask you questions?

A. Yes. I mean, they showed me identification and everything and then I don't remember. I feel like they discussed what I was currently doing and everything before they asked me about if I remembered a certain date, and I said I didn't remember the date. But I thought that I understood what day they were talking about because that was the only day that I could think of that anyone would want to discuss.

Q. When you were contacted by them and they asked you about the date, did you at that moment remember anything?

A. They didn't bring up the date or anything until I was there in person. I had no idea what date or anything.

Q. Okay. Thanks for bringing that up. So when they call you, do you ask them, Well, what do you want me for?

A. No, I didn't that I recall. I mean, I don't remember trying to get specific with them. I was just surprised that I was being contacted by the NCIS.

Q. You said you made an assumption it was Bohlman?

A. Yes.

Q. Okay. Leaving Lance Corporal Bohlman aside, is there anything else in your mind that came up in your mind that you thought there's some criminal act that there's an investigation about?

A. No.

Q. Besides Bohlman's death?

A. That was the only thing that I thought of.

Q. Okay. So initial pleasantries and introductions. How did they begin their questioning?

A. They asked me to run through what I remembered about that -- that day.

Q. And you did that?

A. And I did that.

Q. Now in a first run through, you didn't bring up dragging a body?

A. I don't -- no, I didn't.

Q. Okay. So at the moment they asked you all that you remember, that's all you could remember?

A. Correct.

Q. What you've essentially relayed to us here minus the dragging of the body?

A. Yes.

Q. All right. How did the memory of the dragging of the body come up?

A. I'm not entirely sure. I mean, they would have just been talking and had to ask some sort of question about if I remembered any dead Iraqis.

Q. Okay. And that's when you might have remembered dragging the body?

A. I'm not sure. I'd be assuming what I remembered, but it would have had to have been after that or maybe after a question about do you remember seeing a body out in the field or anything like that.

Q. I guess what I'm -- come up by itself or did they suggest it and you adopted it?

A. No, I didn't adopt that one. But I'm not sure on if they had mentioned it before or not.

Q. Okay. You did adopt some other ones?
A. For -- in the statement that I signed, yes. And now I'm unsure of those.

Q. How did they suggest those to you?
A. It would have been just through talking and asking questions and saying, Well, maybe. Do you remember anything else about -- and they kind of narrowed down sections about -- about things. So they worked from the whole thing and then they worked, like, back through. And then they'd kind of go and focus on more when you were moving from your LAV back to the C-square, Do you remember anything about that and so --

Q. Thinking about that interview and the results of it and the statement you gave, would you feel comfortable having those investigators be investigators on a case where you were a defendant and the way they were behaving?
A. I don't think I would have questioned their -- I'm not sure I would still question their investigative -- but I don't know what a proper investigator would --

Q. Well, you would --
A. I have nothing to scale this off of. I've never had to talk to investigators before.

Q. You have your statement?
A. Yes.

Q. Which has some fundamental misstatements in it?
A. Okay.

Q. And you signed it. They basically got you to sign and initial every piece of it saying that it's accurate, but today you're telling us it's really not. You don't have any independent memory.
A. So I guess as a defendant then --

GC (Capt Gordon): Sir, I object. He already made it clear that he doesn't even understand the proper protocols and tactics that a special agent of this sort would be using. And he's still asking if you were the accused, would you want --

IO: All right. I think Mr. Faraj --

GC (Capt Gordon): -- these guys doing your case.

IO: I think defense should have some latitude here. I think it's one of the themes of their case is the way that these statements were obtained. Frankly, I'm just as interested as well.

At the end of the day, counsel for both sides, I'm not sure -- in my evaluation right now, I'm not sure it adds up to too much. The facts are the facts and regardless of, sort of, whether there was impropriety or not, I've got the factual information in front of me. So I understand it's a theory of the case. It's a curious matter. I'm focused on that, but I'm more interested in what the witnesses are going to say and what I have in front of me. Their reasons for making particular statements or changing them as part of the investigation but not necessarily my focus.

At the end of the day, for whatever reason -- good, bad, indifferent -- I take the information they give me today that either here's what I remember, here's what I don't remember. If the case were to go to a court, we know these statements are not coming in as substantive evidence. Their statements -- 32 statements could come in potentially as substantive evidence, but these statements would not. They could just be used for impeachment purposes.

So I'm focusing on the information in front of me. Although it's certainly an interesting matter how we do have statements such as these that now individuals are saying that are quite different from what they recall.

CC (Mr. Faraj): This is a discovery too for us. We've never talked to these witnesses. NCIS has been beating up these guys for the last two years.

IO: I got you. 32 not only is a method for obtaining factual information, but there's some latitude as a discovery tool.

GC (Capt Gordon): Thank you, sir.

IO: So, you know, the best the witnesses can, I'm going to have them explain how the inconsistency came to be between what we have in front of us in written form. And we're not necessarily talking about, you know, it was light blue and now they're coming into court and saying it was more of a darker blue. It's sort of the

piece of paper was green and now they're saying there was no color there. So it's quite different.

So I'll give counsel for both sides the opportunity to have the witnesses explain the statements, what's true or not true in the statement, what they remember, and how they can explain how it is that they made this statement initially and swore to its accuracy -- how that process came to be.

Questions by the defense (continued):

Q. You're in your last year of college?

A. Yes.

Q. I just want you to apply your knowledge as a former Marine, knowledge of the ways of the world, your education and tell me that if you're a defendant in a case, would you be comfortable with their methods and in the results that were used in your -- during your interview or interrogation?

A. I would have to say, no, based on the fact that I, myself, took -- you know, signed this statement saying that and then now am unclear on whether those are actually my own -- some of those are my own memories or not. So I would have to say I would be uncomfortable with that.

Q. Very well. How old were you in 2008 -- December of 2008?

A. Twenty-seven.

Q. Okay. And were you in your second year of college or first year of college?

A. I might not have been at Cal State yet. I might have been at Bakersfield College, the junior college, at the point still. So, kind of, second-ish year.

Q. But you had college time?

A. Yes.

Q. And how many years in the Marine Corps?

A. Four.

Q. Did you do anything before the Marine Corps?

A. A year of college.

Q. Okay. Have you been diagnosed with any type of PTSD?

A. No.

Q. Have you been diagnosed for PTSD?

A. No. I'm not sure what the difference is between those two questions, but --

Q. I asked -- I assumed -- I asked you if you had been diagnosed making the assumption that you had gone through a diagnosis. So if you -- what I should have asked is have you been -- have you gone to see anyone about any type of mental health issues?

A. No.

Q. Okay. When the special agent called you -- the NCIS special agent -- he said that -- how did he tell you he got your number?

A. He -- from what I remember, he said it was to do with -- I don't know that he mentioned specifically, but I had mentioned that we had just gotten this phone number, and I didn't have -- I don't have -- that's the only piece of material, like, bills or anything that we get that has my name on it. So I guess the house does too. So I assumed phone bill. At that point we had just gotten the phone. So I thought that they had gotten it through the phone bill, but I guess it could have been through the buying of the house as well.

Q. Did you have any feeling about that when you discovered that they could get your phone number that way?

A. I mean, I was pretty impressed. Because if it was the house or the phone, either of them we had just got so --

Q. Okay. And you specifically remember them saying to you that you can be subpoenaed by them if you don't cooperate?

A. Yes.

Q. Did he say anything else in the way of information to get you to cooperate with him?

A. No. I don't remember any sort of coercion or anything like that. I just -- because when we were going over it at first, I was kind of -- I was still having a hard time remembering. And then he told me a couple times, he was like, you know, you don't have to -- you don't have to protect anybody or anything like that. And I told him that I wasn't trying to protect anybody. I just didn't feel that I remembered. And then we went over some more and some time during that, I believed

that he mentioned they could subpoena me.

- Q. And he mentioned that -- what was going on when he mentioned that?
- A. Just the same thing I believe. Just --
- Q. That if you don't tell them what they want, they can subpoena you or what? I mean --
- A. That if -- I feel like what he was saying that if he was under the assumption that if he felt that I was withholding some sort of information that I did know, that he could subpoena me.
- Q. Does he have some special lie detector powers to know what you knew?
- A. No. I do recall him saying at one point that him and the other agent were trained in ways of helping people who could be witnesses remember, you know, trained how to run through scenarios that would -- run through a scenario that would help someone remember things they may have forgotten.
- Q. Say more about that if you remember.
- A. That's all I remember about it.
- Q. What did you take that to mean?
- A. That they'd been instructed on how to question people in investigations.
- Q. Okay. Did you believe that they had subpoena power? Did you believe him when he said that to you?
- A. Yes.
- Q. Okay. If you find out that they don't have subpoena power, how would that make you feel?
- A. I don't know. I guess I'd be upset by it. I don't think it would cause me too much trouble, but I don't think it would have changed anything I did.
- Q. Okay. Did they approach you in a way that suggested they were -- you were trying to protect somebody? Is that why they said, you know, you don't have to protect anybody? I didn't understand that part?
- A. They were just saying that -- I remember they said, you know, they know how it is that sometimes you want to protect other Marines or something from, you know, something happening to them. So he was just trying to say if I was attempting to protect someone, that I don't

need to. That I should make sure that the right thing happens. If something illegal happened, they wanted me to discuss it rather than attempt to protect someone from getting prosecuted with it.

Q. How frequently did they repeat that line or did they bring that issue up?

A. Maybe once or twice. And it would have been right in the same time, not throughout the investigation.

Q. Well, what did you talk about for three hours? You know, we started here -- we've gone two -- right now you haven't been going even two hours, not even an hour and a half actually. So what did you talk about for three hours? I mean, we've gone through everything twice, we've cleaned up your inconsistencies, we've even talked about the method of investigation. So what did you do for the next hour and a half?

A. All I remember is going through it and then working backwards through it and then going through it again and starting over a couple times. And then kind of filling in some spots, you know, where they -- like, when they were narrowing it down into those areas, doing that.

And then I believe there was a little bit of time when the investigator was typing, was just doing something on the computer and I just kind of talked to Special Agent Periard. And then while they were printing out the statement and everything and then we went over the statement. That's what I remember.

Q. Okay. No worries. Did you -- when you remembered later when you began to think about the statement you gave and you told us today that you realized that you didn't really have independent memories of some of the things in that statement -- do you recall testifying that way earlier?

A. Yes.

Q. Did you contact any of the NCIS agents to tell them -- well, first of all, did they give you any contact information?

A. They did. They gave me cell phone numbers. But, no, I did not attempt to contact them.

Q. Okay. Did you tell anybody else besides these prosecutors -- I think you already told them your statement was different. But had you at any time

communicated your, sort of, more clear-headed memory of -- or lack of memory as to what happened to anyone besides these prosecutors?

A. I'm not sure if I talked about it with my wife or not.

Q. Okay. Besides your wife?

A. But no. Other than that, no.

Q. Okay. I want to -- I apologize for asking you to do this. But I want you to think about that day again as much as you can. And tell me from your memory without any of that statement whether you believed in your mind at the conclusion of that day when you began to make your way back to Blue Diamond whether you felt that there was any misconduct or a crime committed by Major Card or by any of your Marines?

A. No, I don't -- I don't remember thinking anything about that. The only thing I remember thinking about at the end of that day was Bohlman.

CC (Mr. Faraj): Before we're done, would you please go ahead and write your name on that diagram, and then the date today is 20 April 2011?

IO: Any additional questions, Mr. Faraj?

CC (Mr. Faraj): I'm done, Your Honor.

IO: Government counsel, any additional questions for Mr. Tipton?

GC (Capt Gordon): Sir, just one second, please.

IO: Okay.

REDIRECT EXAMINATION

Questions by the government:

Q. Mr. Tipton, was there -- I know you said that there wasn't -- you didn't see any weapon on the body of that Iraqi that you pulled?

A. Correct.

Q. Were there any weapons in the vicinity of the person that you saw?

A. No, not that I saw.

GC (Capt Gordon): I have nothing further, sir.

IO: Defense counsel?

CC (Mr. Faraj): No, Your Honor. No, sir.

IO: All right. Mr. Tipton, you're going to be at the same address and phone number for the foreseeable future?

WIT: Yes, sir.

CC (Mr. Faraj): We have his contact information already.

IO: All right. You're instructed don't discuss your testimony with anyone -- the testimony you gave today and the testimony you may have to give in the future if necessary. If anyone attempts to discuss this case with you, give a call. I don't care to the government, to Major Goode, to Captain Gordon, or Mr. Faraj, alright?

WIT: Yes, sir.

IO: And certainly, don't discuss the case with anyone else.

WIT: Yes, sir.

IO: Thank you for your testimony. You're excused.

WIT: Thank you, sir.

[The witness was excused and departed the courtroom.]

IO: Government counsel, I'm just looking over my list of potential witnesses. Obviously, you've got Periard; Rendon; Gunnery Sergeant Coleman, what is his --

GC (Capt Gordon): Sir, the government is not calling him.

GC (Maj Goode): We're not calling him, sir.

IO: You're not calling Coleman? I guess my question is this: We've been going at it for quite a while. We've got a number of witnesses who, for whatever reason, their account in court today is markedly different than their statements. The government's kind of been needling around the periphery so far. Do you have any witnesses who provide firsthand eyewitness testimony as to what took place? More specifically, that Major Card

shot an unarmed injured Iraqi.

GC (Maj Goode): Yes, sir, Jack Phillips.

IO: When is he going to testify?

GC (Maj Goode): He has just arrived about an hour ago. So he is, in fact, here. My plan is Major Leach is -- he's in Hawaii doing a CG visit. He is going to be standing by a phone in five minutes. So I'd like to take him so we can get him. He's a short witness. And then put Jack Phillips on the stand.

IO: Okay. Why don't we do Major Leach telephonically. We'll take a 5-, 10-minute break and then we'll take Mr. Phillips.

[The Article 32 investigation recessed at 1509, 20 April 2011.]

[The Article 32 investigation was called to order at 1527, 20 April 2011.]

IO: All right. Your next witness is Jack Phillips.

CC (Mr. Faraj): Before we call Mr. Phillips, I just want to notify the court of something and put something on the record. I guess the record isn't as relevant as you hearing it. These charges arose as a result of allegations by Mr. Phillips. What I'm going to ask the IO to -- to do if you would permit us -- he's going to be a critical witness. And what I don't want to do is have Mr. Phillips review maps, documents -- the best -- if we really want to get to the truth, the best way to do this is to have Mr. Phillips exhaust his memory for everything and redraw maps. But it's important to hear, watch Mr. Phillips' demeanor, take account of Mr. Phillips' thoughts and beliefs on certain matters related to this case and certain officers that were involved besides Major Card. And so what I'm concerned about -- not -- I think he's an important witness. You need to hear from him. But I'd like you to hear everything he has to say before you begin to give him documents unless he needs to have his memory refreshed. Even maps, I think, would be important for him to draw based on his memory rather than something that he did with NCIS.

IO: Trial counsel?

GC (Maj Goode): Well, sir, I do intend to use this map with him because he actually was the one who created this. He created it before he ever talked to NCIS. He created it with the Sergeant Major in 2008. And I think it will illustrate his testimony, help him walk through his testimony.

CC (Mr. Faraj): I don't have a problem with using anything later, but what I'm asking the IO to do is have him go through -- you know, you can ask him yourself. Have him go through everything, have him draw maps, because I think the man has a lot of ideas in his mind that need to be explored. This is the witness that's critical to this case. And you can refresh his recollection. You know, after he draws a map, I'll recommend, please -- you know, because this is important -- have him draw whatever map he now remembers. It might be the same as that one. And as the IO said, if it's light blue and comes out dark blue, nobody's going to hold that against him. But if it's something that's just not there, then I think we need to know that.

IO: I don't believe it's inappropriate for you to use his statements and the map. I do concur with Mr. Faraj to the extent of right now he may be the only percipient witness. I would like to hear as much directly from him before getting into his statement and viewing the map.

GC (Maj Goode): Yes, sir. I agree with you, sir.

IO: I'd like to see just how good or bad his recollection of the events are.

GC (Maj Goode): My intent is to not even bring this up until I get to the point where he made it. So I'm going to walk him through the story of what his recollection is and then when I get to where he reported the incident --

IO: I'd like to see him draw from memory if he can right now --

GC (Maj Goode): Yes, sir.

IO: -- the best that he can as he sits here today, what his memory is of those events. Now, like anything else, if he can't recall and he needs his, you know, memory refreshed, so be it. You're entitled to show him the statement, show him the map. Again, I have to evaluate

how good is he a witness today.

GC (Maj Goode): Yes, sir.

IO: His inability to remember details today is something I'm certainly going to weigh. So while you're certainly, from a legal perspective, can show him prior documents and prior maps. It does tend to, to some degree, cause me to put less weight and give his testimony less confidence -- understanding that the things he's said, it's been a couple years. So you do it as you want to do it. But I'm telling you it's more helpful to me, and I think I can evaluate his testimony -- perhaps give it more weight if I'm confident he's testifying to these things today and not from something he did. So if he can't recall and you want to refresh his recollection, do it. It's permissible, okay? But the best you can talk to him about the events and then, I guess, rely on the past map, the past statements as sort of a fall back.

GC (Maj Goode): All right. Will do, sir.

Jackie W. Phillips, a civilian, was called as a witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the government:

Q. Can you please state your name, spelling your last?

A. Jackie Wayne Phillips, P-H-I-L-L-I-P-S.

Q. And where do you currently live?

A. At 2500 Medallion, Union City, California.

Q. At one time you were in the United States Marine Corps; is that correct?

A. Yes.

Q. During what time period were you a Marine?

A. From 2001 to 2008.

Q. And can you please give us just a brief summary of your career as a Marine?

A. I enlisted in the Marine Corps shortly after September 11th, which brought me back into the corp for my own reasons. I am prior service. I served from 1989

to 1997 in Europe, as a Desert Storm veteran as well as Bosnian War veteran during the -- when 1st Tanks crossed the river there, I was with the Lurch[ph] unit.

And then I went into the Marine Corps. My intentions were to start out back in reconnaissance. I did not go to force indoc. I ended up going to the battalion and was pretty much at that point being manicured to go lead 1st LAR. And my first tour was OIF-I with a Weapons Company, 1st LAR.

My second tour, I was assigned to General Mattis' PSD detail. And then again my third tour in the Marine Corps was with 13th MEU with 1/4. And in 2008, I pretty much wrote a statement and requested that my assigned -- or my duties as a Marine be resolved.

Q. All right. I want to talk about that later, but for now let's focus on when you were a member of General Mattis' jump. Did you deploy in June of 2004 or were you deployed at that time?

A. In June of 2004, yes, ma'am.

Q. Where were you deployed?

A. In Ramadi at Camp Blue Diamond.

Q. And that's when you were on the Division Jump team?

A. Yes, ma'am.

Q. What was your position on the team?

A. Gunner of a LAV-25.

Q. I want to focus your attention on 7 June 2004, which was the day that Lance Corporal Bohlman died. Do you recall going on a convoy that day?

A. It was that evening. It was a night reconnaissance that we were going on for a route reconnaissance of the next day's operations.

Q. Was there anything unusual about going out on that convoy?

A. The fact that I heard radio communication denying us access, yeah.

Q. What do you mean denying you access?

A. Because it was a well-known fact and being reported by 2/4 that the place -- that that route had not been cleared in the last two weeks. And every time that they

had been in there, they had suffered severe casualties.

Q. Do you recall when you heard that communication or where you were?

A. We were at -- this happened when we arrived at combat outpost at our turn around -- turnabout point.

Q. What time of the day was it when you left combat outpost?

A. It was already about 9 o'clock at night when we left -- probably about 8, 9 o'clock at night when we left our outpost. This was not Camp Blue Diamond, this was our turnabout point where we were to come back and then come through the back way of Ramadi.

Q. So you left Blue Diamond and went to combat outpost and this is when you heard that radio communication?

A. Correct. When we were sitting, waiting for whatever we were waiting for.

Q. All right. Let's talk about when you left combat outpost. You said you were gunner for the LAV-25. Which vehicle -- there were two LAVs, correct, in the convoy?

A. Correct. We usually, for our own sanity, went back and forth on our lead and trail positions.

Q. So where were you that day?

A. I was in the lead.

CC (Mr. Faraj): Can we have the witness' microphone lowered because I'm having a difficult time hearing. I'm sorry. Or just closer, please.

Questions by the government (continued):

Q. All right. Mr. Phillips, that day you said you were -- when you left combat outpost, you were in the lead LAV-25; is that correct?

A. Correct.

Q. How many other vehicles were in the convoy that day?

A. Three.

Q. What was the order of the vehicles?

A. My LAV-25, Major -- or Major Card's HMMWV, Sergeant Gutierrez's C-square, and Sergeant Hyman's LAV-25.

Q. How much time elapsed between leaving combat outpost and when you were struck by the IED?

A. It was roughly about -- we were on the road for about 15, 20 minutes on our way back to Blue Diamond.

Q. What, if anything, unusual did you notice in the moments leading up to that IED?

A. Really nothing unfortunately.

Q. As the gunner for the lead LAV, what type of view -- or what were you able to observe?

A. I observed an elderly civilian walking that we drove by at the point of impact. And I also observed two Iraqi IPs sitting up at the "y" at the end of the road where it went into a "y." And they were sitting at the corner observing and only that.

And I approached them with the machine gun at my hip in a pretty -- you know, it was a scary manner probably to them. But I requested that they get out of their vehicle, because I felt that they were the ones that set the IED off on us.

Q. All right. This is after the IED went off, correct?

A. Yes.

GC (Maj Goode): All right. I want to still focus on right before the IED went off. And do you mind, sir, I'd like to have him step down. I'd like to have him draw what he saw.

IO: Sure.

Questions by the government (continued):

Q. Do you remember the route -- what route you were taking leading up towards the IED?

A. Well, yeah, it's -- I don't know all the names without --

Q. But do you have a fair picture in your mind such that you could draw what the road looked like?

A. For sure.

Q. Can you step down? What I'll do is I'll bring this a little closer. All right. If you could go ahead and just trying to use up this whole paper so it's as big as possible so these gentleman can see, just draw what the

A. road looked like on the route that you were driving.
[The witness did as directed.]

Q. All right. Let me stop you right there. You drew, like -- it looks like -- is this a road right here at the top of the butcher paper?

A. This all is open space. It's a field.

Q. All right. So I'm going to have to dictate what you're saying for our court reporter. So at the bottom of the page here where you've drawn some lines, is it open space?

A. This as all open space field and it went to this edge and you could no longer see this road. This is a wall that was to our direct front. It protected the housing that was up in the element. There was houses.

Q. And you're referring to the line at the top of the page that you marked "wall"?

A. That is a wall that went clearly across. As I said, there was homes up here.

Q. And you're writing "homes" at the top?

A. Across here. This was a wall about 6 feet tall, concrete; no way over it, no way around it. That's what these roads were for. We had came up this way. This was the road where -- Vehicle 1, my engagement --

Q. All right. Let's stop and talk about this road right here. Is your testimony that what looks like to be a road on the left side going vertically up the butcher paper, this is the road you were traveling on in your recollection?

A. Yes, ma'am. This is shortly after we came over the bridge.

Q. All right. What I'd like you to do is draw, like, a rectangle where your vehicle was when the IED struck to the best of your recollection.

A. [The witness did as directed.]

Q. All right. You've labeled this rectangle "my vehicle." It looks like -- is this on the road?

A. No. I didn't go this. This is the road you have to put it -- passed you and --

IO: All right. Major, we need to have the witness just -- sir, you need to speak up as loud as you can, so we can

record it, please.

GC (Maj Goode): She's trying to type what you're saying.

Questions by the government (continued):

Q. All right. Let me stop you right there just so we can have some clarity. This line you're drawing vertically at the top of the butcher paper represents a road. Can you draw a line parallel to it so we can estimate the width of the road?

A. The width of the road was about no more than probably 15 feet, barely enough for two cars to pass.

Q. All right. So go ahead and draw -- can you just draw so -- you know, so it's, like, a road with two lines? You follow?

A. Uh-huh.

IO: All right. The witness is drawing what appears to be a road.

Questions by the government (continued):

Q. All right. So you're drawing another line towards the top indicating a road leading off towards the left side of the butcher paper and a road leading off to the right side of the butcher paper.

A. Yes. This is over across the bridge over and back to Blue Diamond.

Q. All right. So you're indicating at the top of the page there's a bridge that leads back to Blue Diamond and you've written "Blue Diamond."

A. That's the way out. This went back to the big overpass, and this was just a road along this field and houses and the place was a known bad spot.

Q. All right. Let's talk about the road where you've drawn a rectangle and labeled my vehicle. Now, you indicated that that was the LAV you were in. Can you please put an "X" where the IED blast was.

A. [The witness did as directed.]

Q. Now, what I want you to do is draw another rectangle indicating where the next vehicle in your convoy was.

A. [The witness did as directed.]

Q. And you've labeled it "HMMWV." How much dispersion were you keeping that day?

A. Hundred meters.

Q. Was that typical to keep about a hundred meters distance between the vehicles?

A. In the town that we -- that was minimal that we stayed within a hundred meters.

Q. Following the HMMWV was what vehicle? All right. And the witness is drawing another rectangle. And what vehicle was this?

A. That's a C-square.

Q. And he's labeling it "C-square." Now, following the C-square was which vehicle?

A. The command vehicle.

Q. That was the command vehicle. Following the C-square was which vehicle?

A. At the time, we were still he was still coming around this bend.

Q. So he was --

A. That was the last LAV-25 driven by Sergeant Hyman.

Q. All right. The witness has put another rectangle toward the very bottom of the page and labeled it "LAV-25 Sergeant Hyman." So that was the vehicle driven by Sergeant Hyman?

A. Commanded by Sergeant Hyman.

Q. Commanded by Sergeant Hyman. All right. You can go ahead and have a seat, and I'll bring you back up here when we go back to this page.

A. [The witness did as directed.]

Q. All right. Mr. Phillips, when the IED went off, what was the lighting situation like?

A. Dusk.

Q. Dusk. How was -- could you -- how was your visibility?

A. It was -- it was good, but dusk is a hard time through observation of vertical sights in an LAV-25. I was scanning at the time so I was looking through sights because at that point we were waiting to switch over to thermals and start using our night optics. So it's kind of a -- it's a time that usually that everybody is

affected by.

Q. When the IED went off, what specifically do you remember about that moment?

A. The vehicle was totally disabled. It came to a halt on its own because the batteries were blown. We lost all power; we lost radios; we lost weapon systems. The vehicle was completely disabled. And we had numerous Marines, you know, screaming and chaotic in the back because of wounds and injuries sustained and we had dead as well.

Q. Were you yourself injured?

A. No. No, not until I jumped off the vehicle.

Q. At what point did you dismount the vehicle?

A. I dismounted the vehicle after looking at Sergeant Tucker and making sure he didn't have a huge wound to the neck and losing a lot of blood because his blood was all over me down the turret and he didn't even know it. But once I seen the injury, he was basically a walking injured, and I just told him that I thought he should leave with the rest of the platoon. Then I dismounted the vehicle on my own behalf with weapons systems and ammo and personal gear.

Q. In that time in between when the IED went off and when you dismounted the vehicle, did you observe or hear any hostile small arms fire?

A. At that time, there was sporadic gunfire, but it was coming within our ranks.

Q. How could you tell that?

A. Because I seen. I was standing on top of a 15-foot vehicle.

Q. From your vantage point when you were standing on top of the vehicle, what direction were you facing?

A. At the time, I was facing the field and just looking for the best point of setting up some type of defensive up there.

Q. Why did you feel the need to look towards the field?

A. Because of the open element being that road that we couldn't see anything coming around that right corner as well as is that wall. Anybody could have used that wall to their advantage.

- Q. Did you see any evidence of hostiles in that field when you were looking down into the field?
- A. No, I didn't. I did not.
- Q. Now, you said that you heard and saw small arms fire coming from within the jump. Where was that coming from?
- A. It was coming within the platoon -- sporadic and, I think, due to my first engagement with the machine gun. Somehow or another, machine gun fire seems to get people riled up and maybe that was something that set off the platoon. But it was uncalled for. I was the only one required of the engagement. I had the biggest weapon system, and I was good with it. And as far as my procedures, I wouldn't be on Marine Corps standard of giving a warning fires.
- Q. Well, let me back you up right there. When did you first fire your weapon?
- A. I first fired the weapon when we had a civilian vehicle approach on our right side of the road. It was coming into our medevac site.
- Q. Were you still on the LAV-25 or had you dismounted?
- A. I had already dismounted and set up into a defensive in front of the convoy in front of my vehicle.
- Q. Okay. I want to talk about that in detail, but before we do -- before you dismounted the vehicle, did you see or hear any small arms fire?
- A. No.

GC (Maj Goode): Okay.

Sir, may I have him step down again and approach the easel?

IO: Yes.

Questions by the government (continued):

- Q. All right. With this pen, can you please indicate where your -- I guess with a circle -- where you set up when you dismounted the vehicle.
- A. [The witness did as directed.]
- Q. All right. The witness has done so. Why did you set up the position right there?

A. Because I was using about three, maybe 2 feet, of street and curb for my only means of protection really because I was laying in the prone with the machine gun in a tripod position.

Q. 240 Golf, was that the weapon you had?

A. 240 Golf.

Q. Can you please indicate, I guess, with two lines kind of like a triangle, what your sector of fire was?

A. Again, since this was on the ground --

Q. All right. The witness has done so.

All right. You can go back and take your seat.

What led you to dismount the vehicle and set up a machine gun position right where you indicated on this drawing?

A. Because there was two entry points into our medevac site coming from both the left and the right. I tried to have the right road to be shut down by the IPs. Once I had them -- couldn't get out of the vehicle and I did a quick look of the vehicle, made sure I didn't see anything that looked suspicious, I, you know, communicated with them the best I could that I wanted them to move their car and stop traffic so we didn't have any more vehicles coming to a dangerous situation.

And they ended up leaving down that road but just kept driving so they did not set up a blocking position there. And I felt that I needed to cover that road as well as the left until they then brought up -- Major Card then brought up Sergeant Hyman up into the left blocking position on that exit route back to Blue Diamond, which is that road veering off to the left.

Q. All right. Before Sergeant Hyman moved up his vehicle, what were you able to see? How long were you in this position before Sergeant Hyman moved up into the blocking position with the other LAV? And I'm pointing again to your position on the map.

A. For about 15 minutes.

Q. And during that 15 minutes, what, if anything, did you observe?

A. I engaged two vehicles.

Q. Where were the vehicles coming from?
A. They were coming from down that road -- that blind right curve following around the curve into our -- into our medevac site.

Q. All right. Sir, if I may.
Can you step down please and indicate -- I want you to draw on here where you saw -- engaged those two vehicles. And you can indicate which vehicles with a rectangle and label them "Vehicle 1" and "Vehicle 2" in order of engagement. All right. The witness has indicated Vehicle 1 with a rectangle and Vehicle 2 also with another rectangle. And the witness is writing --

Q. I'm sorry, Mr. Phillips. I can't read your writing. What does this one say?
A. This right here was disabled.

Q. So the witness has written "disabled" over Vehicle 1, and over Vehicle 2, this vehicle, you wrote "turned around?"
A. I turned them around and then the same engagement procedure.

Q. All right. You can take a seat again. Thank you.
A. [The witness did as directed.]

Q. When you first saw Vehicle 1, what prompted you -- and what actions did you take to disable that vehicle?
A. I requested permission to engage.

Q. From who?
A. From Captain Card.

Q. How did you do that?
A. Verbally.

Q. Did you -- how far away was he such that you can get that permission from him?
A. We were within 10 feet. And I was just letting him know what I was getting ready to do because we had -- something had to be done up there.

Q. Why did you feel that you needed to engage this vehicle?
A. Because at the time we had medevac in route that was going to -- going to be coming in from Blue Diamond across from the river, and that was the route that they

were coming to medevac our wounded and dead. And I also -- the vehicle was coming at a high rate of speed originally, which, you know, could very well be very common over there because they drove very fast and stupid, especially in the little towns like that. But I think the person -- I -- probably just was unaware of what he was driving into. So as I said before, I went -- I gave him the opportunity -- I gave him some warning fire. I fired up in front of his vehicle. The vehicle didn't stop. I then fired into the hood of the vehicle, took out one of the headlights and the vehicle continued to roll until I engaged again a third time and I disabled it to a rolling stop. And no one got out of the vehicle.

- Q. All right. How much time elapsed between when you disabled Vehicle 1 and when you encountered or engaged Vehicle 2?
- A. That vehicle came around about five minutes later.
- Q. What actions did you take with regards to that vehicle?
- A. The exact same engagement procedure -- warning fire, which promptly changed that driver's direction, and he made that turn about half way through that road.
- Q. Before you engaged that vehicle, did you seek permission from Captain Card like you did with the first one?
- A. Not on the second vehicle.
- Q. Why is that?
- A. I don't know.
- Q. At what point did Sergeant Hyman's vehicle pull up to a blocking position?
- A. This was after -- after our wounded had been medevaced and I engaged on those two vehicles.
- Q. How were the wounded medevaced?
- A. By a later vehicle.
- Q. Can you describe -- or were you able to view the route that the, I guess, the medevac came and where they were?
- A. They came in from that west road up there.
- Q. That's the road at the very top of your diagram?
- A. Correct. That road comes around, and it connected with the main bridge where Hurricane Point and Camp Blue Diamond was. That's where -- how close we were.

- Q. Now, earlier you stated that at some point you heard small arms fire coming from within the platoon. At what point during this timeline of events was that small arms fire?
- A. Most of the small arms fire that I observed was coming within the platoon was coming at the time of my machine gun fire. And again, that's something psychological that for some reason it gets people going. I don't know when you hear machine gun fire, but I don't really know why because there was only one target and I had it handled.
- Q. Now, you fired your weapon twice -- once at Vehicle 1 and once at Vehicle 2, correct?
- A. Correct.
- Q. Which time did you hear the small arms fire?
- A. During both engagements there was small arms fire and at the initial IED blast there was small arms fire.
- Q. Let's focus on that first. During the initially IED blast, how were you aware of the small arms fire that you heard?
- A. Because I heard 240 machine gun go off behind me.
- Q. Who had a 240 other than yourself?
- A. Sergeant Gutierrez.
- Q. Where was sergeant Gutierrez?
- A. He was behind us, behind Major Card.
- Q. In which vehicle?
- A. In the C-square.
- Q. In the C-square. How did you know that it was the 240 that you heard?
- A. Because I'm a gunner and I know. I've been firing that gun for many years, and I heard it go off because it was behind me and his fire was -- I'm not sure. I think it might have just been -- it could have been -- I don't know why he fired really on and what he was firing at, but I know it was nothing because he only fired one burst and that was it.
- Q. Did you hear any other small arms fire at that time that you heard the 240?
- A. No. I only heard that quick machine gun burst. And then most of the what was happening was verbal communication

on the ground trying to set up some type of posture there and as well as initiating medevac procedures.

Q. Did you ever hear any enemy fire. Are you familiar -- first off, are you familiar with what an AK-47 sounds like?

A. Yes, ma'am. I have one.

Q. You're able to distinguish between the two?

A. [The witness nodded his head.]

Q. Did you hear any AK-47 fire at any time?

A. No.

IO: That was a negative response.

Questions by the government (continued):

Q. Did you ever see any muzzle flashes from the field?

A. No, ma'am.

Q. Were you ever in a position to see muzzle flashes from the field?

A. Better than anyone. I was standing nearly on the corner of the field exposing myself more than anyone.

Q. When the when Sergeant Hyman's LAV-25 moved up to the front of the convoy? What was the threat posture like at that time? Were you still in a heightened state of --

A. I felt -- I felt we were -- could be walking out of there so my threat level was high until we got back to the Blue Diamond. We got drug out of there by a tank recovery waking up the entire neighborhood. And you can just imagine that's just asking for trouble, but that's how we got out of there.

Q. While you were laying down in that position that you marked with a circle on the diagram with your 240, other than those two vehicles that you engaged, did you engage any individuals either dismounted or otherwise?

A. No, ma'am.

Q. Did you ever see anybody else within your jump engage any individuals or vehicles?

A. Yes.

Q. Hold on for a second while the helicopter goes over.

- A. In a defensive manner, no. I was kind of really curious as to what all the firing was about, but I know I wasn't the only one.
- Q. All right. And again, you said all the firing -- and I hate to belabor this point with you, but I want it to be clear. Approximately how much small arms fire did you hear coming from within the jump?
- A. Well, I had Marines that were on my vehicles that were asked for their ammo, and some of the Marines went through their combat load and others. So, I mean, that's, like, a lot.
- Q. Could you tell what they were firing at?
- A. Nothing that I could tell. There was no -- nothing going on after I engaged that second vehicle and we turned them about. We had a little shot up for about an hour, and we finally got a recovery there for my vehicle. And then we started our extraction out of there.
- Q. Okay. I want to go back to the timeline of events, and we'll start with when you notice Sergeant Hyman's vehicle move up to a blocking position. If I may, sir, can you step down and show me on this diagram where Sergeant Hyman set up the trail LAV.
- A. [The witness did as directed.]
- Q. All right. The witness is drawing a line up the top -- towards the top of the butcher paper and drawing a rectangle at the very top left-hand side of the page and labeling it "blocking Hyman."
- A. Right here.
- Q. And a circle where they actually set up on the road?
- A. This was where this road veered off to the left and then it would -- then went into a right-hand turn, which would have continued to go straight until the main road where the bridge was. Hurricane Point sat here, and Camp Blue Diamond was over here.
- Q. When you said "over here" it's towards your right. So per this amount but towards the east?
- A. Correct. Northeast, yeah.
- Q. Northeast. Okay, thanks. When Sergeant Hyman's vehicle moved up to the position where you marked up here on the top left hand side of the page, what if anything did you

- do at that point?
- A. I tried to have him dismount his scouts for some support on the ground, and he refused to let them off the vehicle. I had some verbal conversation with him, and he took off.
- Q. What do you mean he took off? The LAV took off or he himself?
- A. He took the vehicle up to that blocking position and didn't put any of his scouts on the ground.
- Q. How far away was -- I mean, it's kind of hard to tell distances on your map. So from where you set up on your position and where the LAV set up --
- A. We're all --
- Q. How far away was that?
- A. We were all still within about 300 meters from one another.
- Q. And to the best of your recollection, you don't the scouts dismounting from his vehicle?
- A. They never dismounted until the recovery procedure. And during it -- all of this probably about an hour and a half time frame, they never hit the deck.
- Q. How long were you laying at this position that you marked with a circle with your 240 Golf? How long were you there?
- A. Probably for 20, 30 minutes, yeah. Maybe an hour at the most, but it was within an hour's time frame.
- Q. At what point did you get up and why?
- A. At that point, I -- we had already medevaced our Marines who were awaiting recovery assets to arrive. We had not set up any real defensive. So I felt like, you know, some -- we were still needing to cover our perimeter. And I ended up moving towards the back of the LAV and set up a rear security.
- Q. And that would be the back of the LAV that you were originally in?
- A. The back of the C-square.
- Q. I'm sorry. So you said you set up to the back of the C-square?
- A. Correct.

- Q. All right. Can you -- and, sir, if I may. Can you step down and please indicate with another circle on the map where you set up your second position.
- A. [The witness did as directed.]
- Q. And if you can, put a "1" next to your first circle to indicate that was your first position. Just put, like, the number one there. That's fine. And then at the bottom if you can put a circle where you set up your second position and then put a number two for second position. The witness has drawn a circle below the lower C-square and indicated it with dismounted 240.
- Q. And the two lines indicate what your sector of fire was?
- A. That's pretty much all I was doing because there was no one back there and the C-square doesn't have any rear -- any way to fire to the rear.
- Q. Thanks. You can have a seat. So the witness has drawn a vertical line towards the bottom of the page and a little line leading off to the right-hand side of the page indicating the second sector of fire. Is that correct.
- A. [The witness nodded his head.]
- Q. All right. Mr. Phillips, when you moved down to that second position as you were walking from position one at the top of the page to position two at the side of the page, what if anything did you observe?
- A. Well, at this time, again, we had already medevaced our wounded. There was injured civilians on site.
- Q. What injured civilians did you see?
- A. There was an injured civilian, an elderly man, which was the elderly man that was walking parallel to me on my right hand side on the sidewalk that was injured either to the IED blast or Sergeant Gutierrez's machine gun fire. I say it was probably the IED blast because he was that close and if we sustained that much injury, I'm sure that's what he did too. But he was -- he was not dead, and he was being observed by members of the platoon.
- Q. All right. Stop right there. I'm going to grab -- I think I have a different colored pen. I'm going to want you to draw him with my blue -- All right, sir, if I could have you step down one more time. Mr. Phillips, if you can come up and I want you with the blue pen to

draw, like, a stick figure on here where you saw that wounded man.

A. [The witness did as directed.]

Q. All right. The witness has done so. All right. You can have a seat.

A. [The witness did as directed.]

Q. At what point did you notice that individual?

A. When I seen Sergeant Duran and Sergeant Gutierrez standing over him and I approached to see what they were looking at and conversating about. And I seen what they were and I went down and looked at the man and thought, well, what are we going to do here.

Q. All right. How far off the road was this man?

A. He was about 8 feet off the road in some brush.

Q. How high was the brush?

A. About 2 feet.

Q. As far as the road and the field, what was the difference, I guess, what was the terrain or evaluation like? Could you see straight out into the field or was there a slope or a hill?

A. There was a little bit of an incline at first that I remember, but it was a pretty open, flat field. Like I said, at that time I believe he may have been saved.

Q. First -- because I want to go through this slowly -- could you see him from the road?

A. I seen him breathing and I seen his eyes. I went down and looked at him.

Q. But before you went down and looked at him as you were standing on the road, your line of sight with the brush and the incline, could you actually see him?

A. Yeah. I knew that's who it was because the age of him and the his robe, the color, and he was the only one on the sidewalk.

Q. You said you saw Sergeant Gutierrez and who was it, Corporal Tipton?

A. Sergeant Gutierrez was the vehicle commander of the C-square.

Q. Where did you see him at that time?

A. He was -- him and Sergeant Duran were standing pretty

much above, you know, right over him.

Q. Over the individual in the field?

A. Yeah.

Q. Now, you said earlier that you talked to them. What did you guys talk about?

A. I didn't talk to them about anything. I just wanted to know what was going on over there, and I walked over there and I seen he got injured.

Q. All right. What did the man look like?

A. About 70 years old, Iraqi elderly.

Q. What was he wearing?

A. He was wearing a white robe, sandals, light bearded, gray, but obviously a civilian.

Q. Why do you say obviously?

A. He had no type of military paraphernalia, weapons, he didn't even have a pair of shoes on. And he would, you know, he was too close to an IED blast. He wasn't a suicide bomber.

Q. You said earlier that he was injured. Can you please describe in particularity what injuries, if any, you observed on him?

A. I observed some pretty heavy -- it looked like to me shrapnel injuries to the shoulder -- upper shoulder.

Q. Could you tell which shoulder?

A. Left shoulder.

Q. Left shoulder?

A. Left shoulder.

Q. Did you see blood?

A. Yes.

Q. Where on his body did you see blood?

A. Within his clothing and his shoulder area, arm area.

Q. And you're indicating with your hand kind of the left shoulder area of the body?

A. Correct.

Q. Was he talking?

A. He was mumbling and rambling on.

Q. Could you understand what he was saying?
A. No. He was just hurt. That's pretty it.

Q. What was Sergeant Gutierrez and Sergeant Duran doing?
A. Standing there doing nothing.

Q. Were they talking?
A. They were talking to one another.

Q. Could you hear what they were saying?
A. No. I wasn't talking in their conversation.

Q. How close did you get to that individual? Did you actually walk down into the field?
A. Yes. I walked down and actually put my hand on his shoulder. And he turned his head and looked at me and mumbled. And I turned around and went back over to my vehicle.

Q. Did you say anything to anybody about that man?
A. Well, I was curious why nobody was doing anything for him but, you know, that didn't happen.

Q. So what did you do then?
A. I observed at that time Major Card approach him and walking up to Sergeant Duran and Gutierrez, they both observed this as well and.

Q. All right. Stop right there. Before you saw then Captain Card walk into the field, did you hear anybody say anything?
A. Captain Card as he was walking down there.

Q. What did he say?
A. He -- in some reason or another, he felt that he wanted to acknowledge that that would be his last IED that he set off.

Q. Do you recall specifically what words he used?
A. This was going to be his last IED.

Q. Now, when you observed this and when you heard him say those words, how far away were you from him?
A. I was standing within 10 feet.

Q. Which vehicle were you standing next to at that time?
A. I was standing at that "x" at the back of my vehicle looking at the damage and how we were going to possibly

get is that out of there.

- Q. All right. So to be clear, this is before you moved to your position two at the bottom of the page. So you were still standing next to your original vehicle, the first LAV-25 next to the "x"?
- A. Correct.
- Q. How was the lighting conditions like at that time?
- A. Dark. Getting darker but dark.
- Q. You mentioned earlier that a lume had been called for. Had a lume -- was that out yet?
- A. Yeah. They kept the a lume up for about an hour straight.
- Q. So at the time that you saw this man in the field and you saw Captain Card walk to the man in the field, was there a lume out?
- A. No. There was no a lume out yet.
- Q. Okay. When you saw Major Card, then Captain Card, walk into the field, could you tell if he had a weapon drawn?
- A. Who?
- Q. Captain Card, Major Card now.
- A. As he approached, he did draw his side arm.
- Q. What type of weapon did he draw?
- A. His m9 Beretta.
- Q. Do you recall where he had that weapon holstered?
- A. It was. He had just finished a transmission on the radio and then walked up. Sergeant Gutierrez and Sergeant Duran, as I said before, approached him.
- Q. Wait. Now I kind of want to go back. You said that he did have his weapon holstered. What type of holster did he have? Did he have a drop holster? Did he have one of those chest holsters or a shoulder holster perhaps? Do you recall?
- A. I believe he had a green hip holster.
- Q. You said before he walked into the field that he was talking on the radio. Which vehicle was he talking from the radio at?
- A. From his HMMWV.

Q. And that's the second vehicle in the line --
A. Right.

Q. -- that you've indicated on the diagram.

All right. When he walked down towards Sergeant Gutierrez and Sergeant Duran, at what point did he unholster his vehicle -- his weapon? While he was still walking or once he got there?

A. As he was walking and then took aim after walking past Duran and Gutierrez.

Q. How far away were Sergeant Duran and Sergeant Gutierrez from the individual lying in the bushes?

A. They were, like, within feet.

Q. Within how many feet?

A. Feet.

Q. So fairly close?

A. Yes.

Q. When you saw Captain card approach that individual, how close did he get to him?

A. A foot.

Q. And when he got to him, what if anything did he do?

A. Made a verbal comment stating that this was this Iraqi's last IED he was going to set off, and then he fired his pistol into the civilian.

Q. Could you tell what part of the body he aimed his pistol on?

A. His head.

Q. And how were you able to tell this? What was your line of sight like at that time?

A. I could see. I was standing 10 feet away. I was just not standing next to that when it went down.

Q. After the gunshot -- well, first off, did he fire once, twice, more than twice?

A. He fired one round.

Q. And what did you observe immediately following that?

A. He got in his vehicle and then I was asked to go ahead and if I would take up that rear security.

- Q. Who asked you to take up that rear security?
A. Captain Card did.
- Q. What did Sergeant Gutierrez and Sergeant Duran do?
A. I don't know. At this time I didn't know what anyone was doing up there.
- Q. Well, earlier you stated that Sergeant Gutierrez and Sergeant Duran were standing within feet from the individual in the field. So did they -- did you notice them react in any way following the gunshot you observed?
A. The same reaction to Major Card; turned about and went up the back to their business or whatever they were doing that night.
- Q. All right. You stated at this point Major Card told you to take up the position that you labeled "dismounted 240" at the bottom of your diagram. Did you talk to anyone on your walk down to that position?
A. The only person I talked to down that way was Sergeant Cotton.
- Q. What, if anything, did you two talk about?
A. Nothing really. I mean, he's like, what are you doing back here. I just said I'm back here because I'm providing rear security because you can't do it from your turret. The C-square has no turret, it just has a the turret ring.
- Q. While you were walking from position one to position two, did you see any bodies.
A. [The witness shook his head.]
- Q. Other than the one in the field?
A. Just the one and the one I shot in the first engagement.
- Q. You said the one you shot in the first engagement. Are you referring to Vehicle 1?
A. Correct.
- Q. And there was a body in Vehicle 1?
A. I'm sure there was. We never verified it, but somebody was driving the vehicle.
- Q. When you got down to that second position marked at the bottom of the page, what if anything of significance happened while you were down there?

- A. Nothing really. At that point, we -- the tank recovery came in, hooked up some -- a bunch of chains. And then we decided to make our route back to Blue Diamond.
- Q. Did you ever see -- while you were either in that field or walking down the road, did you ever see any enemy weapons?
- A. No.
- Q. Did you notice any other disabled vehicles around the area -- the part of the road that the convoy was on?
- A. No. There was no other vehicles other than the one that I disabled in the area. That was the only vehicle other than the IPs that left.
- Q. All right. After you set up in that position, you said the QRF arrived. Is that correct?
- A. After I set up in the second position?
- Q. Correct.
- A. Correct. The recovery -- the second QRF recovery arrived.
- Q. At which point did you guys leave and go back to Blue Diamond?
- A. Once they hooked up my LAV and we got every Marine that was still with us back on the vehicles. And we then started our way back to -- well, we actually went in through the back way. We came in through Hurricane Point, and then we left my vehicle there and came in the back way to Blue Diamond.
- Q. And before you guys left, did you have any conversations with any of the members of either the first or second QRF?
- A. No, we didn't.
- Q. Did you overhear any conversations between anyone from the first or second QRF?
- A. No. We -- they pretty much came and gone. They were pretty quick about what they were doing there.
- Q. When you got back to Blue Diamond, did you and the other Marines -- did you ever talk about what happened earlier that day?
- A. No, we didn't.
- Q. All right. I want to -- give me one second, sir. I

want to -- before -- jump back just for one second before you guys left the area. Did you see or did anybody ever make a sweep of the area for enemy weapons?

A.

No.

Q.

At some point after you returned to Blue Diamond, General Mattis talked to you. Do you remember that?

A.

He talked to me?

Q.

The team.

A.

Briefly, but not into the really the matter of what happened. It was more, kind of, it was not his regular sitdown and briefs for us by far. General Mattis, we went through special -- he started us early in this assignment. We trained for, like, three months with him personally, and he always made it a point of briefing all the actions regardless if anything happened on that day's activity. So it was a little strange that we -- I felt that he was pretty much avoiding us and, you know, and then I requested to speak with him personally.

Q.

Why?

A.

Because I was hoping that he would step up and make me tell him what happened before I left.

Q.

Now, why did you want that to happen and what did you want to tell him?

A.

I wanted to tell him that the people needed to be held accountable in the platoon and, you know, I was willing to start with myself. I did two years ago. That's all I wanted of him, and he failed. He failed the entire platoon.

Q.

Wait. What if anything did you tell General Mattis?

A.

I had nothing to tell him. I was there because I was requesting to leave his detail.

Q.

And is that what you did? You just requested to leave?

A.

Yes. And he tried to tried to scare me because he said that I was going to continue over my tour -- extend my tour and I knew that. That was not a problem for me, and I did. I did a ten month tour over there. Six months with the general and four months with 1st LAR. And I actually had more engagements and lost more Marines with 1st LAR, but I didn't leave the general's jump because I didn't want to be with the Marines anymore because I served with most of that detail throughout my career from OIF-I on. And I trained most

of these Marines. But unfortunately, I had I had to give them something to think about, and that was me leaving. And as I said before, I could have been kept at Blue Diamond by General Mattis, but he refused to ask the correct questions. If he today has no clue what happened, that's ridiculous.

- Q. But you yourself never told him. Is that right?
A. No. I gave him the opportunity. I stood in there for 15 minutes and then he dismissed me. Our conversation is still unresolved.
- Q. Did you tell the other Marines or the other members of the jump why you left?
A. No. No one knows.
- Q. All right. I want to flash forward to 2008, four years later. At that point, you reported this incident to Sergeant Major -- Sergeant Major Webber. Is that correct?
A. Correct.
- Q. All right. I want to talk about that period of time. What led you to report it to your Sergeant Major?
A. Well, at this time, Sergeant Major Webber knew who I was. I had already received orders to the School of Infantry, but was pulled out of the School of Infantry to go back on another deployment with a week's notice. And that was a deal that -- how I'm making deals with generals, I don't know -- but that's the deal I made.
- Q. What was your billet at the time with SOI?
A. At SOI, I was curriculum developer for ITB and LAV schoolhouse.
- Q. And what was Sergeant Major Weber's relationship to you?
A. He was my Sergeant Major of the LAV schoolhouse and then he got sent over to ITB. So basically, he was my immediate battalion and company at both times.
- Q. Why did you approach him and tell him about what had happened in 2004?
A. He in a way approached me due to we were setting together at that year's mess night, and something clicked and he knew -- he knew what was going on.
- Q. How so? What made you think this?
A. Because he -- he was a first sergeant at Hurricane Point

where this all happened.

Q. So at this mess night, were you talking about, I guess, your past deployments?

A. No. He knew there were some emotions that he'd never seen from me.

Q. What sparked these emotions?

A. About two weeks prior, having a discussion with Major Card on the parade deck at the School of Infantry.

Q. All right. Was this the first time you had seen Major Card since you had left the division jump in 2004?

A. Yup.

Q. And how was it that you came across him?

A. I have no idea. He was there being reassigned. At the time, he was, I believe, in between commands. And he was there for -- we had a change of command that was going on, and he was there as a patron or a guest there at the change of command.

Q. And so it was a change of command ceremony that you ran into him at?

A. Correct, up on the parade deck.

Q. When you ran into him, did you guys have a conversation?

A. Yes. He had -- he seemed surprised to see me. Myself as well. But he did approach me and started a conversation with me in front of a fellow Marine friend and instructor as well.

Q. And who was that individual?

A. That's Staff Sergeant McCormick.

Q. And what did you and Major Card talk about?

A. Major Card, unfortunately, I know what he has ordealed and I knew that when I was still in Iraq on the Syrian border when I left them. But unfortunately, when he approached me, he brought back emotions and he brought back false reports. And he said that verbally in front of a Marine, and that was it.

Q. All right. Let's stop there. First off, you said you were aware of his ordeal. What specifically are you referring to?

A. That he is a coma victim.

Q. All right. So why is that significant to you?
A. Because I didn't know if I could really hold him accountable for what he did knowing that he may never recover. But unfortunately, he was still talking some nonsense in my name, and that's not going to happen.

Q. So what did he say to you?
A. Well, I'm going to tell you he was, you know, building me up in front of, you know, someone he didn't need to by no means. Why? Because he was probably just -- he hadn't seen anybody from the jump and I was probably one of the main people that he remembered. And -- but he didn't realize that, you know, that what we did should have been accountable and it was not just him. And that's, you know, I hope everybody can get something from that.

GC (Maj Goode): Well, let me stop you there.

CC (Mr. Faraj): Can we have the answer continue -- the witness continue his answer before we stop him, please.

IO: Mr. Phillips can you explain that last remark the best you can.

WIT: Well, I -- you know, I had no intentions in allowing Major Card to be the only one held accountable for that night. And I hope that the Marine Corps realizes that he was influenced in his actions. Not in his actions of killing that Marine -- that civilian, but in his actions that came about after the fact. This only came about, this whole, you know, ordeal from a statement that I wrote only because I felt discredited by a false award that was given to me.

Questions by the government (continued):

Q. All right. You mentioned a few things just now that I want to talk about in more detail. The first thing that you mentioned was that he was -- I guess you said talking you up. And you felt somehow that that was false. Can you elaborate on what specifically he said that touched you off that you thought was false?
A. Well, this was roughly a year and a half later, okay. He was the one that was -- supposedly wrote up three bronze stars with valor that came about from actions that night. I had no idea how that ever came about, but it should never have.

Q. Well, you did mention the awards and I do want to go into detail about the awards. That's one of the things I want to talk about. But first I want to focus on what was it that he said to you or to that staff sergeant next to you that you thought was false?

A. Well, I was not the one that took out six insurgents that night for one. I shot one civilian in a car.

Q. Did he say that you had shot six insurgents?

A. The award write-up says that.

Q. But what did he say that day on the parade deck?

A. I don't -- to be honest, Major Card -- this award was written when he was in a coma, so I don't know where we're going with this.

Q. Well, I just want to talk about you said that he said something to you on the parade deck that set you off. What did he say?

A. He was reliving a lie. Why? I don't know. I -- I wish that was something that he didn't retain.

Q. All right. You keep talking about the award. Did he mention the award while you were on the parade deck?

A. Yes, he did. He didn't even know that the award was downgraded. But again, he was in a coma when they wrote that award so what are we talking about.

Q. All right. Well, we have the award marked as one of our exhibits, Exhibit 7. What is it about that award that is false?

A. Linear ambush and the repelling and killing of insurgents.

Q. All right. You mentioned the linear ambush. It does say in the award that you were attacked, that the IED was the trigger for a linear ambush. Was there a linear ambush that day?

A. [The witness shook his head.]

GC (Maj Goode): Were there any insurgents that you saw that day?

IO: I'm sorry to interrupt. Was that a no response?

WIT: No, sir.

IO: The answer is no.

WIT: No, there was no insurgency there. There was two IPs.

Questions by the government (continued):

- Q. When you were talking to Major Card on the parade deck, he referenced this award; is that correct?
- A. He did and that's where, you know, he sent me in another corner. I had to live with that for four years and live that lie to my kids and my family and so -- and fellow Marines. But unfortunately, this Marine knew what awards I rated, and he was -- he was not sure what he meant by -- that I was awarded a bronze star with a combat distinguishing device. And I had to explain to this Marine, which he should have never known anything about this. But he's -- I couldn't tell him anything. I couldn't, you know, lie to him. I couldn't not tell him what we were talking about.
- And then like I said, roughly about a week and a half later, we had a mess night and things got a little emotional in there. I was sitting with Sergeant Major Webber and my CO. And they seen -- they seen me crack a little bit, and no one's ever seen that. And he wanted to know what the hell was going on. And he pursued to find out. So I told him and he also told me some stuff because, like I said, he was the one shooting that illume up. He's the one that denied access. He -- but he's the only one that backed me up too.
- Q. How much time had elapsed between when you ran into Major Card on the parade deck and when you had this conversation with your Sergeant Major at the mess night?
- A. Like I said, maybe a week and a half. It was within the time frame of when we had that mess night.
- Q. And I don't want to put words in your mouth, but I just want to make this clear for the record. The thing that set you off that got you thinking about this again was running into Major Card and thinking about the falsity of the award? Do I get that correct?
- A. That's correct.
- Q. Okay. Well, when you -- at some point you wrote a statement to Sergeant Major Webber; is that right?
- A. To Sergeant Major Webber?
- Q. Or wrote a statement and gave it to Sergeant Major Webber?

A. That was my very first -- it actually went through Sergeant Major Webber and the ITB CO. I can't remember his name at the time. You guys probably remember. He's the one that had that real nice Camaro at the School of Infantry. He was the CO up till this last year. But, yeah, I had to give that letter to both of them. We sat down, the three of us.

Q. Did somebody tell you to write that letter or did you write it on your own initiative?

A. I wrote it on my own behalf.

Q. And this was after the mess night when you were talking to the Sergeant Major?

A. I first had a verbal conversation and a long talk with the Sergeant Major behind closed doors. And he told me that he would back me up, because he's already a Sergeant Major, and he doesn't care?

Q. All right. The statement that we're talking about, do you remember approximately when it was that you wrote it?

A. Around August 2008 time frame it would have been. It was -- yeah. Because I was -- a month later told I was on permissive terminal leave two years early while still on a -- even a bonus contract.

GC (Maj Goode): All right. I want to talk about that too.

But first, may I approach the witness with his statement, sir?

IO: Sure.

GC (Maj Goode): I'm handing what's been marked as --

CC (Mr. Faraj): Before we continue, is it okay if we take a comfort break?

IO: Yeah. Absolutely.

CC (Mr. Faraj): We've been going for a while.

IO: I need a couple minutes. Let's take ten minutes.

[The Article 32 investigation recessed at 1654, 20 April 2011.]

[The Article 32 investigation was called to order at 1707,

20 April 2011.]

IO: The investigation is called back to order.

Major Goode.

GC (Maj Goode): Alright, sir.

Questions by the government (continued):

Q. All right. Mr. Phillips, I'm almost done. I just have a couple things that I wanted to clear up with you. First I wanted to talk to you about those two statements that you did. I'm handing you the first one which is defense exhibit -- or I mean, Investigative Exhibit 6 marked for the record. Is this that statement that you did and handed to Sergeant Major Webber?

A. Yes. This is the statement that I gave to Sergeant Major Webber and then was directed to the Joint Chiefs.

Q. Is everything in this statement still true?

A. Yes.

Q. Now, subsequently you met with an agent from NCIS; is that correct? Special Agent Periard? Did you ever meet him?

A. Yes.

Q. And how much time had elapsed between when you wrote this statement and when you had met with Special Agent Periard?

A. Maybe a week I was down here and went through about a 10-hour interrogation with him.

Q. And at the end of that, did you write another statement?

A. I did in there on the computer with -- yes, I did. He had me write up another statement which I never received that statement. That was something I was always curious about where that statement went.

Q. All right. You did have an opportunity, though, to read it at that time and sign the statement; is that correct?

A. Yeah, I wrote it. It was basically just another statement to mirror that one, but he was wanting to see another statement done on his computer for some reason or whatever.

Q. All right. I'm handing the witness what has been marked

as Exhibit 3. I want you to flip to the last page and tell me if that's your signature on there.

A. Yes, it is.

Q. And to the best of your recollection, everything in that statement was pretty much the same as what you had done in your first statement to Sergeant Major Webber?

A. Correct. This was questions and answers that he was wanting from me in regards to that statement.

Q. Now, you mentioned something I want to touch on real quick. You said that you talked to Special Agent Periard for ten hours?

A. I was interrogated for ten hours right down the hallway. No sweat on me though. I had two drinks of water. We got what we needed to do done and I left Camp Pendleton.

Q. During that time frame, what did you guys talk about for ten hours?

A. I don't know. To be honest, I was just blown away that I was in there for ten hours.

Q. At any time did you feel threatened or coerced in saying anything that wasn't true?

A. No, not at all.

GC (Maj Goode): All right. I want to go back briefly to 7 June 2004 because I want to clarify one point.

Sir, may I have him step down one more time?

IO: Yes.

Questions by the government (continued):

Q. Mr. Phillips, what I want you to do is I want you to mark -- earlier you had put a blue stick figure on the map where you saw the injured Iraqi male who was subsequently shot. What I want you to do is let's -- I guess do it with a black pen. I want you to put another stick figure where you saw -- or actually, let's just do an "x" where you saw Major Card stand when he shot the individual. And then put a "c" next to it to indicate Card.

A. [The witness did as directed.]

Q. Now the second thing I want you to do is put an "x" where you saw Sergeant Gutierrez at the time that Major

A. Card shot the individual.
[The witness did as directed.]

Q. Now, put a "g" indicating that that was Sergeant Gutierrez.

The witness has done so.

And now another "x" where you saw Sergeant Duran.

All right. The witness has put another "x" and then indicated it with a "d."

So to clarify, Mr. Phillips, when you saw Major Card shoot the individual on the ground, approximately how far away were Sergeant Gutierrez and Sergeant Duran?

You've indicated 5 feet; is that right?

All right. The witness has also put a circle around the "x" where he was and written 10 feet.

A. So that means that you were approximately 10 feet away? They were in about a 5 feet perimeter or circle with one another. And I was 10 feet away of this -- this is the sidewalk. This is the grass. I mean, it was where I was at because this is where the vehicle was hit, the road came to a stop, guy was right there.

GC (Maj Goode): All right.

IO: And just to clarify. I didn't catch it. How far away from the Iraqi body were Gutierrez and Duran? How many feet?

WIT: All three Marines were within 5 feet from the Iraqi.

IO: The three Marines -- Card, Gutierrez, Duran?

WIT: Correct.

And then I as well, sir, noted that I was just another 5 feet from them which is a total of 10 feet in distance.

GC (Maj Goode): At any time, Mr. Phillips, was that individual on the ground posing a threat to anyone?

WIT: No, obviously not. He was injured and he had no weapons. He was injured due to the IED more than likely.

IO: Mr. Phillips, you can take your seat again. If you could -- I want to just make sure we record your response.

Major Goode, just restate the question, please.

GC (Maj Goode): Yes, sir.

Questions by the government (continued):

Q. Mr. Phillips, to be clear, at any time was that injured individual laying in the field posing a threat to anyone?

A. No, he wasn't. He was an injured elderly civilian that was injured due to the VB -- or the IED that was set off on my vehicle. So he was no threat by any means.

GC (Maj Goode): All right. At this time I have no further questions for you, sir.

IO: All right. We're going to pick it up with the defense. There's one question that I have that I'm going to forget.

EXAMINATION BY THE INVESTIGATING OFFICER

Questions by the investigating officer:

Q. Mr. Phillips, how long did you remain in that area after Captain Card shot that individual?

A. Actually, I felt that Captain Card seen my reaction and then that's when he asked me to take up rear security, because he seen I was not happy in what I just seen.

Q. So how long did you remain there after? Was it seconds? Minutes?

A. Like two minutes.

Q. Two minutes.

A. Literally once it happened, you know, I was just standing there and wondering what the hell was going on. And then I walked up to him and I was instructed to go to the rear of the formation.

Q. This may seem like a silly question, but do you know if that individual was killed?

A. Yes.

Q. Why do you say that?

A. I know who all was killed that night by Sergeant Major Webber.

Q. Based on your observations on 7 June after you saw Major Card --

A. I knew he was dead. Obviously, he was shot at point blank plus he sustained injuries that he may not survive from already. So he was dead.

Q. Did you see his body at any point thereafter later in that day?

A. No, we left them all there.

Q. Did he remain in the field to the best of your knowledge?

A. Yes, sir.

Q. Even until the time you all departed the area?

A. The personnel remained in Vehicle 1, the elderly remained on the ground, and there was also five people in a car.

Q. And they were left as is?

A. In the car. We ain't talking about that I guess, but we should be.

IO: All right. We're going to pick it up tomorrow morning. Mr. Phillips, just a brief instruction. Don't discuss your testimony with anyone. Obviously you can speak with the lawyers involved in the case, don't discuss your testimony with anyone else about what you testified to today or what you might testify tomorrow. If anyone tries to contact you or speak to you, just stop them and let Major Goode know at your convenience, okay?

WIT: Of course.

IO: All right. Thank you very much. See you tomorrow morning.

GC (Maj Goode): All right. Before you could leave, just write your name and the date on the bottom of this.

IO: What time would you like Mr. Phillips back.

GC (Maj Goode): 0745.

IO: Today's 20 April.

Major Goode, we didn't cover it but I know you referenced the statements. The two statements are you offering the map -- the Google Map or the award write-up.

GC (Maj Goode): The award write-up, yes. I believe we touched on that, sir. I didn't actually end up using the map.

IO: Okay. So no on five. And then there's --

GC (Maj Goode): Yes, sir.

IO: -- there's four and five, which is the written -- the drawn map -- not this one. The previous one before was the drawn map.

GC (Maj Goode): The drawn map.

IO: And five was the Google Earth. So we're going with this one here?

GC (Maj Goode): Yes, sir.

IO: Okay. And that one is 35.

All right. Tomorrow, everyone, 0800 again.

[The Article 32 investigation recessed at 1721, 20 April 2011.]

[END OF PAGE]

[The Article 32 investigation was called to order at 0908, 21 April 2011.]

IO: Investigation is called back to order. The date is 21 April 2011.

Mr. Phillips was informed to show up some time prior to 8:30, 8:15, 8:30. So far he has not shown up or contacted trial counsel.

All right. Mr. Faraj, you wanted to put something on the record.

CC (Mr. Faraj): We'll do it at the conclusion of the presentation of the evidence.

IO: All right. Trial counsel, in light of Mr. Phillips not being here, is there another witness you'd like to call?

GC (Maj Goode): Yes, sir. We're going to call Special Agent Periard.

IO: Very well. You may proceed.

And before we proceed with the witness, understanding that the Article 32 is -- several purposes for an Article 32. One is to establish a record if the case ever goes to trial. The primary purpose -- at least what I'm viewing at is the state of the evidence as is today. Understand that Special Agent Periard plays an important role in this investigation but unless the witness came into the courtroom yesterday and said, The matters in my statement are true, and I have an independent recollection; I pretty much discounted that.

So while there's sort of an academic -- and I use that word loosely -- academic question and answer that could take place here, from my perspective, at least right now, I'm not all that concerned how or why that happened. What I'm looking at the end result is, which is several individuals made statements. Their testimony has now changed and for whatever reason -- and again understand that may be a theme of the case -- that doesn't concern me that much. I've basically discounted that. So for whatever reason -- right or wrong, impropriety or otherwise -- unless they came into court and said, Here's my testimony, I'm not sort of going to give their statements weight.

All right. So just wanted to share that with you, so proceed with the witness.

GC (Maj Goode): Okay. Sir, I'll focus in a little bit.

Special Agent Jason R. Periard, CID, was called as a witness by the government, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the government:

Q. Can you please state your full name, spelling your last?
A. Jason Robert Periard, P-E-R-I-A-R-D.

Q. And what is your current billet, duty station, and rank?
A. I'm a master sergeant. I'm the chief investigator for the Criminal Investigative Division, MCAS Miramar.

Q. How long have you been an investigator?
A. About 13 years.

Q. Can you please give us a brief description of your career?
A. I was a military policeman coming in in 1991. I have served several years, five deployments, became a CID agent in '97, did several follow-on tours overseas, did a B-billet, and did a three-year tour with NCIS.

Q. I want to talk to you about your tour with NCIS. Did you get any specific or particular training before you started working for NCIS?
A. The training we get is from the Army Special Agent Course; no training from NCIS.

Q. While you were there you were the agent on the Major Card investigation; is that correct?
A. Yes.

Q. I want to talk briefly about some of the investigative steps you took in that investigation. Were you the main agent in that case?
A. Yes, I was.

Q. Approximately what -- I know there's a lot of witnesses in that investigation. Approximately how many of those witnesses did you yourself interview?
A. Twenty to thirty I believe.

- Q. Some of those witnesses testified yesterday, and I want to talk briefly about your interactions with them.
- First of all, I want to talk about HM1 Slaughter. Do you recall the circumstances under which you first met him?
- A. Absolutely. I traveled down to Albuquerque, New Mexico to meet him at the police station, the Albuquerque PD.
- Q. Why did you meet with him in a police station?
- A. Just so that I could record the interview. We had made a decision early on that all the interviews should be recorded; and I felt an environment where we could both meet that was recognizable to him where there was no distractions, we could talk in that environment with a recording capability.
- Q. We talked earlier in my office, and I just want to get this out on the record, but you revealed to me that you recorded all of the interviews; is that correct?
- A. Correct.
- Q. And that they would be somewhere in evidence even though I may not have copies of them at this time?
- A. Yes, they are.
- Q. Can you detail how you logged that evidence?
- A. Absolutely. The discs or VHS, depending on where I was in the United States -- upon returning, those were placed to -- in the evidence room at NCIS and given a log number. Those log numbers should be recorded in the case file on a spreadsheet that I created. If it's not there, there is a way that the evidence custodian can easily pull every piece of evidence for a particular CCM number.
- Q. Would there be any reason why the evidence wouldn't all be centrally located in the NCIS main office here on Camp Pendleton?
- A. No, not that I can think of.
- Q. Okay. Going back to HM1 Slaughter, what interview techniques did you use when you were talking to him?
- A. Generally, what we use is what's called the read technique for interviews and interrogations. It's a -- it's a training that I went through about six, seven years ago. It's a theme based approach to interviews. We use behavioral analysis and fact based questionings

to find out whether someone's being deceptive.

If they're being deceptive and we believe they're involved, we shift to a theme based approach where we try to assure the person that it's okay to tell us the truth. Basically, we give them some of the reasons why they may be apprehensive about telling us the truth, whether it's, you know, love of the other person that they're trying to protect or they don't want to get involved, things of that nature; so we, kind of, try to alleviate that anxiety. When they come in, we just basically try to tell them that's the right thing to do and use those themes to gather the evidence.

- Q. Were you in any way -- let me put it this way, at what point during the interview did he recall seeing then Captain, now Major Card shoot an unarmed Iraqi?
- A. I don't remember exactly when, but initially he said he didn't remember anything. And that's pretty much been -- was the norm for a lot of these witness interviews. And basically, I used a fact based approach -- a direct approach is what it's called -- I revealed that I already knew some of the details on what happened out there based on other accounts of the information.
- Q. And did you give him those details?
- A. I did. I gave them a couple of the details, like we know something was a violation of the law of armed conflict out there based on testimonial evidence we received already. Why don't you try to think harder about what you saw out there? It's kind of a minor accusatory, but mostly fact based. We just tell them, Look, we already know what happened, there's no need to not tell us what happened. And that's when he told us. It was literally maybe an hour -- within a half hour into the interview.
- Q. When he told you that he saw Major Card shoot somebody, had you up until that point given him details of anything anybody else already told you? Such as -- did you say somebody else saw him shoot somebody?
- A. I can't recall whether I did up to that point, but I might have. I would have to see the video, and that's why I recorded them -- so that everyone can see the tactics that we used are all sound and --
- Q. I assume that when you talked to him you also do a

session where you kind of build rapport with your witnesses?

A. Absolutely.

Q. Did you feel like you built a good rapport with him?

A. Absolutely. He was, you know, he was very delighted that we were talking. I mean, he was very uncomfortable in the beginning, but by the time we left he shook my hand. And I told him down the road somebody's going to be contacting you and he was a very nice person.

Q. After your interview with him that day, did you ever speak to him again?

A. I'm not really sure. I don't think so. I never interviewed him again, but during Lieutenant Colonel Sullivan's preparatory time, he was having me trying to find -- locate people, but I don't know if I talked to him on the phone to try to find him. But every note entry that I made is everything we did in the case. So if I made a phone call, it's in there.

Q. From the conversation that you did have with him at the interview, did he indicate to you -- or is there anything that you can think of that would lead him to later recant what he told you that day?

A. No. I mean, there's no -- I didn't understand the question.

Q. Can you think of -- from your conversations with him, did he give you any indication that he might have a motive or reason why he would later say that he did not see Major Card shoot somebody?

A. No, none that he gave me.

Q. All right. I want to move to Marco Jimenez. Do you recall interviewing him?

A. Yes, I do.

Q. Can you describe briefly the circumstances under which you interviewed him?

A. I asked him to meet me because he was, I believe, in San Marcos at the time. I had asked him to meet me down at NCIS on Miramar. Same reasons -- recordable area, controlled environment where he can come in and knows where it's at. He was comfortable with that, he met me there, and we conducted the interview.

Q. How did it go?

- A. He was very animated, a very funny guy. He described everyone as a cartoon character. Just a really funny, you know, full of quips kind of guy, quick witted. And we had a really good conversation.
- Q. And in your interview with him, we have this statement -- he stated that he saw Major Card shoot an unarmed Iraqi; is that correct?
- A. Correct.
- Q. And what were the circumstances that immediately led up to him revealing that information to you?
- A. We were just having, you know, I told him that, you know, we have this evidence coming forward. People were saying that this happened out there. And then at one point, he said, Yeah, I remember standing behind the vehicle and, you know, I believe he said he saw a flash in his periphery -- I believe he's one of the ones that said that if I'm not mistaken -- immediately looked and saw Captain Card pointing a pistol at an Iraqi who was on the ground in front of him.
- Q. At any point, did you threaten him with trouble if he did not agree to do the interview?
- A. No.
- Q. Did you ever speak with him again?
- A. I don't believe so.
- Q. Was there anything about your interview that would give you any indication that he would have a motive to later on recant his testimony?
- A. None whatsoever.
- Q. Let me talk to you about Christopher Russell. Do you remember the circumstances under which you interviewed him?
- A. I do. I believe I met him in Temecula. I believe he was the one I interviewed at the police station up there. He lived nearby, and he said he was willing to meet me out there. We met out there, and we conducted the interview in the interview room.
- Q. How did that interview go?
- A. Pleasant. He was, I think, working in construction or something at the time, and we talked about that and had a good conversation. In the beginning -- just like a lot of the statements -- he said he didn't remember

anything, and I kind of went to a fact based approach. I said, Look, here's some things that are being said. Then he said, Okay, I do remember, you know, getting a cigarette from, I think, the driver, Britt, and hearing a gun fire and then looking over and seeing Captain Card with a pistol pointed at an Iraqi.

Q. Did he ever give you a phone call any time after your interview with him?

A. No. I believe -- I don't believe I ever talked to him again.

Q. All right. Did he ever somehow contact you and state that he wanted to have portions of his statement redacted because they were false?

A. No. No witness ever called me back. The only person that I had multiple contacts with over the phone was Phillips. He just called me to say how his life was going, things of that nature. But no other witness called me back and asked to change his statement.

Q. If a witness were to do that, what would you do?

A. I would reinterview the person to find out what areas of the statement he wanted to change. It's his statement.

Q. And did Christopher Russell -- anything about your conversation with him lead you to believe he would later have a motive to not want to go forward and talk about what he told you in his statement?

A. None whatsoever.

Q. Gunnery Sergeant Duran, do you recall the circumstances under which you interviewed him?

A. Yes. He met me late in the evening at the west office -- my west office NCIS in Del Mar. He came in voluntarily, we had an interview, and he was very, very defensive in his interview. But other than that, you know, he said he saw Captain Card walking around in the bushes. I believe he said he was the one that heard the moaning and then the moaning stopped when he saw Captain Card over in the bushes.

Q. Did you threaten him at any time during that interview?

A. Absolutely not.

Q. Did you say anything that may lead him to believe he was being threatened?

A. No.

- Q. Andrew Tipton, do you recall the circumstances under which you interviewed him?
- A. I believe so. I think it was Bakersfield -- that we met at the Bakersfield PD.
- Q. How did that interview go?
- A. Pleasant. Same situation. The person came in on his own. I asked him to meet me there, he said no problem. I -- you know, I worked around his schedule. We had a lengthy interview because he had a lot of detail. Initially, came in, said he didn't remember anything. I told him there's way that, you know, we can try to recall the events of that day. I had him kind of talking -- I think I had him do some of the techniques we use to help for memory -- talking in reserve about the events out there and just, kind of, going through them step by step, what the first thing you remember. And then at one point in the interview, we saw some deceptive indications that he might be covering some information up so I used a fact based approach with him just like the others.
- Q. What type of deceptive did you view?
- A. A combination between nonverbal cues and behavioral analysis questions.
- Q. For the lay person, specifically what was he doing?
- A. He was fidgeting a lot. His mannerisms had changed from when we were just talking about sports or whatever it was we were talking about, to someone who had displayed what we call deceptive clusters -- closed posture, you know, kind of nervous, elevated heartbeat, you know, hands moving a lot, things of that nature. And then there's the behavioral analysis that we use that evoke the answers that could tell us whether or not someone might be deceptive.
- Q. Such as?
- A. Why would somebody say that you did this if you're telling me that you didn't? The obvious answer would be, well, you know, because I didn't do it. That would be a truthful person. It would be a matter of fact answer for the most part. Not one of these deceptive indicators can stand by itself. We use a totality of all of them. So it doesn't always -- the person won't always respond that way. But generally speaking, if a person doesn't say, Because I didn't do it, any other answer is considered deceptive.

- Q. Did you ever talk to Mr. Tipton again after this?
A. I don't think so. I don't believe we ever talked again after that.
- Q. All right. Now, I want to talk about a couple witnesses is that weren't here today or yesterday. Did you talk to First Sergeant Beall?
A. I did.
- Q. And what was -- how did that interview go?
A. I met him in Joliet, Illinois, south of Chicago, at the Joliet Police Station I believe. Came in on his own, and we did the interview in one of the interview rooms.
- Q. How long was that interview? Do you remember?
A. Anywhere from six hours to eight hours.
- Q. Did you videotape that interview?
A. I did.
- Q. Was he immediately forthcoming?
A. No, he wasn't.
- Q. So what interview steps did you take in order to get the statement that I'm holding in my hand right here?
A. I built a rapport with him at first. You know, I kind of made him understand that I wasn't here to -- you know, he had been advised of his rights. He's not here to -- you know, I'm not here to point the finger at him or anything like that. Just merely trying to find out what he knew out there.
- He said he didn't remember anything at first. Then he gave me a little bit of information that he does remember sitting in the vehicle and hearing a gunshot, and it kind of progressed. And then at one point, I pointed out that he had earlier said that he really trusted his Marines unequivocally and they were wonderful Marines. And I used a technique where I said, Well, if you trust them and they're all saying this happened and you're saying it didn't, are you saying it saying that they're lying or you're lying. And that's what made him finally tell me that he saw it.
- Q. How did he tell you what he saw, and what did he say?
A. He kind of -- what we call a kinesic mode, an emotional mode, he kind of collapsed and said, Yeah, I saw it. And then we had to go through the entire thing, and I

had him actually demonstrate with one of the agents that was with me how he saw Captain Card standing, how he was holding the weapon, how the Iraqi was on the ground. So we had him actually re-enact what he saw. And he basically said he saw Captain Card shoot an unarmed Iraqi.

- Q. You said he did a demonstration. Can you describe a little bit more exactly what he did?
- A. He was trying to describe the angle and the way that the captain was standing in relation to the Iraqi, and I asked him would it be easier if you -- or I think someone brought up let's -- would you show us what that looks like? And he -- I believe he was the one holding an imaginary weapon, and I had the other agent lay on the ground until he said that's exactly how he was laying. And, kind of, he showed us exactly what he saw based on using those two juxtapositions.
- Q. At the end of the interview, did he agree to enter into a statement?
- A. Yes, he did.
- Q. Who typed that statement?
- A. I typed it.
- Q. Did you give him an opportunity to look at the statement and make sure everything in the statement was true?
- A. Absolutely.

GC (Maj Goode): Sir, may I approach the witness?

IO: You may.

Questions by the government (continued):

- Q. I'm handing the witness what we have marked as Exhibit 16. Do you recognize that statement?
- A. I do.
- Q. How is it that you recognize that statement?
- A. It's got my signature at the bottom, and it's the NCIS paperwork that I use for standard form for a statement.
- Q. And you, yourself, typed that statement. Is that correct?
- A. Correct.

- Q. And how much of an opportunity did you give First Sergeant Beall to input into that statement and review that statement?
- A. Throughout as we typed the statement, he was sitting right next to me. And then we typed it together. Basically, I typed it physically and he told me what happened. We went through chronologically the events and then there was a question and answer period where I would type out the question, read it to him, and he would give me an answer. And I would type exactly what he told me.
- Q. Did you talk to First Sergeant Beall again after this interview?
- A. No, I didn't.
- Q. To the conversations that you had with him during that interview; can you think of any reason why he would have any reason to not want to testify?
- A. No.
- Q. I'm retrieving the document from the witness. I want to talk to you now about Carlos Gutierrez. Did you talk to him?
- A. I did.
- Q. Under what conditions did you talk to him?
- A. He volunteered to come into the NCIS central office at Camp Pendleton and be interviewed there.
- Q. How did that interview go?
- A. Very well. It was very cordial. He's a law enforcement officer so we had a lot to talk about prior to the interview. He told me about how it is to be out of the Marine Corps and, you know, that he loves his job and it's a stressful job. And then we went into the interview phase.
- Q. How long was that interview?
- A. I don't know exactly, but they were averaging six to eight hours because of the detail of the statement.
- Q. Why were these interviews taking so long specifically?
- A. A lot of detail, and I wanted to make sure that we asked every possible question so there was no argument as to what the person was trying to convey in the testimonial evidence. I added every exculpatory question I could think of, every supporting question to get the most

detail so that there was no question what the person was trying to put in their statement.

- Q. And what did Carlos Gutierrez tell you to the best of your memory?
- A. He basically told me that during the -- after the attack on the convoy, he was standing next to the C-square and he saw Captain Card walk down, take out his weapon, point, and shoot an unarmed Iraqi.
- Q. At the end of that interview, did you help him create a statement?
- A. Absolutely.
- Q. And did you, yourself, type that statement?
- A. I believe so, yes.

GC (Maj Goode): May I approach the witness, sir?

IO: Yes.

Questions by the government (continued):

- Q. I'm handing the witness what we have marked as Exhibit 21. Do you recognize that statement?
- A. I do.
- Q. And what is it?
- A. It's a standard form NCIS sworn statement.
- Q. Of Mr. Gutierrez?
- A. Mr. Gutierrez; and it has my signature at the bottom as well as Mr. Gutierrez.
- Q. Now, you said that you typed that statement. How much input did he have in the writing of it?
- A. Complete input. They stand -- they sit right next to us. Basically, I give them the chance if they want to handwrite a statement or they want us to type it or they want to type it. Whatever way they want to provide it, but standard - it's basically they want us to type for them, and they'll dictate the events as they occurred chronologically.

The only thing I do is help him put it down on paper so it makes sense; so it's chronological. That's the only thing I did. So he starts from the beginning, I type what he's telling me, and then at the Q and A portion I

ask the same battery of questions that I ask and I type in his answers.

Q. What does Mr. Gutierrez do for a living?

A. He's a -- I believe a sheriff -- a deputy sheriff.

Q. All right. I'm retrieving the exhibit from the witness.

Can you think of any reason why Mr. Gutierrez -- or Deputy Gutierrez would not want to testify today?

A. No.

Q. All right. One more witness I want to talk to you about and that's Mr. Wike, Andrew Wike. Do you recall the circumstances under which you interviewed him?

A. I would have to look at the statement location. I don't remember exactly where I interviewed him. They were all over the United States so --

Q. Do you remember meeting him?

A. I do.

Q. How did that interview go?

A. Cordial. I didn't seem to have any issues. He was very -- after the initial -- you know, nobody likes to -- once they find out why they're being brought in and asked to talk to us, you know, just kind of a relief. And we just talked about current events and stuff and then went into the interview.

Q. And what did he tell you?

A. Wike, I'd have to remember where he was in the convoy. I can't really remember which one that was. I don't want to get him mixed up with one of the other witnesses. But I know he did say that he saw Captain Card shoot an unarmed Iraqi.

Q. Did you have him write a statement?

A. Yes, I did.

Q. And did you, yourself, type that statement?

A. Yes.

Q. Did you give him an opportunity to review that statement and make sure everything in that statement was correct?

A. Yes.

GC (Maj Goode): May I approach the witness, sir?

IO: Yes, you may.

Questions by the government (continued):

Q. I'm handing him what we have marked as 24. Do you recognize that?

A. I do.

Q. What is it?

A. It's a sworn statement form of a statement typed for Andrew Wike, signed by myself, and witnessed by Agent Renald.

Q. Did you ever see or talk to Mr. Wike after this interview?

A. No. This was in Nebraska. That's why I couldn't remember.

GC (Maj Goode): I'm retrieving the exhibit from the witness.

IO: I'm sorry. Just a quick question -- Wike is a civilian?

WIT: Yes, sir.

IO: Out of the Marine Corps?

WIT: Yes, sir.

GC (Maj Goode): All right. I'm done, sir. No further questions.

CC (Mr. Faraj): Can we have a brief comfort break before we start?

IO: Sure. All right. Let's take a couple minutes here.

[The Article 32 investigation recessed at 0935, 21 April 2011.]

[The Article 32 investigation was called to order at 0944, 21 April 2011.]

IO: Investigation is called to order.

CROSS-EXAMINATION

Questions by the defense:

Q. You are a Marine?
A. I am.

Q. And when did you join?
A. 1991.

Q. And you are now a Master Sergeant?
A. I am.

Q. When were you promoted to Master Sergeant?
A. April 1, '08.

Q. You said you've done some deployments. Where have you deployed to?
A. Operation Iraqi Freedom, East Timor on a humanitarian operation, Korea, Panama, and Norway.

Q. Do you have any Combat Action Ribbons that you're entitled to wear?
A. No.

Q. Have you ever been discharged from the Marine Corps since you joined the Marines?
A. No, I haven't.

Q. So you've been a Marine on active duty ever since you joined?
A. Yes, I have.

Q. All right. Would you agree with me that we expect Marines to always tell the truth?
A. Absolutely.

Q. Do you have any reason to doubt that or to have any exceptions to that?
A. Whether Marines should tell the truth or whether they do tell the truth?

Q. Whether they should tell the truth.
A. They should always tell the truth.

Q. And of course we charge Marines with lying when they don't tell the truth?
A. Yes.

Q. Officially; but even unofficially, we don't accept it when Marines lie.

A. Absolutely. Integrity.

Q. And that's where the issue of you don't cheat, steal, or lie comes in?

A. Yes.

Q. All right. Do you believe that as an investigator you are permitted to lie at any time?

A. During an interrogation, yes.

Q. So you're permitted to lie to people during interrogations?

A. Absolutely.

Q. Okay. Well, explain for me what the difference between lying today in public when you're talking to friends and lying to people when you're interrogating them?

A. Using deception in interrogation has legal precedents. It's something that we do as part of our training.

Q. Okay. Let me stop you there for a minute. You said legal precedents. Is there a case that stands for the proposition that investigators may lie?

A. I'm sure -- I don't know.

Q. So when you say legal precedents, where in the law do we find the justification that grants people, and more specifically in your case Marines, a right to lie?

A. I don't know the case off the top of my head, but if I had time to research, I'm sure I could find several.

Q. Well, you've had lots of training so is there somewhere in your training where you read a statute, a rule for court-martial from the manual or the UCMJ that gives exceptions to investigators to lie?

A. There is training, correct.

Q. I'm talking about statute or regulations, not what somebody's told you.

A. I'm sure at the top of each training there's references to all the statutes that you would need. I don't know those off the top of my head though.

Q. As you -- as you sit here today though, you believe that there's a statute that permits you to lie?

A. As I said, I believe there's legal precedents that per

our training we've been taught that we are allowed to lie in an interrogation, correct.

Q. Okay. So I understand training. Somebody told you -- gave you a class. But when you say "legal precedents" that has meaning. Would you agree with that?

A. Absolutely.

Q. Okay. So as you sit here today, you believe that you could find me a regulation or a statute or some formal authorization that permits investigators to lie while they're interrogating?

A. I'm sure the procedures are on paper somewhere, yes.

Q. I'm not talking about procedure. I'm talking about legal precedent. Those were your words.

A. I'm sure that if given enough time, one could research the trainings based on legal precedents. So we receive the training off of what is acceptable and not acceptable in court.

Q. Okay.

A. It's not going to -- it would be counterproductive to do something that -- to be thrown out of court.

Q. So will you permit me then if this does go to court to -- if we had a jury, to say that you lie as a matter of course when you're doing interrogations?

A. As a matter of procedure, correct.

Q. Okay. So let me ask you this then because in my experience as a human being when people get used to lying, it becomes easier to lie more often?

A. I disagree.

Q. Okay. Would you agree that sometimes people that commit crimes tend to be more easily persuaded to commit crimes again?

A. That's a very broad statement. I don't understand the question.

Q. Have you heard of something called recidivism?

A. Yes, I have.

Q. What is that?

A. It means people in the system that have committed crimes, it's a possibility of them to commit further crimes.

- Q. And you are well aware that every time a prosecutor takes somebody to trial, they go back and dig up to see if they have a record, right?
- A. Yes.
- Q. And then they turn around and use that at trial or at least at sentencing, right?
- A. Sure, yes.
- Q. And you sometimes testify about those things -- that you pulled up their record, and this is what you got?
- A. Depending on the procedures, correct.
- Q. Okay.
- A. You know that there's certain things that can't be brought up at trial unless they're brought up by the defense.
- Q. So in our system, we do give value to the way people behave during their lives, right?
- A. I would assume. I don't rely on those things in my investigative process though.
- Q. I understand. But I'm asking you whether you would agree with me that we do look at people's past conduct when we're evaluating them, for example, in a court of law?
- A. I would actually disagree with that. I mean, if you're looking at the fact-based approach of investigations --
- Q. I'm not talking about investigation, I'm talking about the standards our society use to evaluate people's potential for rehabilitation in the future as they're going through trials and judgments.
- A. I don't understand what the question is I guess.
- IO: Mr. Faraj, restate the question.

Questions by the defense (continued):

- Q. Do you agree that in our society -- in our system, we look at people's past to determine whether they have future potential to either commit crimes again or to be upstanding citizens based on their performance in the past?
- A. Yes.
- Q. And of course we've already said that we sometimes bring

people's records into trial. And if they don't have a record, we bring that up sometimes, right?

A. Yes.

Q. Okay. Now, going back to the lying issue; because you disagreed with me that when we get into a pattern of conduct, we sometimes tend to be more comfortable in doing that thing. And you didn't agree with that?

A. Because the assertion is that when I lie, that somehow that carries over into the rest of my life.

Q. That's actually my assertion.

A. And I disagree.

Q. Okay. And why is that?

A. I disagree because when you do a job, you use the tactics that you're trained to use and nothing more. And the tactics we are trained to use for interrogations are we can be deceptive, we can lie in the interrogation room. We use that as a way of creating an environment that makes it easier for the person to tell the truth.

Q. Okay. So as a matter of training, you train yourself to sometimes lie to people?

A. Correct.

Q. And they're not able to detect that you're lying to them, and so they give you the truth?

A. Yes.

Q. Okay. Now please tell me -- I'm cross-examining you right now, you're being interrogated by me -- how can I tell if you're lying or not.

A. How can you tell if I'm lying?

Q. Yeah. How can I tell if everything you were asked by Major Goode and you answered wasn't a lie?

A. You can check the record.

Q. No, I'm asking you. How can I tell? I mean, you're a trained liar, right?

A. That's a pretty broad statement.

Q. You told me you're trained to lie and to come off and not be detected. Isn't that correct?

A. I'm trained to lie in the interrogation room if I need to to create an environment where they can tell the truth, correct.

Q. I understand. You're trained to lie and to not be detected?

A. Yes.

Q. How can I tell as I stand here whether you're telling the truth or lying? I just have to take your word for it?

A. I would say so.

Q. Just like those Marines had to take your word for it that you interrogated.

Now, are you aware that just about every Marine that you interrogated that's come into this court has recanted their statement?

A. Yes.

Q. So you told me to look to those statements to determine whether you were lying or not. Now, based on that, who should I believe? You tell me.

A. You should believe me because I don't have an agenda. I'm merely collecting the evidence as it is. And in fact, you can check the video. I videotaped every interview.

Q. I'm still trying to grapple with how I can tell if you're lying or not. I mean, if we have a trial and you stand up and get on the stand, how can the jury -- well, let me back up. Would you agree with me that there is no way that you can ever admit to me that you're lying even if you are lying, right? Because that would be perjury.

A. I wouldn't perjure myself on the stand, sir.

Q. I understand. But if you were -- if you were -- if you were just caught in a lie, you're not going to tell me that you're lying because that would be perjury.

A. No. I would tell you if I made an error in my testimony.

Q. I'm not talking about error, I'm talking about outright lying.

A. It would want happen for me.

Q. Okay. And of course if that's true or not because you're trained to lie and get off without being discovered.

A. That's why we collect testimonial evidence in the form

of a statement and in a video.

- Q. Well, let me ask you this: Do you have the power to subpoena anybody?
- A. No, I don't.
- Q. Did you tell any of these Marines that if they don't cooperate with you that you could subpoena them to get them to cooperate?
- A. I did explain to some of them that the procedures are that if they don't cooperate that they could be subpoenaed. I never threatened to subpoena anybody.
- Q. All right. Could you have said it in a way to lead them to believe that you could subpoena them?
- A. I don't understand.
- Q. Could you have said it in a way to lead them to believe that they could be subpoenaed?
- A. I wouldn't have said it in a way to lead them to believe they were subpoenaed. I was merely explaining the procedures.
- Q. Could you have said it I said. Could you, not did you.
- A. I don't understand.
- Q. Could you have said it in a way that left the Marine with the impression that he could have been subpoenaed to cooperate with you?
- A. If they had taken me wrong, absolutely. Anything's possible about how they perceived me in the interview room.
- Q. And that would have been helpful to you if they perceived it the wrong way even if you didn't specifically say it that way?
- A. Helpful how? If it's brought up in court, it could be something used against me. Why would I use something that's not a declared tactic?
- Q. All right. You interviewed a lot of witnesses in this case?
- A. I did.
- Q. All right. Did you develop an idea of what happened on June 7, 2004?
- A. Yes.

Q. Okay. I want you to walk me step by step if you could -- I don't want to get into, you know, what time they left, what time they got back; we're here for a specific event if you recall, right?

A. Yes.

Q. IED and then the events that happened post-IED. Were you able to reconstruct those events in your mind?

A. Yes.

Q. Okay. I'm going to write what you what you tell me up here just so we can follow through.

A. Sure.

Q. So let's call T -- T is IED, okay? All right. That's zero time for IED, okay? What happens -- what do you believe happened immediately after the IED blast took place?

A. The front LAV was disabled.

Q. Okay.

A. So it came to a complete stop.

Q. Okay.

A. There was firing to the right of the convoy. There's no clarification whether it -- there was incoming or not. Some of the people said they heard rounds coming from the right.

Q. Now, everything you're telling me you believe can be supported by evidence, and you believe it to be true based on your collection of the evidence?

A. Based on the collection of the testimonial evidence.

Q. We don't know if it actually happened, but based on your collection of the evidence, you can corroborate some of these things?

A. Yes.

Q. Okay. Firing from the right; what else?

A. At some point, there was a vehicle that came south on the road in front of them.

Q. Vehicle moving south.

A. Several people engaged that vehicle and it was disabled.

Q. Engaged, okay. Do you know who engaged it?

A. Not clearly. I think Phillips said he shot at it, and I

believe Gutierrez said he shot from the vehicle at it.

- Q. Phillips. We know Phillips. You're not sure if Gutierrez engaged?
- A. I'm not sure. I believe he was one of the ones that said he fired at it, but I'm sure that if any of them saw the car, they would have --
- Q. I don't want to use sure. So if you're not sure for Gutierrez, we'll leave him off for now, but let's go with Phillips. Okay; what else?
- A. At some point, there was a second vehicle that came down the same road.
- Q. Okay. Moving south?
- A. Correct.
- Q. What happened to that?
- A. It was fired upon and turned around and left the area.
- Q. Fired upon, okay. What's the next thing?
- A. At some point, the rear vehicle went in front of the convoy to set up a blocking position.
- Q. Do you recall what that rear vehicle was?
- A. It was an LAV.
- Q. Okay. So the rear vehicle is an LAV-25?
- A. Yes.
- Q. Rear LAV moves forward.
- A. And I believe Sergeant Hyman was the vehicle commander for that one.
- Q. Now, let me -- commanded by Sergeant Hyman?
- A. Yes.
- Q. Who was the gunner on the lead LAV-25?
- A. That would be Phillips.
- Q. Okay. And who was the gunner on the rear LAV-25?
- A. I'm not really sure.
- Q. Do you know where Kadrie was, if he was in the first vehicle or last vehicle?
- A. I'm not sure.
- Q. You do recall having Kadrie -- Kadrie did tell you that

he observed Major Card, then Captain Card, kill somebody?

A. Initially, when I interviewed him, no. He said he didn't remember.

Q. But eventually he said he saw it with his own eyes, right?

A. I believe so. I'd have to review the statement.

CC (Mr. Faraj): I can provide you that statement.

IO: It's 15.

CC (Mr. Faraj): I've handed the witness Investigative Exhibit 15. Please review it. When you're done, look up at me.

[The witness did as directed.]

WIT: Yeah, this is the initial statement I believe.

CC (Mr. Faraj): Does he not say he saw it in that statement?

IO: There's nothing in his statement about seeing Card shoot, no.

CC (Mr. Faraj): No? Okay.

IO: Just the -- this is the one -- call came across the radio, someone was alive, that they had been taken care of.

WIT: Yes, sir. This was my first interview with him.

Questions by the defense (continued):

Q. Okay. But he did tell you that he did see Card eventually?

A. I'd have to see the second interview that we conducted.

Q. It's a results of interview, not an actual statement. Okay. So what's the next thing that happens after the rear LAV-25 moves forward that's commanded by Sergeant Hyman?

A. I believe several people helped unload and triage the wounded in the lead vehicle.

Q. Let's take it step by step. What actions are taking place on the ground if you recall from your

investigation?

A. After the engagement of the second vehicle, that the firing had stopped.

Q. Okay. Is anyone on the ground right now outside of the vehicle?

A. Marines?

Q. Yeah.

A. Yes. Phillips had jumped from the lead vehicle with a 240 and was in a blocking position at the t intersection facing north I believe.

Q. Okay. How long is he in that blocking position?

A. I don't know for sure without reading the statement.

Q. Does 30 minutes to an hour sound about right?

A. I would be guessing. I don't know exactly how long he was there.

Q. Okay. Would that have been important for you? Is that an important factor?

A. I'm sure it is. The timeline is important.

Q. Okay. Well, let me ask you this: When do you think this alleged killing took place?

A. After the firefight.

Q. How long after the firefight?

A. It was plus or minus time. There was, you know, some people said 30 minutes after the firing had ended. Everybody was meandering around the vehicles waiting for the wrecker.

Q. Let's do this -- I think we can agree on this: If the killing -- if the illegal killing happened, it happened before the QRF arrived, right?

A. Well, there's two QRFs. There was an initial QRF that --

Q. That's what I'm talking about.

A. -- that retrieved the deceased and the wounded.

Q. I'm not talking about that. I'm talking about --

A. The second QRF. Correct, we can agree on that.

Q. And what time did that arrive?

A. Again, we're talking plus or minus what, the blast?

What are we using as a time frame?

Q. From T, the blast.

A. I would have to look at the statements based on the times they described in the statements. There would be a first time and a latest time. So you would have to say that's the time frame that they -- they guessed.

Q. Did you talk to Lieutenant Stephens -- formerly Lieutenant Stephens?

A. The name doesn't ring a bell. I'd have to see the statement. I had several interviews so I don't --

Q. He's guy that works in Oklahoma for BP; was on the QRF.

A. Is my name on the statement?

Q. Diaz is on the statement. I assume you've read all the investigation, right?

A. I have.

Q. Are you familiar with that person?

A. I'd have to read his statement. The name doesn't sound familiar. But again, there's been a lot of -- there is 30 something people witness --

Q. I don't know that time is on the statement. It's testimony. Take a look at this statement there.

A. Okay. I remember reviewing this statement when it got back from -- we sent a lead out to have him interviewed.

Q. You know what, let's switch topics a little bit. Did you meet with Mr. Phillips?

A. I did.

Q. How would you describe his demeanor? Is Mr. Phillips okay?

A. I believe he's nervous at times, things of that nature.

Q. Did he demand payment to cooperate and testify?

A. He did send an e-mail to the prosecution that had some demands.

Q. And did those seem like the acts of a rational person?

A. Again, they seemed irrational to me, yes.

Q. They seemed rational?

A. They seemed irrational.

Q. Irrational. He also believes that General Mattis is in some sort of conspiracy to bring him down or to cover things up?
A. He has said that, yes.

Q. I think he testified yesterday that he sent a letter that went to the Joint Chiefs of Staff. Were you aware of that letter?
A. I wasn't aware of that.

Q. Nor that the letter that he sent to -- the letter that he gave First Sergeant Webber that then went to his battalion commander that eventually landed on your desk was also forwarded to the Joint Chiefs of Staff. Did you forward that letter to the Joint Chiefs of Staff?
A. No, I didn't.

Q. You didn't?
A. Forward a letter to the -- he said it was forwarded --

Q. He drafted a letter. Are you aware of that letter? He sort of wrote a statement out.
A. Right.

Q. And then that statement almost verbatim what became an NCIS statement --
A. Yes.

Q. That initial statement was delivered to you eventually, right?
A. Yes, it was.

Q. It went through a man by the name of Webber, First Sergeant, Sergeant Major now.
A. Sergeant Major Webber, yes.

Q. And then his battalion commander?
A. His battalion commander, yes, sir.

Q. Then to you?
A. Yes.

Q. Then to the Joint Chiefs?
A. No, I did not forward a statement to the Joint Chiefs of Staff.

Q. He said it was forwarded to the Joint Chiefs.
A. Then he's mistaken.

Q. How can that be?
A. Because he made an error in saying something he probably shouldn't have.

Q. All right. Did you lead him to believe that it was going to the Joint Chiefs?
A. No, I didn't.

Q. All right. So this entire investigation began with allegations from Phillips?
A. Correct.

Q. You had no other facts independent of Phillips before you began to do your investigation?
A. Correct.

Q. Would it be important for you to know where Phillips was at the time when the alleged killing happened?
A. Where he was standing?

Q. Yeah.
A. Yes.

Q. Okay. Are you aware that he testified that he was in a blocking position behind a machine gun for 30 minutes to an hour?
A. If it's in his statement, that's --

Q. It's not in his statement, but that's what he said.
A. Well, that's his perception of the events.

Q. Well, he was there, right?
A. Yes.

Q. Okay. And are you aware that there was no other front security besides Phillips?
A. According to his original statement he said that -- and I wasn't here for his testimony, I'm just telling you what he told me -- there was another Marine in front of him that he had to call back behind him.

Q. Right. And the Marine -- that was early on, and the Marine went back behind him?
A. Correct.

Q. And he remained in place?
A. In place.

Q. And Mr. Phillips sees himself as an extraordinary machine gunner. Are you aware of that?

A. He didn't tell me that.

Q. He believed that no one else should have been engaging because he was engaged. Are you aware of that?

A. No.

Q. Okay. Do you know whether the QRF relieved Mr. Phillips in front security when they arrived?

A. I don't really remember exactly how he was relieved, but I know at some point he got up from his position and walked back towards the HMMWV. I'd have to look at the statement.

Q. It's not in the statement. I'm asking whether you missed something in this statement. Would it be important for you to know where he was -- I mean, to know the timeline?

A. It depends on what he remembers as well.

Q. Okay.

A. I mean, I can't ask a question he doesn't know the answer to.

Q. Does it seem reasonable for you that in a hostile environment, a Marine would get up -- the front security -- without being relieved by somebody?

A. It would depend on whether he was called to somewhere else or whether he was told to go to somewhere else.

Q. Again, let's assume he was because Marines don't act on their own. Then someone must have relieved him from that and placed someone else there or at least there was some sort of communication?

A. That sounds likely.

Q. Do you know of anybody in the jump platoon that replaced Phillips at lead security besides the QRF?

A. No, not off the top of my head.

Q. No one ever said they relieved Phillips, right?

A. Yes.

Q. The only time these Marines would draw back from security is when the QRF arrives.

A. Yes. And again, I'd have to read the statement, but there are people that were relieved in their positions

by the QRF so they could go back and deal with disabling the vehicle and things of that nature.

Q. Right. But the Marines on the outboard of the jump CP of the convoy that has now been hit do not come back internally unless they're relieved by somebody from their own jump CP or when they're finally all relieved by the QRF. Do you agree with that?

A. Yes.

Q. Okay. Do you know who relieved Phillips?

A. No.

Q. But we do know that no one in the jump CP ever said, I relieved Phillips at lead security?

A. Correct.

Q. Okay. And if Phillips wasn't relieved at lead security except by the QRF, then there is -- based on your understanding of the topography and terrain there -- there is no way he could have seen Card shoot anybody?

A. If he wasn't relieved.

Q. If he was still at lead security behind his 240G, there is no way he could have seen back the 200 meters to where the C-square was and Card executing somebody?

A. There's no way for me to answer that without saying -- I'd have to know exactly where the vehicles were, the angle where he was sitting.

Q. Okay. That's what I'm asking. Did you discover all that stuff? You did a lot of diagrams, right?

A. Sure.

Q. Now, the alleged killing happened back by the C-square, which is in the middle of the convoy?

A. Correct.

Q. And Phillips told you that he was standing right next to it -- right next to the killing when it happened?

A. Yes.

Q. But if he was in position behind a 240G oriented towards the south, there's no way he could have seen the killing.

A. Provided he never got up off his position, it would have been a lot harder to see. I would never say -- unless I'm standing right there in that position, I would never

say there's no way he could see it because we don't know if his vision was obstructed.

- Q. This is Investigative Exhibit 35, it was drawn by Mr. Phillips yesterday. This is the lead LAV, and this is his pause, this little circle. He said the killing happened back here and he said there's at least a hundred meters between vehicles. So if he's in front of this LAV, it would be inconsistent with what you believe the facts to be as far as him being at the killing?
- A. Him not getting up from his position would be inconsistent, absolutely.
- Q. Right. Okay. Now, how many people do you believe -- besides all the people that Phillips killed -- how many people did Phillips kill that day?
- A. There's no way to tell. We don't have any -- anybody there that was at the scene.
- Q. He didn't admit to killing anybody?
- A. Killing any individuals?
- Q. Yeah.
- A. No. Shooting at vehicles. He said he shot at some vehicles. I don't really remember him saying anything like that.
- Q. You don't -- Phillips never told you that he felt bad about killing a bunch of people?
- A. I don't remember him saying it.
- Q. If he would have said that, would it have made it into the statement, or would you have kept that out?
- A. Everything made it into his statement that he told me that day.
- Q. Sorry?
- A. Everything that he told me that day made it into his statement.
- Q. All right. My question was: How many people were killed -- how many people do you believe were killed in the field next to the HMMWV based on your investigation?
- A. Based on all the statements, I think two to four individuals.
- Q. In the field?
- A. Yes. Some of the people mentioned there was two people

that got up and were engaged to the right of the convoy, and then some people said they saw I believe up to three bodies on the road later on. So based on those statements, I think two to three.

- Q. Have you talked to Cook and you haven't talked to Stephens?
- A. The QRF people?
- Q. Yeah.
- A. Most of them I didn't get to, no. I was reassigned.
- Q. Help me in understanding how an investigation takes place. I would assume that people that had nothing to do with this unit wouldn't have a motive to tell it one way or the other -- that were sort of neutral observers, we give their testimony a lot of credibility because they saw things as is without any motive to fabricate or lie or deceive, right?
- A. I would agree with that.
- Q. So if, for example, Lieutenant Stephens says he saw one person with his head sort of blown up and then there was another man in the field that got up and walked away?
- A. I wasn't a part of that interview so I don't know.
- Q. That would be important, right?
- A. That would be very important.
- Q. Because the man in the field is the one we're talking about him executing.
- A. Absolutely.
- Q. Are you aware that Stephens and Cook rubbed his sternum? He was saying he got up and walked away.
- A. I didn't see that testimony. I was already reassigned.
- Q. That would be important?
- A. Very important.
- Q. That would cast grave doubts about what Phillips says he saw.
- A. It would be pertinent to the investigation, absolutely.
- Q. Right? Because Phillips also said that nobody moved that man out of the field. Are you aware of that?
- A. Yes, I am aware of that.

- Q. Okay. So we're not talking about the man -- by the way, are you aware that Stephens and Cook both said that Captain Card said he shot at a man coming at him at the road? Are you wear of that?
- A. No.
- Q. Okay. The man coming at him would be the man -- we're assuming -- the man near the road where there was a man with his head blown up. Are you aware of that? You're not aware of that one?
- A. No.
- Q. So we're talking about somebody in the field now, right?
- A. Yes.
- Q. Okay. And we have two witnesses that say they rubbed this man's sternum, he got up, and walked away. You didn't know that?
- A. No, I didn't.
- Q. Okay. That same man was the subject of a report by Captain Card to headquarters where he was complaining that the QRF let an insurgent go, and he wasn't exploited by HET. Are you aware of that?
- A. No, I wasn't.
- Q. And that would be important?
- A. Absolutely.
- Q. Because there is no reason for him to report a man walked away and not being exploited if he was dead?
- A. Correct. But we're presuming that's one and the same person though.
- Q. Well, there was no other person reported in the field.
- A. Several witnesses said there was more than one person in the field.
- Q. Who?
- A. We can go through the statements one at a time. I'm just telling you from a totality of the testimonial evidence, there was more than one person that certain people saw.
- Q. We've heard from Tipton, from Jimenez, from Kadrie, from Duran. Every witness that's come in here besides Phillips has said that what's in their statement is not true, that you, kind of, manipulated them.

A. [The witness nods head.]

Q. So that's gone. Besides their statements -- and you know statements don't come in in trial, right?

A. Are you asking me a question?

Q. Yes.

A. Yes, testimony does.

Q. So their testimony is that no killing happened?

A. Sure.

Q. All right. And you're of course aware that most of those Marines don't really like Captain Card?

A. Some of them did tell me they didn't like him, correct.

Q. Right? Based again on your investigative experience, people that don't like someone don't normally have a motive to lie for them?

A. That's an absolute. I would never agree to that.

Q. I said normally, I didn't say always, right?

A. Generally, they could be seen to have a motive, correct. And that is important.

Q. In fact, a couple of them blamed him for Bohlman's death for being on that road?

A. Correct.

Q. And they loved Bohlman?

A. Absolutely.

Q. They had no real love for Captain Card, he was kind of new there?

A. Yes.

Q. So given their recantation of their testimony and no one but one man who got up and walked away, where is the body that is -- that was murdered by Captain Card? What other body is there?

A. Where is it?

Q. Not where is it, but what are we talking about? There's one that walked away, and at this point, there isn't anyone that says there was anyone in the field. Do you have any independent evidence of a body -- dead body in that field that Captain Card is accused of murdering?

A. I don't understand the question. I'd have to --

- Q. The evidence as it stands now.
A. Right.
- Q. Every witness that they've called has said that the man -- that there was no -- Captain Card didn't shoot anybody. Phillips says there was a man in the field that was shot by Captain Card, but you also have two other witnesses that said when they rubbed that man's sternum --
A. You said that man again. You're assuming that's the same guy.
- Q. The man in the field. There's only one man in the field that I know of, and I need you to help me find the other one. When they rubbed that man's sternum, he was feigning death, got up, and they put him in an Iraqi police vehicle and he walked away. Do you know of any other person that is in the field that Captain Card may have shot?
A. Absolutely. The other person --
- Q. Who reports that one?
A. Doc Slaughter reports a full cranial injury to the top of his head. That to me would indicate -- and I'm not a doctor -- but that he wasn't breathing.
- Q. I understand, but I just told you that all these kids that you interrogated have recanted -- have said that he didn't shoot anybody.
A. People recant for different reasons. I'm not inside their head.
- Q. All right. So as you sit here today, if the body that these witnesses that you interviewed is no longer a body, do you know of any other person that Captain Card may have been responsible for killing in the field that day?
A. If that person is the same person?
- Q. Yeah.
A. I would say he didn't kill that person.
- Q. All right. Let's talk to -- let's talk a little bit about your investigative technique and how you got these statements. You mentioned the read technique?
A. Yes.
- Q. And you mentioned that you've learned some things on

- detecting deception?
- A. Yes.
- Q. All right. Have you read any studies on the read technique? Do you follow up on the read technique?
- A. I don't continuously follow up, no.
- Q. Are you aware that the read technique has been severely criticized by many psychologists and people that work in that field because it brings back false positives?
- A. The only report I remember reading about false positives was for juveniles and the British have outlawed the use of read for juveniles only.
- Q. Okay. Well, the British are ahead of us; that's great. You're aware that -- we're not even talking about suspects here, we're talking about witnesses -- but you're aware that the read technique has led to many people confessing to things they didn't do?
- A. I wasn't aware of that.
- Q. You are not aware of any --
- A. Not in my personal experience.
- Q. Not you. You're a law enforcement official. You keep up on the news of people being, you know, people that are initially found guilty are then found to be not guilty and let go based on, you know, confessions and so on that they gave -- false confessions?
- A. I've seen that, yes.
- Q. All right. Now, tell me a little bit about these techniques where you can tell if somebody is being deceptive. How do you do that?
- A. You start by building rapport. You get the person in a natural state of behavior, which is, basically, you just talk about current events after you've identified yourself and done all the paperwork. You just basically talk to them to relax them and tell them, Hey, look, we're just here, two people talking and you get their normal behavior. Basically, once that's done, you have a baseline. When you get into the part where you actually start asking the important questions, a change in behavior indicates usually deception.
- Q. Great. Let's stop there for a minute. Now, when you say you have a baseline, they're not connected to a heart-rate monitor?

A. No.

Q. They're not connected to a polygraph machine?

A. No.

Q. They're not connected to any of the normal electronic gadgets and devices where we detect people's heart rate, brain activity, or anything like that?

A. Correct.

Q. So what you're telling me, sir, right now is that when you look at people, you're a lie detector test?

A. No, I'm not saying that.

Q. You're a human lie detector test?

A. I'm not saying that.

Q. You can tell when people are deceptive.

A. I base it on different types of behaviors, and if there's a cluster of those behaviors, I can suspect that the person is being deceptive. It's not a lie detection.

Q. How does a polygraph machine work?

A. It uses changes in the -- as I understand it, I'm not a polygrapher, but the changes in the biology of the person.

Q. They take a baseline and ask some questions?

A. Correct. It's very similar.

Q. And of course you know that even based on that scientific activity we don't allow that into court, right?

A. Absolutely because of the fallibility of the science.

Q. How fallible are you in your techniques?

A. I have no idea. I know that the statements I get are completely the person's information that they're giving to me. I don't make them say anything that they don't want to say.

Q. Well, then why would you go to the lengths of building rapport and try to detect their -- if they're deceptive. I mean, when you say detect they're deceptive, you're telling me that you've made a decision that they're lying.

A. Based on the evidence, correct. I can pretty much

assume that --

- Q. There is no evidence; based on your observations?
A. I can detect whether they might be deceptive -- might be. So I know which direction to go.
- Q. Okay. Well, let's talk about Marines a little bit. In your experience, good Marines follow authority, right?
A. Yes.
- Q. And these former Marines that you spoke to, to a man eventually agreed to meet with you?
A. Correct.
- Q. And you know very well that none of them have to agree to meet with you?
A. Absolutely. They came in voluntarily.
- Q. Yet they were persuaded by you because you said NCIS, and they came and talked to you?
A. Correct.
- Q. And you're aware that just about every one of them has severe PTSD?
A. I'm not a doctor. I don't know.
- Q. Would that have been important for you to determine?
A. I'm not allowed to go into their medical records to look at those things.
- Q. I'm asking you as an investigator. Would you want to know if someone has some mental health issues?
A. Absolutely.
- Q. When they're answering questions?
A. Absolutely.
- Q. That would be important?
A. Yes, it would be.
- Q. Because you know that people with PTSD or traumatic brain injury in some cases can be more easily persuaded to go with a story line. Are you aware of that?
A. I have not read that.
- Q. Okay. When you say they were being deceptive, could they have just been nervous because they're afraid of you as a law enforcement official who they felt had the

authority to bring them in?

A. I've never been accused of being intimidating to anybody.

Q. Well, sometimes I'm driving down the road in my vehicle and I see a cop pull in behind me, and I'm going the speed limit and my registration is good and I'm an upstanding citizen, a retired Marine Corps officer and lawyer, and my heart starts to beat.

A. Sure.

Q. And I don't even know who's sitting in that car.

A. I have felt that myself.

Q. Yeah. So you don't have to be scared. You can carry the mantle of authority that scares people regardless of who you are.

A. Which is why we do a rapport building session prior to.

Q. You would agree with me though that being in front of you could cause them to be scared and fidgety?

A. Initially, yes.

Q. Have you investigated a lot of cases?

A. Yes.

Q. All right. Generally, when someone knows they're guilty of something or knows of a crime, would you agree with me that when law enforcement approaches them, they already know what's going on?

A. Yes.

Q. Right? I asked -- or my co-counsel asked every one of these Marines that testified what they thought about the minute you contacted them, and none of them -- none of them believed that it had anything to do with Captain Card killing anybody. So there's no conscious awareness of any crime that was committed on June 7. Are you aware of that?

A. No, I wasn't aware of that.

Q. But that would be -- for example, none of them said, I knew exactly what it was about, it was about Card killing that man, that's some indicator of veracity, right, of the event?

A. I would say the only people that that is true to is mostly the people that were directly involved with it.

- Q. All right. Well, let's talk about the person you're accusing of being directly involved. You contacted Major Card, correct?
- A. Correct.
- Q. Did you introduce yourself to him as a Master Sergeant in the Marine Corps?
- A. No, I didn't.
- Q. Why not?
- A. It's a matter of policy we don't reveal our ranks.
- Q. Whose policy?
- A. Both CID and NCIS.
- Q. All right. As an investigator, is Major Card entitled to the respect and the exercise of the normal customs and courtesies accorded to officers his rank?
- A. I would agree to that.
- Q. Because as he sits here today and when you interviewed him, he was not guilty of anything. He was just an accused, right?
- A. Absolutely.
- Q. All right. Why'd you ask him to take off his blouse?
- A. We had to take a photograph of him.
- Q. Why'd you ask him to take off his blouse?
- A. Because we had to take a photograph of him.
- Q. Does your camera not work if he's got a blouse on?
- A. No. It's because every photograph we send has to look the same. There's a standard policy we do. We don't like name tapes or ranks in the photographs.
- Q. Why don't you take it from the head up?
- A. Because that's not the policy. It's a four by six photo that we take the same exact way for everybody regardless of rank.
- Q. So there's a policy that says when you're taking a photo a person can't have his rank on?
- A. That's just the way we do business. Every time we take a photo, we have them take the blouse off.
- Q. I still don't understand why this officer couldn't keep his blouse on. Well, he did keep his blouse on, didn't

he?

A. I don't really remember.

Q. But you wanted him to take it off?

A. Yes. Because that's what we do. It's a policy we use.

Q. So if I go back and look at this policy, it's going to say that Marines must take their blouse off before they're photographed?

A. I'm not sure, but it's the standard way we --

Q. You're telling me about the policy, and I want to know why you wanted to take -- have this officer take off his blouse. I know you want to have a standard photo, four by six, from the shoulders up or whatever --

A. Yes.

Q. So what if somebody's wearing a suit? Do you make them take their jacket off?

A. No. If they're in uniform, we have them take their blouse off.

Q. What if a female Marine is wearing a charlie shirt? What if a female Marine -- they don't wear a shirt underneath them.

A. There's no name tags.

Q. Let's say she's at MCRD, they wear a name tag, and she's got rank insignia. You make her undress to her bra?

A. No. She would take the name tag off.

Q. You could have covered up his name tag.

A. I think that would be disrespect to the uniform.

Q. So it's better to disrespect him and tell him to take his blouse off?

A. I don't believe it's a disrespect to have somebody take their blouse off. We do it for working parties all the time.

Q. We do it for working parties all the time because we want to take it off.

A. No, actually we're told to take it off because you don't want to ruin the uniform while you're working. Plus, it's hot.

Q. When was the last time you sent a major on a working party?

A. Never.

Q. When was the last time you as a Master Sergeant went on a working party?

A. It's been a while.

Q. Usually staff NCOs and officers don't go on working parties.

A. No, they run them.

Q. Did you contact Major Card's ex-wife?

A. I did.

Q. She told you that she didn't want her to contact her?

A. Absolutely.

Q. Yet you continued to try and contact her?

A. No. I initially left a message. And then when we couldn't talk to her directly, we went to the house and tried to contact her.

Q. Why?

A. So that we can give her a chance to give information she might have that's pursuant to the investigation.

Q. She was there on June 7, 2004?

A. No. But as you know, witnesses that hear the information from the suspects after are also pertinent to the investigation.

Q. You're familiar with the marital privilege?

A. I am.

Q. Can I go talk to your wife about what you do in your personal life?

A. Generally, no.

Q. Why not? I'd like to. You don't have any more authority than I do to do anything, do you?

A. As I understand it, they weren't married at the time.

Q. Well, you still have marital privilege, even with his ex-wife. You know that.

A. Not really sure.

Q. Do you normally try to use family against people?

A. I'm not using anybody against anybody, sir. I'm merely trying to collect testimonial evidence.

Q. Why did you bring up Gunnery Sergeant Duran's wife and his unborn child during your interrogation of him?

A. At the time, Staff Sergeant Duran, during the interview he was getting very, very heated because I was being direct with him. I basically told him, you know, I think you're lying. Your friends said that you were there, you saw what happened. And he got very, very upset and started showing what we kind of feel is ready to be a little irrational so I calmed him down. I said, Hey, look, calm down; everything's going to be all right. And I started to change the subject by building rapport with him. I said, How's your wife and kids doing.

Q. How did you know he had kids, man?

A. He talked about them earlier in the interview.

Q. Why did you get into his wife and kids? I mean, what business is it of yours?

A. I do it all the time. I get into everybody's business just to build rapport with them. Why wouldn't I? If you and I --

Q. You have kids?

A. Absolutely. I have kids. Talk about them all the time.

Q. To your friends, but not when you're interrogated?

A. That's a rapport technique. That's what we do.

Q. Would you leave some room for the possibility that a staff sergeant of Marines, now a gunnery sergeant, combat vet, multiple tours, selected by General Mattis was telling you the truth that day?

A. His career doesn't have a whole lot to do with whether he's telling me the truth or not.

Q. Will you leave some room for the possibility that this honorable Marine who's never done anything bad before, he's got no record, might be telling you the truth?

A. I don't know how to answer that question. I don't know why his career has anything to do with whether he knows about something or not.

IO: The question is: Are you open to the possibility that Duran might have been truthful.

WIT: Absolutely.

IO: That he wasn't lying to you.

WIT: As I do with every interview, yes.

Questions by the defense (continued):

Q. And the reason he got angry is because you were accusing him of lying?

A. Correct.

Q. And Marines don't like to be accused of lying.

A. I don't think anybody likes to be accused of lying.

Q. You do it on a regular basis in your interrogations, but most Marines don't like to be used of lying, right?

A. That's true for everyone I believe.

Q. That kind of goes with the word honor and courage, telling the truth, being honorable, right?

A. Yes. And as a matter of fact, for clarity purposes, he did bring up the fact that he asked me if I was threatening him and his wife and kids and I made it clear that that's not the purpose of me bringing up that subject. That's why I remember that particularly in the interview because I knew that he was misinterpreting what I was saying.

Q. Well, he may have been misinterpreting, but that's what he perceived.

A. And I allayed his fears by telling him there's no way in heck I would ever threaten anybody.

Q. So your rapport building wasn't working very well on him because he thought you were threatening his wife and kids.

A. Yeah. He mistook what I said and got upset. And I alleviated that, and he relaxed after.

Q. Apparently everybody you talk to makes a mistake and you're the only one that's -- I don't want to ask that question. I'm going to withdraw that. What about Gunnery Sergeant Beall, he began to get upset in Joliet, Illinois, didn't he?

A. Not like Duran, no.

Q. But he was upset?

A. He was frustrated. I could see it on his face.

Q. And again, talking to a gunnery sergeant -- was he a staff sergeant when you talked to him or a gunnery sergeant?

A. I believe he was a First Sergeant.

Q. First Sergeant. You're a Master Sergeant?

A. Correct.

Q. But he didn't know you were a Master Sergeant?

A. No, he didn't.

Q. I wonder what he would have done if he knew you were an E-8 like him. So here is an E-8 accusing another E-8 of lying and covering up dishonorable conduct. And when he told you, he looked you in the eye and told you that didn't happen, you accused him of lying.

A. He never said it didn't happen. He said he didn't remember.

Q. All right. He said he didn't remember because you already gave him the facts, and he said he didn't remember that happening.

A. I gave him some of the facts. It's the direct approach.

Q. And he said he didn't remember that happening?

A. Correct.

Q. So you're telling him -- you're presenting him with facts and a foregone conclusion; and he says, I don't remember that?

A. Correct.

Q. And then you accused him of lying?

A. Yes. Because he was showing deceptive indicators.

Q. Again, can we bottle up that deceptive technique and sort of use it in other places because I still don't understand what is the measure by which we determine whether someone is deceptive or not?

A. It's a totality of their behavior.

Q. Okay. So you actually use the -- you said you were -- when you were talking about that, you said you had heartbeat. Do you connect them to a heart-rate monitor?

A. No. No, I don't. Sweating --

Q. You said elevated heartbeat.

A. What I mean by that is sweating, fidgeting.

Q. And those mean deception?
A. They could mean deception if they're coupled with other things, correct.

Q. In every case, you decided there was deception?
A. Not every interview, no.

Q. In just about every interview -- well, in Beall's interview, you decided there was deception?
A. Absolutely.

Q. And in Duran's interview, you decided there was deception?
A. Absolutely.

Q. All right. Let's throw some quantification and science in here. What is a percentage of false positives that your internal deception mechanisms bring back?
A. I have no idea.

Q. Well, how can you tell then?
A. How can I tell if it's working?

Q. How do you know? You know, if you're 70 percent accurate, then we can tell that seven out of ten times you're right. I think polygraphs are 90 -- 90-some percent.
A. That's why my interrogation techniques are not admissible. I can't tell somebody definitively that you're lying.

Q. Yeah, but your interrogation techniques took a bunch of statements that have this man -- have had this man's life on hold for two years.
A. Correct.

Q. So I want to know how we can tell that those -- how those interrogation techniques work.
A. The deception is coupled with a bunch of different behaviors. And then that's a tool for me to know when someone's being deceptive.

Q. Have your techniques been subject to any clinical studies to give us a number? Sort of, you know, Agent Periard is right 70 percent of the time based on clinical studies.
A. Empirical studies? No, not that I know of, not my procedures.

Q. Is even the read technique -- or the read book -- has anyone ever done studies to show, yeah, 70 percent of the time this technique is used accurately, it's -- I keep using 70 percent but you can throw any number --

A. I'm not aware of any studies.

Q. There are no studies. Its something cops cooked up.

A. Are you asking me if the cops cooked it up, or --

Q. No, I'm arguing. I apologize.

A. Okay, sir.

Q. You used a technique with Gunnery Sergeant Beall where you said, Hey, all the Marines say this; do you believe your Marines are liars? And he said, basically, I give up.

A. Yes.

Q. All right. Let me throw that back at you. You interviewed numerous Marines?

A. Yes.

Q. Who all said I didn't see anything or I don't remember anything?

A. Correct.

Q. Are all those Marines lying Agent Periard?

A. No. Some of them actually showed deception, but they never admitted to what they saw. In my opinion, based on my training, not everybody has that moment of truth and says I'm going to tell the truth at that point. But it's getting to that moment to truth that the technique tries to allow the person to get to.

Q. I am asking you whether based on all these Marines statements early on when they said I don't remember anything or I didn't see anything -- I mean, some people couldn't have seen anything?

A. Correct.

Q. All right. I mean, why can't you believe those Marines and come to the conclusion that you're wrong because the majority of the Marines didn't remember anything until you began to give them facts and plant ideas?

A. Almost every incidence of an interrogation I've done in my 20 years starts with deception, starts with the denial that they don't remember anything.

Q. With people who are accused, right?
A. It's the same concept. At that time, I had testimonial evidence supporting that had happened.

Q. Are you doing interrogations on witnesses or are these interviews?
A. They're interviews.

Q. Okay. So why are you using interrogation techniques?
A. The interview and interrogation techniques is was read teaches. The interview techniques are the same end result -- it's to lower that anxiety to not tell the truth in everything you tell.

Q. Why did you believe that all these Marines are going to lie to you? They don't even like this man.
A. I didn't believe with all the interviews. Depending on the evidence, what that showed -- whether they were involved or had a position to see.

Q. Let's talk about Duran. Why do you believe he would lie to you?
A. Several reasons. His deceptive indicators in the room?

Q. No, no. Why do you believe he would lie to you? What are the motives for him to lie? Not what you detected, you know, is he buddy buddy and trying to protect him? Is he family? Why would he lie to you?
A. There could be hundreds of reasons he could lie to me.

Q. Give me some that you found out.
A. Misguided street-cred. I've seen that in several people in certain areas of the country.

Q. Misguided what?
A. Street-cred -- not cooperating with the cops. You'd be a snitch, kind of a snitch attitude. That's a natural barrier that we deal with every day as cops.

Q. Is that for everybody?
A. No, everybody's different.

Q. So you believe that all these Marines have the kind of personality -- now remember what we're talking about, we're Marines; a lot of them get out and want to be cops or work security, right?
A. Marines are a cross section of society.

Q. I know, but many Marines -- do you have a good opinion of Marines generally?

A. I have a wonderful opinion of the Marine Corps and Marines.

Q. Great. Do you believe that most Marines are upstanding citizens?

A. I believe that.

Q. Want to do the right thing?

A. Absolutely.

Q. Tell the truth?

A. Want to tell the truth.

Q. The overwhelming majority are that way, right?

A. Yes.

Q. Correct?

A. Yes.

Q. Okay. So as you sit here today and when you interviewed many of these witnesses that you had to interview for six to eight hours before you got what you wanted, all of them -- all of them had this street-cred notion?

A. That was only one example.

Q. Huh?

A. That's only one example. There are many things that could keep people -- another one --

Q. I'm sorry. I don't want just general examples. I'm talking about specific witnesses.

A. I'd have to look --

Q. I asked you about Gunnery Sergeant Duran. Why do you believe, based on your investigation and what you know of Gunnery Sergeant Duran's relationship to the accused, personal culpability, right? Aren't those factors?

A. Absolutely.

Q. For example, he would have a motive to lie.

A. Sure.

Q. Right? He's the accused?

A. Absolutely.

Q. Right? Okay. His close friends, family may have a

Q. motive to lie?
A. Sure.

Q. But you're aware that even family sometimes tells the truth about --
A. Absolutely. Each individual has to be assessed individually.

Q. So what factors did you discover --
A. For Duran?

Q. -- specific facts about Gunnery Sergeant Duran that would lead you to believe that he would lie to you?
A. Based on my experience with him.

Q. Yeah. And your knowledge of the facts.
A. I think it was a mixture of the snitch street-cred thing, based on his background and the way he was presenting himself and the fact that he didn't want to be involved in this case. Who would want to be involved? I mean, that's a motive for just about anybody not to want to come and testify or be subpoenaed. I mean, I deal that with every witness I talk to.

Q. Let me get this straight. So we're dealing with a unit who lost a dear friend to them, Bohlman?
A. Yes.

Q. They blame him for it some of them. Some of them blame him for it, right?
A. Some of them did, yeah.

Q. And many of them -- many of them blame him for being on that road at that time?
A. Yes.

Q. And you're telling me that all of them wanted to protect this officer who they generally didn't like?
A. You shrugged your shoulders.
I don't know exactly know what you want me to say to that. That's a general sweeping statement about an entire investigation.

Q. I'm asking if you took that into consideration, sir.
A. Absolutely. Motive is always important when we're talking to witnesses or suspects, which is why I got the

statements that I got from them. I believe that they wanted to tell the truth, but there was things holding them back -- not wanting to be involved, not wanting to be a snitch, what goes on in the field stays in the field, there's many things that we work through with Marines specifically.

CC (Mr. Faraj): Can we take a break, sir?

IO: Yeah, let's take a break.

[The Article 32 investigation recessed at 1047, 21 April 2011.]

[The Article 32 investigation was called to order at 1059, 21 April 2011.]

IO: Investigation is called back to order.

Mr. Faraj.

Questions by the defense (continued):

Q. Sir, when we left off, we were talk talking about Gunnery Sergeant Duran?

A. Yes.

Q. And I asked you a question about the factors that led you to believe that he would need to lie, and you said something about street-cred and then you said background. What is it in his background that you felt would lead him to want to?

A. During the rapport building, he talked about, you know, being from the street and kind of having a hip-hop quality to him, those types of things, and he expressed too, you know, just things about that community and that kind of persona.

Q. What's the community that you're referring to?

A. Just the kind of street mentality, like, don't be a snitch, you know.

Q. He said don't be a snitch?

A. He didn't say that directly, no.

Q. Okay. So I listen to hip hop music -- I really do -- does that mean I'm the type of personality that wouldn't want to cooperate with cops?

A. Absolutely not. I wouldn't draw a conclusion on that at

all.

Q. Okay. And I grew up in the city of Chicago, inner city. How about that factor?

A. That would be a factor I would take into consideration when I was interviewing you.

Q. But what else do you know about me?

A. Besides what we talk about?

Q. Yeah.

A. I don't know anything about you, but if we talked for about an hour or so, I'd probably know a lot about you.

Q. What else did you find out about his background besides street, you know, inner city?

A. He used a little bit of slang. He talked in, like, kind of a slang.

Q. He's Hispanic. That's your problem with him.

A. It's got nothing to do with it, sir.

Q. Well, he's got a slang. He listens to hip hop. Have you ever worked on the drill field?

A. No, I haven't.

Q. Do you know where we get our kids from in the Marine Corps?

A. Where we get Marines?

Q. Recruits.

A. Absolutely.

Q. You know we get a lot of Marines from the streets?

A. Absolutely.

Q. Broken homes, right?

A. Absolutely.

Q. Single family homes and all of them -- all of them take an oath just like you did, become Marines, and try to do the right thing?

A. Absolutely. We all try to do the right thing.

Q. All right. So what else in his background did you consider?

A. Just the conversation we had.

Q. Well, what is it? I mean, I'm Gunnery Sergeant Duran, what are you telling me?

A. I don't remember the entire conversation.

Q. What was it in the conversation that led you to believe that he lied to you?

A. The fact that he wasn't saying what was corroborated in the other statements.

Q. Okay. Anything else?

A. Not that I can remember, no.

Q. Okay. Did you consider his background as a Marine staff NCO?

A. That's always a consideration.

Q. Is it?

A. Part of his biographical information that I collect, and I take that into consideration.

Q. I better not cross my hands because I'm self conscious now.

A. Are you asking me if being a staff NCO means that I hold you to a higher standard?

Q. Yeah.

A. Yes. I would believe so as a Marine.

Q. Let me give you an example. You are a master sergeant?

A. Yes.

Q. If I asked you a question, even I believe it to be differently because I wasn't there, I just heard something; just by you being a master sergeant telling me something -- I would believe it until it was proven differently. That's how I think of Marines. And I'm trying to figure out why this staff NCO who denied in every way didn't get the benefit of the doubt?

A. Actually, he didn't deny it in every way. He did give information that was pertinent to the investigation.

Q. What was that information?

A. He heard some moaning over in the bushes, and the moaning stopped when Captain Card came out of the bushes.

Q. All right. And I've already told you that one of those guys in the bushes was feigning death.

A. According to one of the witnesses, correct, or maybe two, right?

Q. Two people rubbed this certain sternum, he got up and walked away.

A. And you're assuming that person is the same person.

Q. There's been no other evidence there was anybody else. No one else has said that there was another man in the field. We haven't heard that in this hearing.

A. Are we talking about statements or testimony because I wasn't here for the testimony?

Q. I'm telling you what came out in the testimony. No one at this hearing, and that's why I asked you if you knew something different.

A. I thought you were asking me so that's what I wanted to clarify.

Q. As far as we know, there's only one man in the field.

A. That's what you're telling me.

GC (Maj Goode): Sir, at this time, with all due respect --

IO: Mr. Faraj, I think you're mischaracterizing the evidence as at least I understand it.

CC (Mr. Faraj): Okay.

IO: Again, I don't want to litigate the case through the witness. This is all -- I want to give you some latitude. None of the cross-examination right now is particularly helpful for the purposes of my 32.

CC (Mr. Faraj): Well, we're creating a record.

I understand that. I want to give you some latitude, but I just want you to know that this is not necessarily helping me as I evaluate the case. I've already indicated that the statements previously given, the witnesses came in, they've changed their testimony, that's what I'm focusing on. I understand there's issues with the way the statements were taken and investigative techniques, and I understand and I understand that's part of the record.

But for me, you know, at least, I would ask if you can hit on points that are certainly, I guess, more

pertinent for me because those statements, as we know, are not coming in if this case goes to court. Those statements are not coming in for the substantive truth. We don't necessarily play videotaped interviews. I understand that witness credibility is always at issue if they testify, but I'm look at the substantive evidence right now -- what's there, what's not there.

Questions by the defense (continued):

Q. Anything else in his background -- Duran's background?

A. Not that I can remember from the conversation, no.

Q. All right. What in Beall's background led you to believe that he may be -- that he's being deceptive or he would be deceptive?

A. Beall was less background, more deceptive indicators that he was showing -- very, very -- his nervousness elevated as I got more into the facts of the incident and the fact that other people had said he was standing right there when it happened and that they had gotten his attention. Those things, when I touched on those, his elevation of those deceptive indicators was key to me that I was on the right track of getting the right information.

Q. And with Beall, you detected what elevated deceptive indicators?

A. Closed posture, overall nervousness, speech change -- and I'm speaking in general terms without reviewing the vide. I've done hundreds and hundreds --

Q. Oh. So you're not specifically referring to Beall. You're just saying these are the things you look for.

A. Right. Those are the changes.

Q. No. I'm referring specifically to Beall. I don't care about others.

A. I would have to review the video.

Q. Okay.

A. But I know for a fact that it was mostly factual based because by that time, I had evidence that he had actually been -- his attention was diverted to that person that was in the bushes making noise, and that he was looking right at it when it happened.

Q. Did you go to Iraq?

A. I did.

Q. Did you find out who this alleged person is?

A. Oh. Did I go to Iraq -- I thought you were asking if I've deployed to Iraq.

Q. No. I meant for this investigation.

A. No. It was actually done by the agents out in Ramadi.

Q. Okay. Did you get a report back on who this dead person is?

A. On the dead person?

Q. Yes.

A. No. We weren't able to locate him.

Q. Do we have any idea of the person's name?

A. Not a clue.

Q. Family?

A. No.

Q. How do you know that there's a dead person?

A. Based on the testimonial evidence that I collected. That's all I have to go on.

Q. There were a lot of dead people that day?

A. Yes. In different locations, absolutely.

Q. Okay. How do we know that the person that Captain Card shot wasn't already dead for example?

A. Because some of the accounts had the person sitting up and then after the recoil of the weapon, fell backwards. I do remember one or two of the statements stating that.

Q. Okay. And other statements said something that he was already on the ground, right?

A. They just said that he was on the ground in front of him, correct.

Q. Right.

A. And then there was the wounds afterwards that were witnessed by, I think, one or two of the witnesses.

Q. Well, I mean, how do you know that that person wasn't already dead?

A. Oh, as a result of the shot?

Q. Yeah.
A. Well, I asked that in the question and answer. That was all I was able to -- I made sure every question was asked, and whatever they could remember or remember seeing is what they answered. If you check, I also asked the exculpatory questions as well. I wanted to make sure I gave them every benefit of the doubt -- furtive movements, things of that nature.

Q. What?
A. Anything like a furtive movement -- did he see -- did anybody see him move? Was there a weapon nearby? Was there any threat of any kind? I ask those questions because I'm trying to gather the most accurate information as possible.

Q. I began to ask you some questions today when we started about Kadrie. Do you remember that?
A. Kadrie, right.

Q. Kadrie. And during the break, I realized that he said that he -- did he tell you or did you read in your investigation that he communicated to Lisdahl that he saw it? Do you remember that?
A. It sounds familiar, but I'd have to review the statement. I'm not sure if -- I think he -- yes. Lisdahl was the friend of his that he told I believe that he told about afterwards.

Q. Yes.
A. And, Lisdahl, we had interviewed and corroborated that as well. So we had reinterviewed him because of that.

Q. Kadrie?
A. Yes.

Q. And he said, yes, he did tell Lisdahl?
A. Yes. And he said he had heard it -- that it happened, that he didn't actually witness it, and that he had reported it because --

Q. Well, he said that he told Lisdahl that he witnessed it.
A. According to Lisdahl, correct.

Q. Right?
A. Right.

Q. Was there anything odd about Kadrie witnessing it?

A. About the fact that he witnessed it?

Q. Yeah.

A. I don't understand.

Q. Could Kadrie have witnessed anything?

A. I'm not really sure without reviewing the statements. You mean, was he in a position to witness it? Is that what you're asking?

Q. Would it refresh your memory if -- that Kadrie wasn't inside a vehicle on his sights almost the entire time?

A. That I wasn't aware of.

Q. Okay.

A. We had Lisdahl's statement so we had to reinterview him just to be sure that his testimony was accurate.

Q. You testified that you did not recall Russell ever contacting you after that first interview?

A. Correct.

Q. Did he call you and leave a message?

A. I didn't get any messages from him.

Q. If he would have called you, you would of called him back?

A. Correct.

Q. So if he -- so you don't -- you didn't talk to him again?

A. I don't believe so, no.

Q. Can you try to remember?

A. I don't remember ever talking to him again after that interview, no.

Q. And he didn't leave you a message?

A. No.

Q. Because you would have called him?

A. Correct. I gave everybody my cell phone and my business card.

Q. And you represented yourself as Jason?

A. Yes. Special Agent Jason Periard.

Q. Okay. So if he pulled out the number -- actually, you

were called on a number a couple of days ago, and you said -- do we have that number?

A. That was my work number.

Q. You would have given him that number?

A. No. I've since been reassigned back to the Marine Corps.

Q. You would have given them that number?

A. I don't understand.

Q. At the time you interviewed Russell, you would have given him that number, that NCIS number?

IO: Why don't you state the number that Russell --

Questions by the defense (continued):

Q. Are you familiar with the number (760)208-8078?

A. That's my cell phone -- that was my NCIS cell phone, correct.

Q. Great. So if he had that number -- Jason -- the Jason he's referring to would be you?

A. Provide it was not after I PCS'd to Miramar.

Q. Two weeks after you interviewed him, were you still --

A. I would have definitely got it.

Q. Okay. That's an NCIS number?

A. Yes, it's an issued number.

Q. Okay. Let me ask you this question. I'm sure it's going to be impossible. Is there any way to get those phone records?

A. I don't know. It was like a Nextel phone. I think they still use them.

Q. Okay. And this was from 2008?

A. I believe so, yes.

Q. All right. What is your opinion regarding a witness who calls you to say, you know, what I put in that statement, that's not really true. I don't remember it that way. I was led to say that. What would you do if somebody told you that?

A. I would immediately set up a second interview.

- Q. Okay. If they -- if that was their position -- let's say they didn't want to interview again. They just told you, Look, I'm recanting that statement. Would you notify anybody?
- A. I would reduce that into an investigative action on the report, and I would notify -- if -- depending on which stage -- the legal stage it was in -- if it's still just a case that's open, I would notify, probably, my supervisor.
- Q. It would go in your ROI?
- A. Yes.
- Q. If we were at this stage, perhaps you would tell the prosecutor?
- A. Yes, I would make a record because it's counterproductive for me not to.
- Q. I'm sorry I jumped around. I'm going to go back to this issue with Gunny Duran. You said that he misperceived what you were saying about his wife and child as a threat?
- A. Yes.
- Q. To the best of your ability, what do you remember saying that led him to that perception?
- A. He was getting upset, and he was about to stand up in his chair, like, in a threatening manner. And I was sitting down, and I said, Hey, calm down. Everything is going to be all right. I said, Look, let's pause for a second. And I said something to the effect of how's your wife and kids doing because he had talked about them during the rapport-building stage. And then he said, What do you mean? Are you trying to threaten my wife and kids? I said absolutely not. That's not what I'm doing. I was just trying to change the subject.
- Q. Okay. What, if anything, did you -- did he, at some point, believe that you were threatening his Marine Corps career?
- A. That's what he said to me. So I don't know what he was -- I think he was assuming that, yeah.
- Q. Okay. And what did you say that you believe led him to that perception.
- A. That's what I had said to him. I told you what I had said to him.

- Q. Okay.
- A. That's why I gave clarity to it. I wanted to make sure he understood I wasn't threatening him. I was merely trying to go back to a rapport-building stage. Sometimes people get upset from the accusatory stage, they get a little huffy. I try to calm them down because to me -- I know everybody sees TV. You don't make people feel uncomfortable. You want to relax them so that they can feel like they can tell the truth. That's the way we're trained. We try to take that anxiety away by giving them themes. This is why I think you're not telling me the truth. The things that I talked about -- maybe you're feeling like you don't want to be involved with the case. Maybe you just don't want to be involved at all. Maybe you have some loyalties towards the unit and you don't want it to be stained. Those types of things we have to assume because we deal with them every day.
- Q. Thank you for that clarification. I'm still trying to understand. I mean, everything you're telling me is, you know, sort of a conversational. What would lead somebody -- Duran appeared to be rational. Why would he be led to believe that you're threatening him? What else did you say?
- A. I don't know why he would feel threatened by me. I mean --
- Q. What about Beall?
- A. Watch the videos. I don't ever make anybody feel threatened in an interview room.
- Q. Okay. Let's talk about the videos. You said you had videos of all the interviews?
- A. Correct, except for one.
- Q. Who?
- A. Duran's. We started using the tough book that week. I made it a note -- and I believe there's a note entry on this as well -- we did the tough books. We tried to record it. It was a brand new setup that we had in that interview room, and it didn't record.
- Q. You just kept telling me watch the video, but you don't have a video?
- A. I just remembered that that's one of the videos that we didn't -- and we also have another one that was after the fact. We couldn't get it to play.

Q. Who was the other corrupt one?
A. I don't remember exactly which one it was.

Q. Did you turn all those videos over yet?
A. They went right into evidence after I was done.

Q. Okay.

IO: Where do you believe those videos -- do you believe they would be here at Camp Pendleton?

WIT: Yes, sir. Yes, sir, they would.

IO: NCIS -- NCIS Camp Pendleton?

WIT: Yes, sir. NCIS policy was -- at the time, we had just changed to recording every suspect interrogation. I recorded every interview so that it would be recorded. There was nothing that could be said later on. Unfortunately, the technology is what it is.

Questions by the defense (continued):

Q. You said the video for Gunnery Sergeant Beall is available?
A. It should be, yes.

Q. Was he First Sergeant?
A. First Sergeant Beall.

Q. Do you have an explanation for why most of the people who have testified in this hearing have now -- well, let me change that question. Have you had in your experience a situation where practically every witness whom you got a statement from went back and said, you know, some of this is the truth, but a lot of it not the is the truth. In fact, the most damaging part is not the truth?
A. I've had several witnesses do that.

Q. In one case. Not in general cases. In one case where every witness basically says -- or at least every witness we've heard from here --
A. I haven't heard all the testimony so I don't --

Q. Have you had witnesses -- Have you had experience in a case where many witnesses in the same case go back and recant their testimony about the most damaging part of

the allegations?

A. I would say some witnesses, not many. I've never had a case like that.

Q. Do you have any opinion as to why that may have happened in this case?

A. There's several opinions, but they would all be conjecture. They don't want to be involved in the case. They don't want to get people involved.

Q. They're already involved. They came. They didn't have to come, but they came.

A. But it's one thing to come here and actually tell the truth on the stand. We've had problems with that in the past obviously it's --

Q. So you believe that on the stand they would lie, but to you they told the truth?

A. I would believe there's factors as you asked earlier that would make somebody come in and change their statement, yes.

Q. Most of them are out of the Marine Corps?

A. Absolutely.

Q. And again, we've already established that most of them don't really care that much for Major Card?

A. Some.

Q. And many of them blame him for a close friend's death?

A. Some do, correct.

Q. And of course, if this goes forward there's subpoena power. They don't have a choice?

A. I would assume so. I don't have that power so --

Q. Well, you say you have that power though.

A. I told you I didn't have that power to subpoena people.

Q. Didn't you tell Tipton that you had the power to subpoena him?

A. No. I said he could be subpoenaed as part of the trial.

Q. I see. You said you went back to the Marine Corps? You personally have gone back to being a Marine? Not being a Marine, but --

A. Yeah, I finished -- I'm always a Marine. NCIS is a three-year tour, and then you return back to your next

duty station.

Q. What is the biggest case you worked on?

A. I don't know if I'm allowed to talk about them.

IO: I guess in a general term. So this case is a murder case --

WIT: I've worked a murder mutilation case, I've worked armed robbery cases, I've worked several rapes, numerous death investigations, larcenies.

Questions by the defense (continued):

Q. Have you ever worked a law of war case?

A. This was my first one.

Q. And are you familiar with the law of war cases that have gone on at this base?

A. Yes, but I wasn't directly involved in them, but I know about that.

Q. There's been a couple from Fallujah, Hamdaniyah, Haditha.

A. Yes, sir.

Q. This is the most senior person to ever be accused of a murder, right? In those cases -- in all the cases that have come out?

A. I would say so.

Q. Being the lead investigator on this case would be a pretty big deal for you as an investigator?

A. Not really.

Q. That doesn't go on your resume?

A. It's not going on my resume.

Q. Really? Why not?

A. My experience goes on my resume. I don't talk about any of the investigations I've conducted specifically. I just tell them I have -- just as I told you, I have several investigative endeavors --

Q. Your resume would say something like, I investigated -- not in so many words, I'm just going to take some creative license -- I investigated the accusations or allegations of the most senior Marine to ever be accused

of a murder in a war crimes case?
A. I would never put that in a resume.

Q. But that's what you did.
A. Excuse me?

Q. That's what you did. That's what you've done in this case, right? This is a big war crimes case for a senior officer.
A. You're the first person to point out that this was the senior officer that's ever -- I wasn't aware of that.

Q. Well, Haditha had enlisted Marines?
A. There was two cases involved with Haditha that were more senior people.

Q. That was negligent dereliction of duty or something.
A. Sure.

Q. We're talking about a murder -- first degree murder.
A. I guess I'm not getting the -- I don't understand. I wouldn't put that in a resume. That's unprofessional.

Q. This is the most senior Marine to be accused in a war crimes case of a murder.
A. Okay.

Q. Right?
A. I guess. I don't have a historical background for that. So I don't -- I see a suspect as a suspect when I investigate. I treat everyone exactly the same. That's one of the reasons we don't have rank is because we don't want to have that in the way of having a conversation with somebody because that would be in the way. And you know as a former Marine it would be. We want to give that person an opportunity to look past anything that I bring into that room. I'm just Jason Periard. That's all I am. And I don't -- I don't see this as something that I would put on my resume. I see my time deploying overseas, I would put in my resume or --

Q. You said that when you interviewed Jimenez, you told him that people were saying this happened to get him to talk. Your specific words were you told him people were saying this happened.
A. Right. I point out the evidence.

Q. Okay. Which people said what happened?
A. By that time?

Q. Yeah.
A. I would have to look back, but I know at least I would have had Phillips' testimony, Gutierrez, Tipton, several people that had corroborated what happened out there. So that's a fact-based approach. You take that evidence -- at the point where the indirect approach doesn't work, you go to a fact-based approach and you start to show them the evidence that you have and say, Look, I'm describing to you that the people that were there who were standing next to you said you were standing there with them. In fact, I think in that case, standing right behind the vehicle and this happened.

Q. Have you ever been in a combat environment?
A. Environment, yes.

Q. I don't want to say environment.
A. Not in direct combat, no.

Q. In direct combat?
A. I have not.

Q. Have you read books about combat?
A. Yes, I have.

Q. Would you agree with me that it often times -- well, almost all times it's chaotic?
A. Absolutely.

Q. All right. Do you find it odd at all that during the time when this unit was still on alert for possible attack though they weren't under attack at that time, that all these people saw what happened that you got statements from?
A. No, I don't. I don't find that odd at all.

Q. Okay.
A. Because they were in a mission posture that wasn't a 360 security. They were all milling about according to the statements.

Q. Really?
A. That's what most of the people told me.

Q. Who had security then?
A. I have no idea. I wasn't -- well, I didn't get to the QRF interview so I don't know what they said or who was still out there or whether some people were --

Q. I just want you to imagine the situation on that road. Everybody is kind of milling about the C-square. Is that what you --
A. That's what everybody said. They were waiting for the T-88 to arrive to -- the wrecker to arrive to tow the LAV up.

Q. So where was Jimenez when he saw that? Do you recall?
A. He told me he was standing, I think, behind the vehicle, the C-square.

Q. Okay.
A. I believe.

Q. So how did he see through the vehicle? Did you ask him that?
A. He was standing behind the vehicle so the angle that he showed me was he had a direct sight of what happened. And I asked that in followup questions as well to make sure that was, in fact, what he saw.

Q. I think based on the -- on interviews that you did, one could conclude that most of them were kind of milling about the C-square?
A. According to the people that were in the immediate vicinity of the C-square, correct.

Q. All right. Did you discover that anybody was still on security while they were all milling about the C-square?
A. Yes.

Q. Who?
A. I believe Britt was -- had the south -- the south flanking area of the C-square. And then Cotton, I believe, was the one facing the rear. And then from Phillips' testimony, he said that he was in a rear security behind that.

Q. And of course Cotton -- you got Cotton to say that he heard Major Card say, Let the motherfucker I die.
A. I don't understand what I got Cotton to say.

Q. In Cotton's statement, it says let the motherfucker die.

A. He said that Card said let the muster fucker die?
I believe so, yes.

Q. Did you ever discover any facts different than that?
A. As far as that statement being said?

Q. Yeah.
A. There was a variation of it, I think, let the guy die,
let him die.

Q. Or he'll never set off another IED?
A. Or he'll never set off another IED.

Q. Did you discover that anyone besides Card made that
statement?
A. I don't believe so. I even asked them -- most of them,
Are you sure it was Card or was it somebody else?

Q. Did you ever hear Cotton admit to you that he was the
one that made that statement?
A. No.

Q. He never said that to you?
A. I don't believe so. That would have been pretty
important.

Q. Why?
A. Because that means he said that preparatory command and
not the person who allegedly shot the Iraqi. He didn't
tell me that.

Q. How would that change your investigation?
A. It would be a factor, something to look at, absolutely.

Q. So based on -- based on your recollection of the
interviews, the statement was either, This motherfucker
will never set off another IED or let the motherfucker
die?
A. Yes.

Q. Okay. And based on your interviews with the people that
heard it at least?
A. Right.

Q. It was believed that it came from Major Card?
A. It was attributed to Major Card, correct.

Q. So if -- if that statement was made, but it was made by

someone other than Major Card -- well, I don't want to ask that question.

A. Okay.

Q. How do you feel about this investigation -- about your performance in this investigation?

A. I think I performed the way I always perform -- followed the rules.

Q. Do you feel like it was done properly?

A. I do.

Q. Is there anything that you would want to go back and do over again?

A. No.

Q. Is there any -- anything that you'd like to -- additional that you'd like to discover?

A. Things I would like to discover? Yeah, absolutely. I would have liked to have found the victim. I would have liked to have found a weapon.

Q. Besides that, I mean, that's impossible at this point. I mean, through the people that you talked to.

A. I don't know what else I would have -- I mean, I'm just collecting evidence. I don't have a wish of anything. On the contrary, I want to make sure that each person -- that's why I spent six to eight hours with these individuals to make sure that everything they're telling me is what's coming from their memory and not from what they heard from somebody else, including myself.

Q. I think you're aware now that a lot of them have recanted?

A. Yes.

Q. Would you want to go back and do anything over again given that information?

A. No.

Q. Do you feel like your techniques -- whether read, or any other techniques -- or your ability to carry off deception without being detected could have led to some false facts being given to you?

A. No.

Q. Do you have any doubt about that?

A. None whatsoever. I've been doing it for a long time.

Q. You speak with certainty. Why is that?
A. I've been doing it for a long time. I'm pretty confident.

Q. As you sit here today, you don't believe that you could ever -- not deliberately, mind you. I'm not saying that you're deliberately trying to get people to give you false facts. I'm saying based on your techniques that they are so effective that sometimes people will give you facts just to be done with it.
A. No. Because they would have showed the same deceptive indicators when they were giving me a story that I wanted them -- is what you're saying. They would have shown the same deceptive indicators.

Q. All right. But it wouldn't be deception if you already gave the facts. Say, yeah, that happened.
A. No. I can ask you to describe a pink elephant that you've never seen before and some of those same deceptive indicators will appear.

Q. All right. So based on what you just told me, every fact in the statements that we have you believe is the entirety of the truth?
A. From my perspective or from their perspective?

Q. From their perspective.
A. I believe they gave me everything in their statements that they believed was the truth at the time.

Q. At the time?
A. I'm not going to say they didn't leave out something, and I'm not going to say --

Q. I understand.
A. The totality of the statements I believe were accurate.

Q. The black and white of the statements you believe was accurate based on what they gave you?
A. Based on what they told me.

Q. Do you believe that your techniques would have different outcomes based on the state of mind of the person that you were working with?
A. I don't think I have the credentials to answer that. I don't -- you're talking about psychology?

Q. Yeah. I mean, you've already told me that read

shouldn't be used on a -- that the British decided that read techniques shouldn't be used on individuals.

A. Right. They believe that they're highly susceptible to being led, being coerced.

Q. Right. And that's because perhaps mentally they're not as developed as adults.

A. That's -- I guess that would be their argument, yes.

Q. Okay. So we already have some basis to believe that the read technique can get people to do things if they're not developed fully as adults that they wouldn't otherwise do if they were mature and understanding.

A. That's the argument that the British make, correct.

Q. I understand, but you brought it up.

A. Sure.

Q. You may not agree with it, but you and I can both agree that there is some research as to suggest that.

A. Yes.

Q. Would you also agree that sometimes full-grown adults may -- some, a few -- not be fully developed or have some mental defects that would cause them to have the same susceptibilities as juveniles?

A. Sure. Mental capacity, absolutely.

Q. All right. And you said you didn't inquire into the mental health of any of the Marines you spoke to?

A. No, unless they had given me access to their medical records. I didn't have access to those.

Q. I forgot to cover one important topic. How many hours did you spend with Major Card?

A. It wasn't long. It was maybe an hour and a half I think.

Q. Okay. When you read him his rights, he said I invoke?

A. Absolutely. Actually, he exercised.

Q. Right. So what did you do for an hour and a half after you read him his rights?

A. I had to wait to get someone to pick him up from his unit. So we hung out there, and I believe he smoked a cigarette with one of the other agents. And I had to get somebody to pick him up because we had had him in custody so procedurally we have to release him to

someone from his command.

Q. Wait. He came to you.

A. Correct. But the minute he came in, we had to detain him because we advised him of his rights and we --

Q. So you arrested him?

A. We detained him.

Q. Okay. Who picked him up?

A. I don't remember his name. It was a colonel I think or Lieutenant Colonel.

Q. So let me get this straight. You read him his rights you say you have a right to leave at any time, you don't have to answer questions because he wasn't going to the brig, right?

A. No, he wasn't going to the brig.

Q. And you're telling me that he had to remain there until somebody came to pick him up?

A. Because as -- procedurally, because we had -- we detained him, we have to release him -- we can't release him to his own recognizance.

Q. Why not?

A. Part of the procedures are because the way 32(b) works as far as our procedures are concerned, if I suspect the person and I'm going to ask him incriminating questions, I advise him of his rights as a suspect. When he's brought into a police environment as a suspect, he is detained at that point. And then we release him to a unit representative. That's just the procedure that we've always used, both CID MPs and NCIS. I do that with every suspect.

Q. When you said 32(b), were you --

A. 31(b).

Q. 31(b), okay.

A. And I was talking specifically about why we advised him.

Q. Oh, I understand why you advise. I'm not getting over why a major couldn't be released after he says I don't want to talk to you?

A. It's not an issue of rank. It's not an issue to try to make them feel bad. It's a policy. We do it with every suspect.

Q. And who did you call?
A. I called his unit and had -- I can't remember what his name -- come pick him up.

Q. Did is a major come pick him up or a lieutenant colonel?
A. Lieutenant Colonel I believe, yes.

Q. What if there was no lieutenant colonel available? What would you have done?
A. We would have had to find someone to pick him up.

Q. Like who?
A. Anybody at the MEF that was of senior rank or equal rank.

Q. And where was this located?
A. Mainside, where the interview took place.

Q. He drove to you, right?
A. Correct.

Q. Please tell me again because I don't understand -- what basis did you use to put him to custody? The charges -- was it the charges?
A. There was no charges at the time.

Q. Okay. What authority did you have to arrest him?
A. Anytime we have a suspect brought into a custodial environment, that's the procedure that's followed.

Q. All right. Did you get a -- did you have a permission from the command to arrest him?
A. No.

Q. Did you -- did you have charges that led to his arrest?
A. No.

Q. And you asked for him to come in?
A. Yeah, his command did.

Q. And he came in?
A. Yes.

Q. And you said you held him for an hour and a half after he said I don't want to talk.
A. Well, we had to process him as well. As part of our procedures we have to fingerprint and photograph every suspect per the DOD instruction.

Q. Okay. How long did that take?
A. I don't really remember, but that was included in the hour and a half I believe.

Q. Typically, how long?
A. 20, 30 minutes. And then there was a smoke break. He went outside and smoked with the guy that ended up in the interview with me.

Q. Okay. I'm going to hand you a document. It hasn't been marked, but it's labeled as page 53 of your notes. Would you take a look at it, please?
A. Sure.

Q. When you're done reviewing it -- and pay particular attention to the comments and the times. Actually, I'm going to ask you to answer from it because it's -- you probably don't remember.
A. Sure.

Q. What time did Major Card arrive at NCIS?
A. He arrived at 0902.

Q. What time did he leave?
A. He left at 1100.

Q. Okay. I'll retrieve that. Thank you.
A. Also one of the things now that I read the notes too -- throughout the process of advising him, he wanted to keep getting briefed what was going on with the case. And I told him that I couldn't continue to interview him because he had exercised his right to seek legal counsel.

Q. He asked for legal counsel?
A. He did. And we made a phone call and I can't remember exactly what -- it was a female --

Q. Yeah.
A. -- captain I believe.

Q. Yeah. He was never provided legal counsel at that time.
A. No, because we weren't going to ask him any questions.

Q. Okay. Sorry, Your Honor, I'm done. I just need to clarify some things. So based on what you believe, you believe that NCIS, when you're not arresting anybody or holding somebody over, you have a right if somebody

comes in to talk to you to hold them until they are released to someone else from their command?

A. You just said I didn't detain him, but I did. He was not free to leave at that point.

Q. Let me ask you this: Does he have to come talk to you?

A. No.

Q. So he could have said I don't want to talk to NCIS?

A. Well, I could have found him where he was at and detained him.

Q. Okay. So there was an arrest? Describe the difference between detention and arrest?

A. We don't use -- the word "arrest" means you have arrest authority. So technically, we use the word "detained." It's the same thing, they're interchangeable. The difference is there is legal reasons why we use the word "detained." So either way, whether he would want to come in on his own, I could have went to his workspace based on the evidence I had and detained him, brought him back for questioning.

Q. To do what? What is the purpose of detaining him?

A. So that he is free from movement so that I can interrogate him.

Q. Okay. And he says, I don't want to talk to you.

A. So I bring him back and process him. I still have to process a suspect.

Q. Okay. And so -- that's fine. So why can't you just release him like most other law enforcement agencies do after they process a subject?

A. To his own recognizance?

Q. Yeah.

A. We're not allowed to do that. I don't know what the exact -- it's never been in our procedures to do so.

Q. Again, I guess I'm going -- another question regarding the law or not procedure, but the law. Do you know what that procedural step of detaining someone and releasing him to his command -- if that procedural stuff is supported by any law that you can think of or any rule under the court-martial.

A. I'm sure it is because it's what I was taught, in both MP school and in ASAC.

Q. Okay. And you believe that you, as an NCIS agent, may just hold somebody until you decide to release him to his command?

A. Well, he was being processed anyway. That processing time is part of it.

Q. After he was done processing?

A. Sure. We have as to release them -- we can't just release him on the street. We've detained him; we've stopped him from freedom of movement.

Q. Do you have the power to put people in jail?

A. No.

Q. What must you do to put people in jail?

A. We have to have an arrest warrant.

Q. What else?

A. Are we talking about --

Q. Marine Corps.

A. Marine Corps, active duty?

Q. Yeah. In the brig. Do you have the power to put people in the brig?

A. No, only the commander does. We can put him in pretrial confinement based on several situations, whether he was a flight risk, a danger to himself.

Q. As an MP, you have the power to arrest someone?

A. Detain.

Q. Detain?

A. Correct.

Q. You can arrest them, handcuff them?

A. Yes. Based on probable cause, yes.

Q. Then if you decide this person is a danger, what must you do to put them in the brig?

A. Make liaison with the command.

Q. Command. Always through the command, right?

A. Yes, absolutely because the commander has the ultimate authority on that.

Q. All right. Distinguish for me the difference between arresting somebody for -- or holding somebody for an

hour and a half or two days. What is the difference besides the time?

A. I would say two days is unreasonable.

Q. So there's a reasonableness analysis under this detention thing? Can you hold somebody overnight until the command picks them up?

A. No, we don't --

Q. What is the time limit that you can detain somebody?

A. I don't know what the time limit is. I guess, would it be a reasonable standard just like most things in the law. If a reasonable person believe that was a reasonable amount of time to process Major Card then --

Q. Let's assume that Major Card had shown up at 1700. I'm not going to make a bunch of ifs, but 1700 on a Friday, you call, nobody shows up. What happens then?

A. We would find alternate means of releasing him to somebody from his command.

Q. There is nobody. You can't reach anybody.

A. The SOG for the -- or the OOD for the base. There's always somebody.

Q. Okay.

A. I've had situations like that before.

CC (Mr. Faraj): All right. I don't have anymore questions, Your Honor.

IO: Government counsel, any additional questions.

GC (Maj Goode): No, sir.

CC (Mr. Faraj): I think we need to mark this as an exhibit.

IO: You want to get that marked? That'll be 36. Do you want to admit that?

CC (Mr. Faraj): Yes, but we'll need to make a copy of it first.

IO: We'll take a short break. Special Agent Periard, thank you very much for your testimony.

Defense is going to offer Investigative 36 and that is an NCIS log entry?

CC (Mr. Faraj): Agent notes.

Your Honor, we're going to need to make a copy of it, and then we'll offer it.

IO: Very well. We're going to take a break and see where we're at. The investigation is in recess.

[The Article 32 investigation recessed at 1146, 21 April 2011.]

[The Article 32 investigation was called to order at 1251, 21 April 2011.]

IO: Investigation is called back to order.

I see Mr. Phillips is here. Are we ready to put him back on the stand?

GC (Maj Goode): Yes, sir.

IO: Okay. Good afternoon.

Major Goode, I believe you're done with your examination?

GC (Maj Goode): Yes, sir.

IO: All right. Defense counsel.

CC (Mr. Faraj): Yes, sir.

CROSS-EXAMINATION

Questions by the defense:

Q. Good afternoon Mr. Phillips?

A. Good afternoon, sir.

Q. Thank you for being here.

A. No problem.

Q. How do you feel about being here today? I think you're stuck on the flag. I don't want it to fall over. I think your chair is stuck on a -- it was hooked on it. There you go.

A. Today, a little uncertain on some of the testimony possibly that may have been given. Just a feeling I have from the Marines that were brought here.

Q. How do you mean -- what do you mean by that?
A. I feel that they were influenced and scared to possibly give all the information that may have been required or needed.

Q. Did you have an opportunity to find out about the information that was provided?
A. What do you mean?

Q. You said you feel that they might have been influenced?
A. No. I don't know on that. I didn't ask them if, you know, anybody was coming across that way to them.

Q. Right. I mean, do you know what they said -- what caused -- what is causing you to be -- what is causing the hesitation about their testimony?
A. I think they're scared on their own behalf because of their actions.

Q. What do you think their testimony was?
A. I think they're keeping a lot of information to themselves to be honest.

Q. And why is that? I think you have an opinion on that?
A. Because they're scared.

Q. Of whom?
A. Of consequences. Some may still be active duty, some may be civilians that have no real idea now at this point, after this many years as went by of what this really has been going on for the past seven years.

Q. May I ask you some more specific questions?
A. Sure.

Q. You're referring to their testimony, and I'm trying to find out if -- what you know about their testimony?
A. Nothing really that I know.

Q. Do you know what they said in their statements?
A. No, I don't.

Q. Okay. Now, you said -- when you said they're scared, you kind of looked past me. Is there someone on that side thank you they might be scared of?
A. What do you mean looked past you?

Q. I saw you kind of look past me. I may have been seeing

things, but I thought maybe you were referring to somebody that they're scared of?

A. No, not here.

Q. Who do you think they're scared of if they are scared?

A. Obviously, probably General Mattis and the Marine Corps.

Q. Can we take that one at a time -- those topics one at a time? I know you have some strong feelings about at least one of those.

A. Uh-huh.

Q. Let's take the Mattis issue first. Why do you think they might be scared of General Mattis?

A. Because he's a very influential man and very powerful. And at this point, it's pretty clear that we don't know what side we stand with that man. And that's politics.

Q. You've obviously made -- come to some conclusions in your mind, and you just shared them with us. Is that a fair statement of what you just did?

A. Uh-huh.

Q. Can I ask you to share with us the reason why you have those opinions or those conclusions?

A. Well, I have seen the personal influence that he's put on others as well as what he failed to do for us.

Q. Be more specific, please. It's very important for the investigating officer so he can -- we're on the record, and what you say is very important. I don't think you're scared of anybody.

A. Well, the fact that all the Marines that got out of the PSD detail were all LAR Marines. They were all Marines that I served with for years. The division element, as far as I know, they're all still in, and they've all continued their career paths.

Q. So?

A. I felt we were disrailed and done wrong by him, and I tried -- I've tried to bring that out in the safest manner available to me because I am compelled -- obviously concerned of my own safety at this point, and I've said that many times.

Q. What measures, if any, do you take to protect your safety?

A. I don't hardly. I'm pretty much 24/7 on the guard of my

surroundings, always have been since that night.

Q. Because?

A. Because I've been -- things came my way that shouldn't have over the years.

Q. And you believe, if I may, I want to direct you because I think we're kind of going around the topic, and you and I had a conversation. You believe General Mattis is responsible for a cover up or something like that?

A. I do. I honestly believe that Major Card was influenced by him to do what he done.

Q. Any actions that you believe Major Card did were influenced by Mattis?

A. After the fact.

Q. Okay. Can you say more about that and what you personally -- what personally led you to these conclusions?

A. Well, the fact is Major Card was concerned because I requested mast to speak to General Mattis three days after the event of June 7th. That there tells me General Mattis was not blind to the situation --

Q. Okay.

A. -- as reported.

Q. Do you recall if you requested mast using documents?

A. No.

Q. Kind of in person?

A. No, it was just in person.

Q. Do you think knew at the time you requested mast why you wanted to speak to General Mattis?

A. Yes.

Q. Okay. And Mattis found out about it?

A. Found out about the request mast.

Q. You wanted to speak to him?

A. Correct.

Q. And at some point, you actually did have audience with Mattis?

A. I had a closed-door conversation with him in his office for about an hour.

- Q. And I think I heard you say on direct examination that you wanted to share with him, but you expected him to ask a question that you knew he should have asked but he didn't ask?
- A. Of course.
- Q. Okay. Can you tell us more about that -- about the meeting, what happened, what was going on through your mind at that time?
- A. I am -- I was not going to discredit my platoon and make them feel that I was turning everyone in so I went about it the only way I knew that I could, and I played -- I played the role of going there as, you know, a disturbed or an upset Marine of the situation. And I was unhappy with the way things were going within the detail. And he had made no desire to pull anything from that conversation to find out why I was leaving two weeks before we were going home.
- Q. Let me stop you because we haven't heard about this. You actually left the PSD. I think we actually did talk about it, but just to refresh everyone's memory. You left the PSD, the personal security detachment, literally two weeks before you were supposed to go home and went back to LAR?
- A. Yes, for four months.
- Q. And as a result of that, you ended up staying in country longer?
- A. Yes, I did a ten-month tour.
- Q. What influence, if any, did Mattis have on you being sent away?
- A. He let me go. His influence was he -- instead of saying, No, you're not leaving and you're going -- we're going to find out what's going on here before we go home. That's what was not taking place. And I seen that there was things that were being developed and believe it or not, I baited him and they all -- he took the bait.
- Q. How did you bait him?
- A. Those awards that everyone was written up for, I'm the one that requested that they be written because I knew that we would lose the official documentation, the combat reports that happened.
- Q. So you requested that those awards that you eventually

got be written?

A. Yeah. I knew that they were building us up and telling us that we did the right thing that night. So I suggested if that was the case, I think we should be recognized. So I baited him.

Q. Do you remember specifically did you bait Mattis or someone else?

A. Beall, which, in fact, went to Major Card and General Mattis.

Q. Beall, you said?

A. Yes. He was the one that wrote the awards.

Q. Bill or Beall?

A. Beall.

Q. Beall, the Gunny Beall?

A. Correct.

Q. I'm sorry. I didn't understand. I thought you said bill. So you got Beall to submit or to write up --

A. I let them think that that's what I wanted them to do.

Q. And that's what they did?

A. And that's exactly what they did.

Q. And this is -- I remember you testifying yesterday about an award that began as a bronze star and was downgraded when he was in a coma?

A. Correct.

Q. That's the award you're talking about?

A. It was written on August 4th and Major Card was in a coma and I was still in Iraq.

Q. So he couldn't have written that award?

A. No, he did not.

Q. Do you know who did?

A. I believe it was Gunny Beall.

Q. Beall?

A. That wrote those awards, and then they were approved by commanding authority, which was General Mattis.

Q. I want to backtrack a little bit. You said you requested mast and as a result of that, you did have an

hour audience with General Mattis?
A. Yes, sir.

Q. Okay. And you said it was closed door?
A. Yes, sir.

Q. So your desire to have a private audience with Mattis did actually come to be?
A. It did.

Q. And Major Card in n way prevented you from having audience with him?
A. No.

Q. Okay. Now, we discussed a little bit that some of these Marines fear repercussions. I think you said you fear for your safety?
A. At this point, I do. We're way beyond turning back. I've already done the damage.

Q. When you say "fear for your safety," give me an idea of what you mean by that. When you say "safety" I'm thinking grievous bodily harm or some bodily harm to you or someone you know. Is this what we're talking about?
A. Yes.

Q. So would you explain -- I know you have the concern about it, but where does the concern -- not where does your concern come from, but where do you think it would come from to you?
A. I don't understand.

Q. Not a very good question. Who do you think could hurt you for standing up and saying what you saw?
A. Well, anyone that feels that I'm not doing the Marine Corps a credible thing. Marines do stupid things.

Q. I understand. I think I understand. So you're saying this isn't sort of a preplanned thing to get you for saying that, it just might be a random act of violence?
A. It could have been last night.

Q. I understand. Are you saying that this could be some random act that a Marine does or is it a planned act on you?
A. At this point, I don't know. I know that I stopped his career.

Q. Whose?
A. General Mattis'. So -- but I know he's not leaving government -- the government agency that he belongs to.

Q. I know you have some information about how you stopped his career, right? Or you know how you stopped his career?
A. Well, I would have to say because no matter what he says, everyone -- there's still people that know what's really happened and what kind of a man he is and the things that I've been willing to come forward with and say about him and his, you know, obvious putting risk on my side because --

Q. I understand?
A. -- you know, he at any time, you know, I'm not hard to find.

Q. They found you?
A. Right.

Q. Do you have any opinion as to why your career ended? Did you end your own career in the Marine Corps?
A. Unfortunately, I had to.

Q. Why?
A. Because I had to stick around and see where this was going to lead. I knew what happened. I knew where it was starting with in 2004 when this happened and they disbursed the platoon to all the ends of the Earth literally. And some of us have not seen each other since that time, which is just unbelievable to consider. But because -- but that's what was done to us. And this isn't just -- this is a division thing too. This was 1st Marine Division by all means. You know, General Mattis has been a member of 1st Marine Division during the entire element of this Iraq war and I've been a part of that. And, you know, I was, you know, I wanted to do the detail, and I chose to do it. And in fact, I was put on to continue more of those details. I trained the next detail that went out with General Hook, but I refused to go on that. And when I told them I wasn't going to go --

Q. Why did you refuse to go on General Hook's detail? Did General Hook come after Mattis? I'm not familiar with the progression.
A. Yes. Yeah, that was --

Q. So Hook was the division commander after Mattis?
A. Yes, I was going to go over there for 2d Marine Division.

Q. I'm sorry, one more time?
A. They were going to send me with 2d Marine Division on his PSD.

Q. Did Hook ask you personally?
A. No. Come to find out General Hook didn't even want the PSD, didn't even use them.

Q. How did you find out about that?
A. From the PSD because I wanted to know how things turned out for them once I, you know --

Q. Was there a specific person that you communicated with or just you knew the guys generally?
A. I knew most of them. I trained them. I did, you know, they have to go through gunnery.

Q. Where did you train them? Here or Lejeune?
A. Yes, here in Twentynine Palms.

Q. So they came to Twentynine Palms?
A. We took them to Twentynine Palms.

Q. I'm sorry. I'm confused. You were talking about 2d Marine Division, right?
A. No. I'm talking about -- we sent elements to support 2d Marine division.

Q. I understand. Okay. And those are the elements that you trained in Twentynine Palms?
A. Correct.

Q. Thank you for clarifying that. I misunderstood. I thought 2d Marine Division came here to train. So those guys came back and told you he didn't even want a PSD?
A. Correct. When I returned back from General Mattis, his PSD at that time, I was actually with 1st LAR. I came back about five months later. They put me in battalion. I started -- I was running battalion gunnery. I was one of the battalion master guns. So that was a billet that I was going to hold and that was -- that was training battalion and division jump.

Q. Were you in a division school's billet or a battalion

school?

A. No. I was with battalion. They call it battalion master gunner. Basically, that's just one of the senior gunners that are qualified to train the rest of the battalion in gunnery qualifications prior to deployments.

Q. What was your rank at the time?

A. Sergeant.

Q. Now, you made a distinction between LAR Marines and division Marines earlier. LAR Marines were scattered by Mattis or people working for Mattis?

A. All of us were.

Q. Okay. The division Marines remained in the Marine Corps?

A. It seemed they all got duty assignments of choice when they got back.

Q. Okay. Say more about that, please.

A. I was just saying they all were, you know, put in duty assignments that they normally wouldn't be sitting in. Like Sergeant Duran, how is he even a driver?

Q. What was his MOS?

A. He's a comm guy originally.

Q. Don't generals usually pick comm guys as drivers because the comm guys kind of flip the switches and it doesn't take much to drive --

A. They do. But we actually had an entire C-square, which is.

Q. Common?

A. Yeah. That was the battlefield on wheels.

Q. So you would agree that it would make sense to have a comm guy, and they frequently have comm guys, just because they want them --

A. Yeah, they like to have the experience there.

Q. Is there anything else besides that that you thought, you know, Duran got favoritism because he was a division guy rather than the LAR guys?

A. I really don't think Duran was ever really liked to be honest with you, but he was just where he was at.

Q. By Mattis?
A. Yes. And by most in the LAR.

Q. Okay. Now did you -- before coming here today, is it fair to say that you were reluctant to come testify?
A. I was a little nervous about coming in here because who I may been confronted with.

Q. And who?
A. This morning.

Q. Go ahead. I'm sorry. I cut you off.
A. First Sergeant Hyman. There's no doubt me and him had problems with one another. I never liked him since the day I met him. He's a terrible NCO. I can't believe he's a First Sergeant.

Q. Okay. Did you have more to say about that?
A. No, I don't.

Q. I was actually referring you to coming to testify at all, not just today.
A. No, I don't have a problem coming in and testifying. But I had a problem this all being put on Major Card's shoulders.

Q. You don't feel he's responsible for everything that happened?
A. No. He's responsible for what he did, and I told you what he did.

Q. All right. All right. Did you ask for any type of protection in order to testify?
A. No. I just asked for maybe something, you know, after the fact because, you know, I don't -- can't really be protected while I'm standing here and coming and going. But after the fact, when everything dissipates and clears, I'm not forgotten by no means.

Q. I think, if I remember right, you were concerned that you -- that they were even interfering with your ability to get a job or to seek employment or to interfere with your private life. Did I -- maybe not in so many words, but I sensed that you felt there was interference in your private life?
A. Well --

Q. And they being Mattis, Marine Corps.

- A. I felt that in a way I was done being set for discredited myself by turning my medical separation -- paying me so much of the funds up front and in a way that would put me out there to others as a possible target as well as a, you know, what can we see him get himself in to so this case never even comes to light. I feel, yeah, there's a good possibility that could happen, but that was unfortunate that it turned out that way for me. I did screw up pretty good, but I changed things in the state of Oregon as well. Veterans up there now don't go to jail when they get in trouble. They go to the VA, and that was due to me. Because I didn't go to the VA. They locked me up three different times, and they held me in there under, you know, non -- cooling off periods for up to 30, 40 days.
- Q. I saw the charges were menacing. What the heck does that mean, menacing?
- A. I caused a problem for people that are trouble so they consider that a menace.
- Q. You reminded me of something. You were talking about your discharge earlier, and we never really got to it. Were you medically discharged?
- A. Yes.
- Q. Okay. And you got -- it sounds like you got a lump sum, and by taking the lump sum, you hurt yourself by not -- I don't want to put words in your mouth. I understood that you got lump sum and by getting the lump sum, you don't get to get longer-term benefits. Did I understand that correctly?
- A. I would not receive the benefits sustainable at the percentage that they should be because all of this money is basically thrown at you as a, you know, an up front type interest free loan. In a way, it almost comes out, but you lose all you're monthly rating where you should be. And when that happens, you know, you go from living on \$1200 a month with a wife and two kids when you should be receiving nearly \$3,000 a month in disability.
- Q. Do you have a disability rating?
- A. I'm 90 percent.
- Q. Do you know what it's for?
- A. I was rated on six different areas.
- Q. Is it okay if you share those with us? If it's too

A. private, that's okay.
PTSD, traumatic brain injury, spinal injury --

Q. Spinal injury?
A. Yeah. I lost two disks, and I had L-4 nerve damage.

Q. How did that happen?
A. That night when I jumped from that LAV.

Q. What else, sir?
A. Three concussions, about 60 percent hearing loss, and a little bit of knee issues, but it's pretty much all just bodily.

Q. Is it okay for me to ask you some questions about those things?
A. Sure.

Q. If it's uncomfortable, you let me know.
A. No problem.

Q. I'll respect your privacy. Can we talk about your TBI?
A. Sure.

Q. How did that happen?
A. It was concussions. I was hit --

Q. Actually, you were in the LAV that got hit?
A. Yes. I was hit three times, actually, over that tour with other elements as well.

Q. Did you ever lose consciousness during any of those?
A. I don't think so. I mean, I smashed my face a few times, you know, up in the turret obviously, but I don't feel that the concussions were that -- because I didn't. Yeah.

Q. But you had concussions?
A. Yes, I had concussions.

Q. You had three different concussions?
A. Yes.

Q. As a result of attacks?
A. The impacts.

Q. Got it. And a concussion, do you know --
A. A concussion is hard to explain. It can -- medically,

they say it could cause this or that and it may be -- unfortunately, concussions, once you start having them, you're more prone to receiving them. And I've seen that because I've also been in a couple motorcycle accidents that I was knocked unconscious as well.

Q. In addition to the three concussions?

A. Yes.

Q. So that can cause TBI as well?

A. Yeah, it's the same thing.

Q. When you were diagnosed with TBI, did they begin with the audiogram where they test your hearing and then they give you a series of questions that you have to answer? Is that the type of diagnosis you went through?

A. No. Actually, I haven't seen a doctor since I left the Marine Corps because I refuse any more treatment at this time.

Q. Forget the Marine Corps. Did you ever go through one of those TBI diagnoses where you do the audiogram and then they ask you a bunch of questions?

A. They've been trying to get me in there for the last couple years. I just -- I cannot fall into the VA's -- I'm not going to fall into that category right now. I've been trying to keep from being labeled as a disabled combat veteran that is unable to continue his job, and I'll continue to be this way until something happens.

Q. I understand. Are you currently --

A. I was never supposed to get out of the service.

Q. I sense -- I sensed that yesterday, and I'd like to talk to you about that a little bit because it sounds like you were almost forced out.

A. Well, in a way, yeah. It was most definitely -- everyone was wanting to know what my intentions were. I could have stayed in terminally as a sergeant and never got promoted because of my break in service. But, you know, I was also being done dirty by other units, you know. Units that I shouldn't even have been with. And, you know, that's influenced, you know, most of these senior Marines are retired now because they're smart and they retired before any of this came to light. You know, and that's General Mattis' right hand man, Sergeant Major Bell, Sergeant Major Ward at 1st LAR.

Q. Ward?
A. Yeah.

Q. W-A-R-D?
A. Yeah. First Sergeant Porterfield that did these things to these when they tried to come back and talk about the incidents that happened to them on their last deployment. And, you know, I could keep going on, but it's 1st Marine Division.

Q. You say incidents. There is more than what's alleged here?
A. There's more things than we could talk about.

Q. I'd like to talk about it.
A. I don't think so.

Q. Can I ask please? Because this is where it comes out. I mean, there's a record. Nobody's going to be able to suppress this.

IO: I'm not sure if it's relevant. If you want to just talk in generalities, when you refer to other things, are you talking about unlawful killings? Is that where you're going? You can talk in general terms if you don't want to get into specifics, and I don't know how relevant specifics are, but you mentioned --

A. Well, just -- no, there's really nothing more to talk about on that. There was no -- no more recklessness on the platoon's part by any means. The only recklessness within the platoon was by General Mattis. And that's just because that's the way he is. I mean, it didn't really matter because we were there and we made that choice to be there.

Q. You mentioned that you were getting \$1,200 a month to live on these days?
A. Yeah, that's where, you know, the way they work.

Q. Did you ask for any assistance from -- any additional assistance?
A. From -- no. Medically, no. I'm not --

Q. What about from the Marine Corps or the government or anything else like that?
A. I asked Admiral Winfield to help me out because he is the director of homeland security and he would be the person that would have hired me in 2007 when I was

accepted for employment as an HSI agent.

Q. What is?

A. It's a DOD, homeland security investigations agent. Basically, works hand in hand with ICE, U.S. Marshals, and work on the under -- elements -- the elements, you know, the crime that most people can't get into. You know, regular law enforcement doesn't pursue.

Q. What's their jurisdiction? What's HSI's jurisdiction if you know?

A. This was -- I was -- I would have been working Seattle, Portland. I would have had two state jurisdictions.

Q. Okay. And Admiral Winfield, how's he connected?

A. Well, he is the NORCOM commander, and he's the homeland security director.

Q. Now or then?

A. Now.

Q. Okay. I actually don't know.

A. So, you know --

Q. Homeland security for the United States or Oregon and --

A. For the United States.

Q. Okay.

A. So my request of them was just the fact they consider me still as an asset for this country and consider employing me in that position that I was hired for in 2007 only because that was a place that I feel I could continue service and not be concerned so much about someone coming behind my back.

Q. In 2007, you were still a Marine?

A. Yes, I was still a Marine.

Q. How did you get hired?

A. I was doing this while on my --

Q. So you were --

A. I was planning on getting out.

Q. Okay. So is that before when you began to plan -- when you began to plan to get out, was that an independent decision or did somebody influence your plan to get out?

A. No. I was just planning that. My plans were to go to

the School of Infantry, get my spinal surgery taken care of, which I did, and then I would, you know, I would have got out in 2011 here.

Q. Would you have retired in 2011 here if you stayed in?

A. I would have been at 18 plus years. I would have had a two year extension to hit 20 years if I would have stayed in.

Q. So your contract was supposed to take you to 2011?

A. Eleven.

Q. And it ended short because of the medical disability?

A. Medical board and my letter that was my statement that was sent to the joint chiefs.

Q. Okay. I want to talk about that letter. You believe the letter we're talking about is the report of this incident?

A. Correct.

Q. That made it to First Sergeant Webber and then to the CO?

A. The one that I wrote that went to the commandant then went to the joint chiefs. That's the letter we're talking about.

Q. Okay. What, if anything, did the commandant do about it when he got it?

A. He just sent it. As far as I know, he just sent it up.

Q. What, if anything, did the joint chiefs do about it when they got it? Do you know if they got it first of all?

A. Yeah. Yeah, they had it.

Q. How do you know?

A. From Sergeant Major Webber.

Q. Okay. And did they take any action on it?

A. A year later, they gave it back to IMEF.

Q. Okay. So in 2007 -- I'm sorry. When the letter given?

A. It started in 2008. It -- in 2009, the investigation should have took place within the platoon. And here in 2010, joint chiefs had decided that the Marine Corps needs to handle their shit and put it back in IMEF.

Q. And that's when this investigation got started?

A. Right.

CC (Mr. Faraj): Can we take a break at this time?

IO: Yeah. How long do you need?

CC (Mr. Faraj): Ten minutes.

IO: All right. Let's take a ten-minute break.

[The Article 32 investigation recessed at 1329, 21 April 2011.]

[The Article 32 investigation was called to order at 1339, 21 April 2011.]

IO: Investigation is called back to order.

Mr. Faraj, can you continue, please.

Questions by the defense (continued):

Q. We left off talking about Sergeant Major Webber?

A. Yes.

Q. And the progression of the letter or the statement that you wrote. Do you recall that?

A. Okay.

Q. Do you believe Sergeant -- do you know Sergeant Major Webber?

A. Yes, I do.

Q. Do you know him well on a personal level?

A. Not like personal friends, but obviously a mentor and a friend when I needed one.

Q. Do you -- based on your association with him, do you believe him to be a truthful person?

A. Most definitely.

Q. You have no doubt that he's truthful?

A. No doubt.

Q. So when he communicated to you that your letter -- your statement had made the to the commandant and then to the joint chiefs, did you have any reason to doubt his statement?

A. No.

Q. And he did tell you that?
A. Yes, he did.

Q. Okay. So there's no reason why he would lie to you or not tell the truth?
A. No.

Q. Did your statement have any action taken on it, or did your -- did the action taken on your statement by the authorities meet your approval?
A. Well, there was no -- I didn't know what actions were going to be taken to be honest because I knew what I was asking, and I knew that it had never been asked by anyone in the Marine Corps.

Q. What were you asking for?
A. I request the Marine Corps relieve me of my commitment and contract which is, you know, considering I was one of the most experienced infantry gunners that LAR had on hand and that I was still on a two year contract and had no real documentation of personal or psychological problems.

Q. You had no misconduct in your past?
A. Never. I had nothing showing me not to continue serving to be honest.

Q. I apologize, I may have missed something. You just told me about a letter to relieve you of further contract obligations, correct?
A. Correct. That was toward the end of that statement.

Q. Oh, the same statement where you made allegations of law of war violations?
A. Correct.

Q. All right. So in that statement, you also asked that you be relieved of further contract obligations?
A. Yes.

Q. Okay. Did -- well, initially I asked you --
A. Did I feel like --

Q. They did what you wanted to?
A. Yeah, they did it, but I felt that they shouldn't have done it to be honest though with you.

Q. Why is that?

- A. Because once they let me go, this was done. And we would have never spoke of this again. But I didn't allow that to happen.
- Q. So you feel -- if I may take some liberty with summarizing -- you feel like they knew by letting you go, they would kill the story?
- A. Exactly.
- Q. And now that it's back to life, what action, if any, do you think they'll take? If you don't know, then don't worry about it?
- A. I hope that General Dunford and Sergeant Major Webber step up for Major Card's sake and bring some light to this subject matter. And bring all held accountable for misconducts during that deployment.
- Q. And some of that misconduct includes General Mattis according to you?
- A. For sure.
- Q. Do you have any doubt in your mind that Mattis should be just as responsible?
- A. No doubt.
- Q. Anyone else besides Card?
- A. Yes, First Sergeant Hyman.
- Q. I'm not going to get into specifics, I just wanted to get names. So again, to summarize it, you think that while you had a fairly glowing career up to that point --
- A. For sure. You look at my fitness reports, I had officers that had stated in their fitness reports they would go anywhere with me. And, you know, I was promoted to sergeant in two years.
- Q. You had some army experience?
- A. Yes. I was reconnaissance so yeah, I had experience.
- Q. Now, again, I want to summarize. So great career -- and I think you said yesterday -- you left me with the impression that you were probably one of the better machine gunners in the Marine Corps based on what you were saying yesterday?
- A. Yes, I was.
- Q. Do you feel that way?

A. Yes.

Q. Okay. Were you an 0331?

A. Thirteen and eleven.

Q. But you trained on the machineguns?

A. Yeah.

Q. Mostly?

A. As an infantryman, you're expected to know your machineguns.

Q. Know your guns, okay. So capable at the individual skills, good Marine, you asked to be relieved of your contract. They should not have let you go, but the only reason they let you go was because they wanted to cover this up?

A. Yes.

Q. That's how you feel sitting here today?

A. If they really thought I needed help, it would have happened. They would have sent me to Palo Alto. They wouldn't have sent me on 120 days PTAD leave waiting for a discharge to come to me because that's what happened.

Q. Do you believe the joint chiefs were responsible for some of that action, or was that at the Marine Corps level?

A. That was at the Marine Corps level.

Q. Where do you think the highest level of decision making -- where -- to which point of decision making did your package reach where that decision was made do you think? Commandant or no?

A. Yeah. I would say MEF.

Q. Was Mattis involved in this decision process?

A. I'm sure he was. You know, I was even trying -- at one time General Petoskey even tried to get me out -- asked me if I wanted to get out. You know, I -- I told him no, this is not happening. You know, I don't know. I feel the Marine Corps has been trying to put me out for a long time because for whatever reasons they had.

Q. All right. You told me a few minutes ago that when you jumped off your LAV on the evening of June 7th 2004, you injured two disks?

A. Correct. The L-4 and L-5. And L-4 was nerve route was

scarred into my vertebrae, which had to be surgically cut away.

Q. How severe how severe was that injury?

A. It was severe. It was bad, and I was required to deploy injured and it was well known.

Q. Before you go, I'm focused on June 7. Did you have those injuries already?

A. No, those injuries was because of the amount of weight and the height.

Q. You jumped off a 5 feet of LAV, 6 feet of LAV --

A. Yeah.

Q. -- with a 240 Golf?

A. Yeah. I was on top of the turret, and I had a machine gun plus full body armor and my own personal gear because I didn't know if I was going to be running back to --

Q. And you compressed your L-4 or L-5 or fractured them?

A. Yeah. They were actually both totally gone. They were nothing but fragmentations.

Q. They actually fragmented from that jump?

A. [The witness nodded his head.]

Q. When did you discover -- besides pain, you probably felt pain. But when did you definitively discover as a result of X-rays or whatever that those were hurt?

A. When I took it upon myself and stole a Toyota and drove to Kuwait City Hospital.

Q. How many days after June 7 -- how long?

A. I was in Iraq again. This was on my third tour with 1/4.

Q. Do you have a sense of --

A. They didn't believe I was hurt so I made -- I proved it by going and having an Iraqi -- or a Kuwaiti spinal surgeon give me an MRI in Kuwait City.

Q. Do you remember when that took place -- the date?

A. It happened a month before I came home so it would have been --

Q. August?

A. It would have been probably --

Q. July?
A. Mid '08.

Q. Oh, '08? Not 2004?
A. I mean mid-'06.

Q. '06?
A. '06. I was on another tour in '05 and '06.

Q. So nearly two years later?
A. Yes.

Q. When you jumped off the LAV, did you feel the pain of the injury?
A. No.

Q. That happened later?
A. Yeah.

Q. Okay. Let me back up. Had you asked for any monetary assistance from the government in the last few weeks, and what was there response to it if you did?
A. What do you mean?

Q. Did you ask for any assistance -- for any monetary assistance from the Marine Corps when they contacted you?
A. Like, monetary as in moneys?

Q. Like money.
A. I -- no, I didn't ask for any money. I told them that if they wanted me to come down here that I would need an advancement because --

Q. On travel pay. I'm not talking about that. I'm just talking about to pay you?
A. No, no.

Q. What about any guarantees for educational benefits for your kids?
A. I suggested that the government owes my two boys that because they're both, you know, I have a teenager, a 14 year old, and a seven year old, and the Marine Corps and the Army is all they've known of used to do. And as it stands, their dad has no livelihood for them anymore.

Q. I'm sorry to hear that. And you suggested that they try to assist you with your children?

A. Yes.

Q. Would you like to take a break?

A. No.

Q. Where do your children live?

A. With me.

CC (Mr. Faraj): I would like to take a break.

IO: All right. Let's take ten minutes.

[The Article 32 investigation recessed at 1351, 21 April 2011.]

[The Article 32 investigation was called to order at 1356, 21 April 2011.]

IO: Investigation is called back to order. Mr. Faraj?

Questions by the defense (continued):

Q. Mr. Phillips, I want to turn our attention to June 7, 2004. I think you told me there was -- you told us yesterday that the vehicles were at about one hundred a hundred meters dispersion between each other during the road march back to Blue Diamond, correct?

A. That's correct.

Q. And that when you when your LAV blew up, you eventually grabbed the machine gun and dismounted?

A. That's correct. Once I evaluated Sergeant Tucker and tried to get some type of operation in the turret and there was none so then I --

Q. What was your rank at the time?

A. At that time, I was a corporal.

Q. Okay. Were you the senior man in the vehicle?

A. No.

Q. Who was the very the senior man?

A. Sergeant Tucker. He was the vehicle commander.

Q. Was Sergeant Tucker responsive?

A. He was responsive -- you mean at that point?

Q. I mean did you speak to him?
A. Yes.

Q. Did he direct you to go?
A. No. I actually, kind of, directed him to exit the vehicle and go with the medevac due to his walking wounded injuries. He was not majorly injured, but he did sustain shrapnel wound to the face and neck and shoulder.

Q. Did you think about assisting him at all or were you comfortable that he doesn't need assistance?
A. He was fine. I just wanted to make sure he wasn't going to bleed out. And he assisted as much as he could in the recovery of the dead on our vehicle and assisting with the medevac as walking wounded.

Q. Okay. When you say medevac, was the medevac already there?
A. It was being called while we were --

Q. How?
A. -- the vehicle personnel off my vehicle.

Q. Okay. Did someone communicate to you that the medevac was being called?
A. Well, not on radio, but Major Card and doc came immediately to the back of our vehicle.

Q. Okay. Let's take a step at a time. So IED blast goes off, your turret is unresponsive. Are you the gunner?
A. Yes.

Q. The turret is unresponsive. Does the gunner sit on the left?
A. Left.

Q. Left. And the vehicle commander is?
A. Top right.

Q. Okay.
A. So Sergeant Tucker exited from the right side --

Q. Did you turn around and look for him or did you get in?
A. I got up and literally turned him to look at me.

Q. So you got up on top of the vehicle?
A. No. I got up on my seat, stood on the seat.

Q. You stood up?
A. So I'm standing parallel side to side to him to check him out and informed him that I think he should go with the medevac.

Q. How did you say that? What did you say to him?
A. I said I think you need to get off the vehicle and get looked at by doc. I'll be all right. I'm taking the machine gun off.

Q. Okay.
A. And that's what happened.

Q. Now, just so I understand -- once the turret was disabled on the vehicle, the turret-mounted 240 Golf wasn't probable anymore either, right?
A. It would not have been -- to properly engage, no, it wouldn't.

Q. That one turns with the turret?
A. It turns with it. It can be fired manually, but it can't turn the turret manually.

Q. Not very practical?
A. No. Especially since there was nothing -- you know, there was buildings to the left of us and there was nothing to traverse on anyways with the main gun.

Q. So with the main gun -- with the -- turret gun disabled, really the only security forward --
A. Was his machine gun.

Q. Was the --
A. The vehicle commander's machine gun.

Q. The machine gun?
A. Correct.

Q. You take that up, you jump off the vehicle -- does that have a bipod on it?
A. Yes.

Q. Okay. It comes on it?
A. Yes.

Q. You don't have a tripod for it, do you?
A. They had a, you know --

Q. Did you mount it on a tripod, or were you --
A. It was on -- it was on the bipod.

Q. Bipod. And I think you testified that you took a firing position in front of that disabled vehicle?
A. Correct.

Q. Your disabled vehicle. All right. And then you immediately began to engage?
A. No. I immediately began to scan and observe because at that point, there was nothing coming -- coming towards us. No type of vehicle was approaching. That came within probably five minutes of the IED blast.

Q. Okay. So IED blast goes off, for five minutes there is no firing by anyone in the unit, or is there?
A. No, there was.

Q. There was?
A. That was all the reckless firing.

Q. Okay. Let me stop there because I thought you said yesterday that there was no reason for anybody else to fire when you fired, that they keyed off of you. Did I misunderstand that?
A. No, that's correct.

Q. Okay. So did you engage when you got off the vehicle?
A. Once I was down in a defensive position. And I engaged when that vehicle approached.

Q. Let's stop there. You told me that there was reckless firing before.
A. I did no firing at all until --

Q. Until you engaged?
A. I only deployed my weapons systems on those two vehicles.

Q. I understand. We're not questioning what you deployed your weapon, but it was your proper engagement that triggered a bunch of reckless firing by other Marines in the unit?
A. I believe so.

Q. Was there any other firing, whether reckless or not, by anyone before you began to properly engage the vehicle in front of you if you recall?

A. I believe, like I said, I heard a short burst of machine gun from my rear and I believe that was Sergeant Gutierrez. He could of possibly been startled by the blast and by, you know --

Q. Sure.

A. Or he could have, you know, he could have shot that old man.

Q. Besides -- okay, we'll get to that in a minute. Besides that, was there any other firing until you fired?

A. Well, yeah. At that point, people were getting out of their vehicles and just shooting out in nowhere.

Q. Okay. So you think that --

A. I was standing on a 15-foot vehicle. I had complete 360-degree observation of the entire area. You think I would have been standing up there if we had a linear ambush and insurgents were shooting? Hell no.

Q. Probably not. Okay. So when you're hearing firing, is it --

A. I was standing there, looking around, what are they firing at.

Q. Is it United States forces small arms fire?

A. Yes.

Q. Does it include any machine gun or bushmaster fire?

A. There was some main gun fire, but that was -- that was after the QRF came.

Q. So after the QRF came, somebody fired their main guns?

A. Sergeant Hyman.

Q. It wasn't you of course.

A. It was Sergeant Hyman.

Q. There was only one other LAV 25?

A. Yeah. Mine didn't even work.

Q. Okay. So you believe Sergeant Hyman actually committed war crimes with that gun?

A. Yes, I do.

Q. We'll get to that in a little bit. All right. So you stand up on this vehicle. You're in the seat, and you're hearing Marines firing and you believe it's

- reckless because you just can't identify a target.
- A. Well, I seen the firing going on within the platoon, and I did observe and I didn't know really what to think about it. So like I said, I jumped from the vehicle, came around the back of it, set up --
- Q. Is it fair for me to assume -- sorry to cut you off -- is it fair for me to assume you would never, in garrison, jump off the vehicle the way you did with a 240 Golf?
- A. No, normally you wouldn't.
- Q. What caused you to do that?
- A. Because everyone was shooting over my head.
- Q. So they were shooting in your direction?
- A. Yeah. I mean, not directly at me but, you know, rifle -- direction for -- only obviously aimed in my direction because I was the one in front, you know, supposedly where the ambush was taking place, right?
- Q. So they were aiming in your direction but firing over your head?
- A. They were firing over my head or to the right of it to the field and I was like --
- Q. Okay.
- A. -- holy crap.
- Q. So you jump off the -- that's the reason why you jumped off the vehicle, to avoid friendly fire?
- A. Well, yeah, for sure. I mean, obviously if there was bad guys out there, I would have jumped off the vehicle even faster. But there was so much reckless firing taking place and I was trying to get off that vehicle. I was, you know, easily could have been hit.
- Q. Did you take any action to -- to have them cease fire since you had an awareness -- you certainly knew there was nobody in front of you that was a threat at that point, right?
- A. When I took up a defensive?
- Q. Before, you know, as you're jumping of the vehicle and you're watching these guys firing, you at that point, there's nothing to shoot at in front of you or anywhere for that matter?
- A. Well, at that point, we were -- I was still trying to

find out what was going on, and that's when I approached those two Iraqi IPs.

Q. Okay. Had you fired your machine gun at all before you went to the Iraqi IPs?

A. On the first vehicle.

Q. I'm sorry. I'm confusing you.

A. I fired my machine gun --

Q. Before you fired your machine gun --

A. -- and then I got up and walked over to the IPs and I said --

Q. Before that, sir. Before you even get off your vehicle. As you're getting off your vehicle, right?

A. No.

Q. You hadn't fired?

A. No.

Q. You jump off the vehicle, now there's firing going on because somebody shot off a burst of machine gun and let everybody else -- everybody else began to shoot. Did you take any action to say, Hey, why are you shooting; there's nothing to shoot at?

A. No. The only action I took was requesting action -- requesting permission to engage on that first vehicle.

Q. All right. Were you already in the prone when you requested permission?

A. Yeah. I would have been in the prone, and I believe I got up to one knee and I hollered at Major Card -- because we were about 15 feet, probably, from one another -- and I hollered across, you know, I'm engaging on this vehicle pretty much because I was trying to --

Q. You placed your position yesterday right in front of your vehicle. Is that correct?

A. Correct.

Q. All right. So you begin to observe the vehicle come at you, and is it fair for me to assume that at that point, with that vehicle's approach, you believe they may constitute a hostile threat?

A. For sure. You know, VBIEDs were a big threat, and the fact that the car was coming at the rate of speed that it was.

Q. And based on your experience in Iraq, once Iraqis see that there's some sort of stopped convoy, they normally don't approach?

A. Yeah, for sure. Especially when you fire in front of them. I mean --

Q. Okay. So at the point that you're laying down in the prone behind your machine gun, is there any reason for you to doubt that a vehicle that approaches you is fair target so far as shooting at it to disable. Do you have any doubt in your mind that you can do that?

A. Circumstances.

Q. Well, we're talking about these circumstances. You've just gotten hit, and you've got a vehicle approaching, you said, about 30 miles and hour?

A. Yeah, for sure. Because my responsibility at that time is the safety and well being of the platoon and the medevac. So I, of course, would have -- it would be fair to say, yeah, that would be standard for anyone.

Q. So as this vehicle is approaching -- where was the vehicle approaching from? Is that at the top of the road here?

A. That right.

Q. This one?

A. Swing a little down.

IO: And for the record, we've got --

WIT: All the way down. Comes up that road and veer to the left.

IO: -- Investigative Exhibit 35.

Questions by the defense (continued):

Q. At which point as I'm moving -- tell me to stop where you engaged it.

A. I probably started at the second and totally disabled it where it stands at one.

Q. Okay. Now you are behind a 240 Golf?

A. Correct.

Q. How far was the vehicle away from you when you initially engaged?

A. Maybe 200 meters at the most.

Q. Okay. And the maximum effective range on a 240 Golf is what? Do you recall?

A. Shoot, you can get up to --

Q. 1800 meters?

A. Yeah, you can get way out there.

Q. Okay. So it's a high velocity round intended really for --

A. Battlefield machine gun suppression.

Q. It's fair to say that one of those bullets would definitely go through the vehicle, right, all the way from one side to the other?

A. For sure. It would go through the cab, it would go through the windshields.

Q. Okay. And, I think, of course when you're firing at the rapid rate, there is no take aim, single shot, you know, I got it; you just kind of open up in a direction of fire and you get your target?

A. Correct, yeah. That's your, you know, machinegun- that's the correct carry of a machine gun, yes.

Q. And given that it's not on a tripod, that you're on a bipod, the recoil makes the gun jump even more. So it becomes even more wieldy to stay on a target -- on a specific point of aim?

A. I don't know about that really. You get your shoulder up in it in the way I had it placed, it wasn't moving.

Q. I understand. But -- I'm not saying it was running away from you, I'm saying it's a lot more stable on a tripod than a bipod.

A. Of course. Unless you set up your position for. And that would be, you know, lay and shifting your body into it and position of the rifle or the machine gun.

Q. And you continued to fire on this vehicle until it came to a stop where you directed -- and I'm pointing too Exhibit 35, you have Vehicle 2. We agreed that you began to fire at the location of Vehicle 2 on this diagram, and the vehicle came to a stop at Vehicle 1, correct, sir?

A. Yes, sir.

Q. All right. Did you ever go back to that vehicle?
A. No, we didn't.

Q. Do you know what, if anyone, was inside that vehicle?
A. There was one person driving.

Q. Was there anyone else inside that vehicle?
A. No.

Q. Was that person killed?
A. I would assume so since the vehicle came to a rolling stop, and the person had no movement. We had no movement in the car for, like, an hour and a half that we were there.

Q. Do you know if that vehicle stay on the road, or did it roll into the field?
A. It rolled a little bit into the field.

Q. Okay. Based on your best recollection, did anyone dismount from that vehicle?
A. No.

Q. You don't recall anyone dismounting that vehicle?
A. No. No one -- no one got out.

Q. Okay. Now, earlier I forgot to ask you this, you said that Sergeant Gutierrez may have shot at the man on the road with his machine gun?
A. There could have been that --

Q. Why do you say that?
A. Well, the fact that he may have been startled by the explosion. He was just coming up around the bend of that curve where he would have come into --

Q. The curve we're referring is way at the bottom?
A. Right. He was coming around that bend. So where he sits as the C-square sits now, that's where he would have set off a burst.

Q. So he would have fired in the direction of the C-square?
A. He would have fired from the C-square to the right of the HMMWV.

Q. Okay.
A. And, you know, that's -- that's a possibility, but I really can't confirm that -- his -- but I guarantee that

he was wounded from either IED blast or that machine gun fire.

Q. Okay. Could he have been wounded by one of the other Marines shooting recklessly?

A. Not yet. Not at that time.

Q. Well, but you were up here. Would you have seen that?

A. Well, I mean, there would have been time. No one got out of the vehicles yet. He was hit before anyone was on the deck.

Q. How do you know that?

A. Well, he was standing right there.

Q. He was behind you by this point?

A. No. He was right next to me when my vehicle was blown up. I lost him --

Q. I misunderstood. I'm sorry. I thought you said that he was fired on -- you think that he may have been fired on from the C-square to the right?

A. No, straight.

Q. Okay. So you remember the man next to you when the IED goes off?

A. Yeah.

Q. How far from the actual blast was in man when the IED went off?

A. Like, shit, 5, 10 feet. He was on the sidewalk. He probably got launched off the sidewalk.

Q. Okay. And this IED was powerful enough to --

A. It was two propane tanks full of --

Q. It disabled an LAV?

A. Yes. It blew the whole back end out of it.

Q. And this LAV is armored, not a tank?

A. Lightly armored.

Q. It can take 5.56 rounds?

A. Yes.

Q. It can take grenades?

A. Well, yes.

- Q. And the way the hull is shaped, it can take, potentially, and RPG depending on where it takes the hit from?
- A. It can take some direct RPG and landmines.
- Q. Okay. And this was a powerful enough explosion that it totally disabled your vehicle and killed and injured a couple of Marines in there, right?
- A. Correct.
- Q. And the best of your recollection is the man that you saw was five to 10 feet away from the IED explosion?
- A. Well, he was -- for sure, he was, I mean, within blast range because of the fact that he couldn't have been but 10 feet behind me once I passed him when we were hit.
- Q. All right. Now, jumping around a little bit, but throughout the day, throughout the entire time you were there, do you recall -- I already ask you if you saw anyone come out of the vehicle and you said no -- the vehicle that you shot up, right?
- A. Correct.
- Q. You would have seen somebody come out of the vehicle and into the field from your vantage point?
- A. Oh, for sure. All of us would have.
- Q. Okay. And from where you were standing, you could observe the field?
- A. From where I was standing, I could observe the entire field and the road and the wall.
- Q. And you have no doubt that by the end of the night, by the time that you all leave, there is one person that is dead that Major Card -- you saw Major Card shoot?
- A. Yes, sir.
- Q. Is there any other person in this field anywhere?
- A. Not that I ever seen.
- Q. Okay. And you would have been able to see that?
- A. I was out in that, and so was other Marines. I had pulled back Tipton because he was in the line of fire.
- Q. We're going is to get to that, but I'm just wondering about what you saw in the field. You never saw anyone else, and if there was someone else, you could have seen them. Is that correct?

A. You would think so. We would have at least retrieved weapons or documentation.

Q. No. I just want to be clear. You remember seeing one person, correct?

A. Correct.

Q. And if there was more than one person, you think based on where you were standing, you would of seen that person, correct?

A. Correct.

Q. And when you left the field, you are certain that there was only one person and that's the person out there in the field and that's the person that you saw shot.

A. That was the only person I'd seen all night.

Q. Okay. Now --

A. Other than the two Iraqi police.

Q. Got it. People in the vehicles we're going to leave aside for now. We'll talk about them progressively. You said you engaged that first vehicle about five minutes after you had taken your position, correct?

A. Correct.

Q. And then you engaged it -- you opening on that vehicle which you believe constituted a threat caused other Marines to also fire?

A. I believe so.

Q. Okay. But you have no clue what they were firing at?

A. No.

Q. Do you know if they could have engaged the same vehicle?

A. They probably were.

Q. Okay. Were they engaging anybody else?

A. No. There was no other elements around us.

Q. Okay. And at some time after that, another vehicle begins to make it's way to you?

A. Correct.

Q. Where did that vehicle come from?

A. The exact same route up the road --

Q. The same route from where Vehicle 2 is right now?

A. Correct.

Q. And I think I remember you saying you engaged that vehicle and it fled?

A. Correct. I engaged them in pretty much the exact same manner, and he was turned about and he turned back without any, you know, injuries.

Q. Okay. How do you know that?

A. I seen him drive out of there.

Q. Do you know it there was anybody in the back seat or other people?

A. I mean, I don't know how many people were in the car. I just wanted that car out of there.

Q. Okay. So you don't know if your engagement on that car caused any other --

A. Well, I didn't shoot at the car. I never shot at the car.

Q. What did you shoot at?

A. As I said yesterday, I initiated both engagements by giving warning fire.

Q. How do you give warning fire?

A. You fire in front of the vehicle and just throw up some dust and scare them.

Q. So are you on the same plane as this road?

A. Yes. There's maybe -- it's almost flat the whole way across there.

Q. Okay. So --

A. You could see the surface of the road from the other surface standing on the other road so --

Q. So this is your machine gun -- if this is your machine gun, this is the road, and this is the vehicle, are you on the same plane as the vehicle? Are you about the same level? Are you higher, lower?

A. We're on the same level, but I'm not shooting at it from the front.

Q. I know.

A. It's the side.

Q. I know. I just put it this way so I could see if you're

- on the same level, right?
- A. Correct.
- Q. So when you're shooting, the vehicle is moving in that direction, right?
- A. Towards us.
- Q. Okay. On the road, and I know we don't have the same diagram. And you're shooting in front of the vehicle?
- A. In front of it.
- Q. Okay. How do your rounds land in front of a vehicle from a machine gun if you're on the same plane?
- A. You fire short of it, in front of it. What do you mean?
- Q. Well, if you're on the same plane -- if you're on the same plain --
- A. It's not line of sight. A machine gun doesn't work like that. I can fire 5 feet in front of me with a machine gun.
- Q. When a machinegun's round goes off, it goes straight, right? And then begins to drop, correct?
- A. With distance, yeah.
- Q. Okay. But at 200 meters, a 240 Golf doesn't begin to drop?
- A. No.
- Q. It's still on the same level, perhaps a little higher even?
- A. Right.
- Q. So how do you get the round to hit the ground?
- A. You aim down at the ground. You aim lower than the target.
- Q. But you're on the same plane.
- A. You're missing it there.
- Q. I may be. Were your rounds skipping and going into the homes behind them?
- A. There was no homes back there. The homes were to the left.
- Q. There was a wall and some homes back there, wasn't there?
- A. No, there was just a big wall.

Q. Okay. There's a wall --
A. Direction of fire wasn't towards the wall, it was towards --

Q. The direction of fire was towards the front of the vehicle, right?
A. East. East.

Q. Behind the vehicle?
A. From where I was at, east of you. But I'm saying I'm looking at it so I'm firing from a frontal --

Q. Where were your rounds going when they went past the vehicle?
A. They were hitting the street and hitting the dirt in front of them.

Q. What was behind?
A. A wall and a field. There's nothing there.

Q. Okay.
A. It was --

Q. There weren't homes up here?
A. Not in that section up there. Homes were set up here and here.

Q. I see. Okay. So that vehicle stops and turns around?
A. Uh-huh.

Q. All right. And you're not sure if they took any casualties or not, but you don't think they did because you didn't shoot at them?
A. Correct.

Q. Did you engage anyone else that day?
A. No.

Q. Did you engage the Iraqi police vehicle?
A. No.

Q. Okay. So you just --
A. I had searched I searched it. I didn't engage at all.

Q. How did you search the vehicle?
A. I asked them to open up the trunk, and I asked them to get out of the car where I could look through it.

Q. Did you have the 240 Golf with you?
A. Yeah.

Q. Did anyone else go with you?
A. Well, I tried to get somebody to go with me, but he wouldn't put anyone on the street.

Q. Who?
A. Sergeant Hyman.

Q. Okay. When Hyman came up with his vehicle, did he go past you?
A. Yes. He went past me and went up the road to the left.

Q. Okay.
A. First, I stopped him. I'm like, where are you going and I'm like -- then I hollered at him. I was, like, give me two of your guys, you know, because I didn't have anyone. Everyone in my vehicle got medevaced except me and Tipton.

Q. Had they been medevaced at that point? Were they still -- when Hyman moved up?
A. Yeah.

Q. So the medevac had come?
A. Yeah.

Q. Had the QRF arrived at that point?
A. No.

Q. Okay. So medevac is gone, Hyman moves up to take up a blocking position, did you go back to the same position -- after you I fired on this vehicle, did you remain in this position?
A. Yeah, for awhile.

Q. At some point, you go up and talk to the Iraqi police, or is this before Hyman arrives?
A. Actually, before he arrived, I was on my way up there as he was, kind of, coming up the road. And I wanted some help on the ground. What I was trying to do was, you know, if I could have found something, you know, maybe we found the people that did that that night. You know, maybe them two are chief of the Iraqi police now too, but whatever.

Q. Is it fair to say that if you would have left your

position, then that would have left you exposed to the sector --

A. Oh, yeah. I was still holding that position in the defensive because that blocking position Hyman took -- he was off that way. He was almost out of sights sometimes.

Q. You were so concerned about this approach --

A. That road was my main concern because --

Q. The road that --

A. -- anything could have come right down that road into the field right at us.

Q. Okay. And that's -- I just want to focus this because we're talking off a map. So the road we're referring to -- or the sector we're referring to includes the road where you engaged the two vehicles, right?

A. Yes, that was it.

Q. That was a dangerous, dangerous avenue that could have posed a threat to your unit, and you remained focus on that?

A. I did.

Q. Okay. Is it fair for me to assume -- I was a Marine so -- and I was a grunt so I make assumptions. Is it fair for me to assume that you would not have left your position unless you were relieved because that was an important avenue, correct?

A. Yeah, I would --

Q. And Hyman wasn't relieving you, he wasn't sending anybody?

A. No, he wasn't. He was -- I don't even know really -- I mean, he was just going up there to set up a blocking position, and he stayed up there until we drove up alongside him and fell into our convoy.

Q. Who did?

A. Sergeant Hyman. His vehicle stayed up there until the recovery assets removed us, and then he fell into the convoy from there.

Q. Okay. Did you see the recovery come up?

A. Yeah. I was -- when the recovery pulled up, that's when basically, pretty much all defensive posture almost, you know --

Q. So you remain in position?
A. No. There was not much of a defensive being set at that point. It was almost like we were -- we were lacking there.

Q. Where?
A. Continuing our defensive posture for sure, but luckily nothing happened.

Q. I understand. I'm saying when Hyman fell in -- he waited until the recovery comes in and then he begins to retrograde or falls in?
A. Right.

Q. And you essentially do the same thing?
A. Well, actually, I rode back in the back of the C-square. I was the last vehicle in the --

Q. I'm sorry, I'm not being clear. I'm talking about the defensive posture of the unit. You guys don't relax until you get the recovery --
A. Until the QRF gets there. Then things start to, you know, tone down a little bit.

Q. That was my point, is that your maintaining -- the PSD or the jump is maintaining its own security posture until you get reinforcements, and then you can, sort of, relax and fall back.
A. Exactly.

Q. Okay. Did anyone from your unit try to assist you in establishing a defensive?
A. Our unit?

Q. Your unit, meaning jump. I'm sorry.
A. No. Well, actually, Tipton did. Tipton brought me some spare ammo.

Q. I don't mean the in that way. I mean, did anyone try to come up and say, Hey, I've got your machine gun, go, you know, I'm relieving you or anybody like that before QRF arrives? You're the only one on this machine gun?
A. Yes.

Q. And you're the only one that's defending the unit from this position besides, maybe, small arms in the back?
A. Yes. I -- yes.

Q. You're sure of that?
A. Yes. That was -- I had the only weapons system that could do that too.

Q. Right. Because you've got vehicles approaching and your gun was disabled. Could you communicate if you needed to? Could you communicate with Hyman to have him orient on this road and stop vehicles if he needed to?
A. When he went up in the blocking position?

Q. Yeah.
A. No, he went too far.

Q. Where did he engage -- let's get to that point. He engaged somebody with his bushmaster.
A. Down that street, yeah.

Q. And you know about that?
A. Yeah, I do.

Q. Do you know about it because you heard about it or because you saw it?
A. Well, I know because I heard the rounds and there was six rounds missing from his gun and there was --

Q. Do you account -- are those rounds --
A. We don't have proof of any accountability anymore from what I was told. But, as I said, Sergeant Major Webber was First Sergeant at Hurricane Point, and he asked me because he wanted to make sure that it wasn't me that fire up 25 that night.

Q. There was some concern about that?
A. Well, he wanted to know a little more of what he was told to coverup.

Q. Okay. The Sergeant Major was told to cover up?
A. [The witness nodded his head.]

Q. To cover up what?
A. He was the one who cleaned up that area in the morning, we didn't.

Q. When you say cleaned up?
A. Trying to make people feel better about it or paying people or whatever the hell they had to do.

Q. You told me tell me this yesterday so I'm just going to

say it. Tell me if I'm wrong. You're saying that Hyman was responsible for killing people in a vehicle up the road and --

A. It was unreported and accounted for, but it was falsely included an insurgent ambush as an insurgent number.

Q. And that number made it into your award that you were very upset about?

A. Yes.

Q. But again, he didn't write that?

A. No, because he was in a coma.

Q. And I think you said earlier that you tried to bait them into doing it and they actually did it knowing that --

A. I did it before I left because I seen that they were going to cover it up and not bring it out to us and question us.

Q. And that's the only way you can account for it?

A. Exactly. Here today, that's the only proof we have.

Q. All right. Just to wrap this up, you're in a defensive position -- when I say "you," you personally are behind your machine gun on the approaches on this road to the north?

A. Yes. You would -- you could consider that.

Q. Okay. Hyman is slightly off to your northwest covering another approach, correct?

A. Yeah. He was -- he was literally up that road to almost where another road goes like that to where you would get on the main road that crosses the bridge, you know.

Q. Right.

A. That's how far up he was.

Q. And you felt based on your training and experience that you needed to cover this road with that machine gun?

A. I did until I was told to --

Q. Retrograde.

A. -- go rear.

Q. Okay. Who replaced you here?

A. I don't think anyone ever replaced me holding that position.

Q. Did QRF eventually come in?
A. No.

Q. So when you left, you left it open?
A. No. Everyone was just standing around. The vehicle was being hooked up for tow right there.

Q. So that's after the recovery vehicle gets there?
A. Right.

Q. Where you sort of say let's go?
A. Okay. That clears it up. At the time where you all dismounted, did you go become to Blue Diamond in the C-square.
A. I did.

Q. When you went to get into the C-square, were there any bodies around the C-square?
A. No.

Q. Iraqi bodies?
A. No.

Q. No. So around the C-square, you couldn't see anybody?
A. No.

Q. As far as bodies?
A. No, it was just --

Q. Just the man in the field and we had in people in the vehicles and whoever Hyman killed down the road?
A. Right.

Q. I'm not trying to minimize it, but -- I apologize.
A. Yeah. Well, we -- yeah, there was more, obviously, that I don't know the exact details. I know that there was six -- supposedly six insurgents, and that was included in the number.

CC (Mr. Faraj): Let me draw a diagram. I want you to help me with this one actually. If this is the road -- it's not to scale -- and this is the C-square. Okay? And this -- this circle is five, this is 10 yards, this is 15 yards.

IO: You want to put the numbers in there, Mr. Faraj, just to be helpful, please. Thank you.

Questions by the defense (continued):

- Q. 15 feet, 45 feet, there's no one in the front within the five yard circle of the C-square -- no Iraqis, correct?
A. [The witness shook his head.]
- Q. Is there anyone within 10 yards? Within 15 yards?
A. No.
- Q. There's the man in the feel?
A. He was not 15 yards. The C-square was at least one hundred yards from the LAV.
- Q. The LAV?
A. The lead LAV and the C-square were at least dispersed by one hundred meters even in a close position.
- Q. So the man was near the LAV?
A. Yes.
- Q. The dead man was near the LAV?
A. Yeah.
- Q. Okay. So you said about a hundred yards? You said a hundred meters.
A. In closing, when we all bunched up there, yeah. We would have been traveling at one hundred meters within one another. But when we all bunched up there --
- Q. I'm sorry. I want to be clear. I'm talking about bodies. There wasn't a body near the C-square?
A. [The witness shook his head.]
- Q. Within 15 yards correct?
A. No.
- Q. The nearest body was the one in the field about how far away?
A. From the C-square?
- Q. Yeah.
A. Well, I just told you it would have been 10 feet from the LAV 25. So you figure there was --
- Q. Your LAV 25?
A. Right. So you're figuring about a hundred meters probably between there and then, you know, you've got your HMMWV in between there and the Iraqi would have

been between the HMMWV and the LAV.

Q. So we're talking about maybe a hundred -- at least a hundred yards?

A. Yes, exactly.

Q. Greater than a hundred yards. Is that fair?

A. No. A hundred yards or less.

Q. From the C-square, not your LAV. I'm sorry.

A. Yes.

Q. I'm talking about the C-square. More than a hundred yards to the C-square?

A. A hundred yards or less in distance.

Q. From whom?

A. Because no matter what, we would have closed up within one hundred yards of one another.

Q. I understand. A hundred yards from whom? The C-square?

A. The C-square.

CC (Mr. Faraj): Okay. So less than -- can you give me an estimate?

IO: A hundred yards or less -- the Iraqi body was a hundred yards or less from the C-square.

WIT: That's what I just said, sir.

Questions by the defense (continued):

Q. Can you give me a better estimate of how far it was?

A. Ninety, eighty feet at the most.

Q. Not feet. We're working in yards.

A. I mean, 75 yards at the most.

Q. Okay. I'll write that down. About 75 yards, is that fair?

A. Sure.

Q. Again, we're not talking about distance from the LAV. I know he was close to the LAV. We're talking about the C-square.

A. [The witness nodded his head.]

- Q. Right?
A. Yes.
- Q. Okay. Are you upset with me?
A. Well, you're not making any sense for this courtroom right now.
- Q. All right. Help me make sense then.
A. The man was 10 feet from the LAV 25 and 80 feet from the C-square.
- Q. 80 feet or 80 yards?
A. 80 feet.
- Q. Okay.
A. We were talking about feet a minute ago, now we're talking about yards. We were close, all of us right there. So I'm not really getting at what you're trying to get at here.
- Q. I'm not trying to get anything. I know he was close to the LAV 25. I get that. I'm trying to figure out the distance from the man to the C-square.
A. Like I said, you have to say 75, 80 feet right there. I mean, you got to figure we couldn't have got too close or we would have been parked on one another.
- Q. Right. What is the length of an LAV 25?
A. Maybe like 13 to 18 feet long.
- Q. Okay.
A. And then we're talking two of them and dispersion and a HMMWV and dispersion like I told you, you know, the distance I did.
- Q. Okay. So from the LAV 25, there would have been some distance before you get to the next HMMWV, right?
A. [The witness nodded his head.]
- Q. About how long?
A. In that position, probably would have closed up to about 50 feet.
- Q. 50 feet? Okay. So between the disabled LAV 25 and HMMWV, right?
A. Uh-huh.
- Q. And then from HMMWV -- Vehicle 2 now, to vehicle three?

A. About the same.

Q. About the same distance, 50 feet? And the man was next to --

A. Me.

Q. -- LAV 25?

A. He got blown off the curb pretty much. Because he was walking on the curb and then he was 5 feet into the field.

Q. Okay.

A. So he got blown off the curb.

Q. Okay.

A. So he was directly to the rear of the vehicle.

IO: Mr. Faraj, do you want to admit that as the next exhibit? All right. That's 37. We'll call that Faraj drawing with Mr. Phillips.

Q. That's about right, so 50 feet plus the length of the vehicle about 120 feet? Okay. So this is IE-37.

A. So what you're trying to ask me is -- are you trying to get to the fact that you think that that man was mistaken for someone else? I mean, what are we talking about?

Q. I'm just trying to establish his distance from the vehicles. That's it. Where it was located.

A. Okay.

Q. There's no trick to it. We're just trying to find out the where he is in the field. Do you know how far away he was laterally from the LAV 25?

A. About 5 feet.

Q. Okay. So he was right next to it?

A. About five, ten feet. Like I said, the sidewalks about 3 feet wide and he was about five feet off the sidewalk.

Q. Okay. All right. I'm sorry if you're upset with me. I wasn't trying to trick you or anything. I was just trying to establish some distances.

A. I was just curious why you kept asking if there was bodies around the C-square. No one reported any bodies around the C-square, did they?

Q. I can't get into what people reported.
A. But I did not see any when I went back there, and I was back there providing rear security for the element for about 20, 30 minutes before we left. I would have seen something like that.

Q. Thank you for clarifying that. Now, you said you remembered Major Card wearing an OD green holster. Do you remember that on direct examination yesterday?
A. Both. Yeah, both. Actually everybody had them and the hip holsters too. It's depending on whatever you wanted to wear.

Q. Do you remember what he was wearing though?
A. I thought usually Major Card wore just a regular hip holster.

Q. What does that hip holster look like?
A. Just a green -- OD green.

Q. "OD" means olive drab green, just so we're clear?
A. Yes.

Q. All right. When Cotton -- when Cotton and you were talking -- were you and Cotton in talking in the back of the last vehicle? Did you chit chat a little bit?
A. I don't really know about talking.

Q. You testified that you didn't spoke to talk about nothing yesterday. Do you remember that?
A. Yeah. I mean, we didn't really talk about anything. He was just, like, kind of, blown away what was going on. He was a little shaken. I think that might have been his first real close engagement at that time, and he knew that there was things going on that wasn't right. But, you know, whatever. I don't think he had any real misdoings there on any part. He was just a good mechanic.

Q. Did he -- do you remember him saying words to the effect of let the muster fucker die?
A. No, I didn't hear nothing like that.

Q. You didn't hear Cotton say that? Would you have remembered if you heard it or you just don't recall?
A. I don't even recall even hearing him talk like that.

Q. Okay. How long did NCIS interrogate you for?

A. It was probably a 19-hour session, me and Jason Periard.

Q. Why so long?

A. I don't know. it was just a long day. It - we went through his -- his spiel -- or that page, like, five or six pages of questions and answers he had for me that he directed and I answered. And he also had me write out another statement on his computer. But when all was said and done it was about nine, ten hours.

Q. Nine, ten hours?

A. Yeah, it was all day long.

Q. How did you feel about that?

A. I knew it was a process.

Q. Did they leave you in a room for a while?

A. Alone?

Q. Yeah.

A. Yeah, sometimes.

Q. You were complaining about, in your words, piss breaks, I think you said.

A. No, I wasn't complaining about nothing. I said I had two drinks of water and that was about it. But I've had less in that amount of time.

Q. Did they -- why'd you make that comment?

A. I thought it was kind of weird. You know, it wasn't what I was expecting coming up there for, but --

Q. Why did you think it was weird?

A. That it was so -- so much being asked in such a short period. And I mean a short period being a day. You know, because that's all it was. After that, I left the state of California.

Q. Did you share with Periard any of the stuff that Webber shared with you about that vehicle?

A. Yeah, a little bit. I think, maybe, the fact that -- I think Jason investigated Sergeant Major Webber as well if I'm not mistaken.

Q. Do you know why those statements didn't make it into your official statement?

A. What?

Q. About other law of war violations by other people?
A. Of -- what other people? You're talking Hyman and --

Q. The bushmaster shootings.
A. -- and the failure of reporting?

Q. Yeah.
A. Well, I -- that letter was written very -- thinking about myself still too. What I said in that letter, could have been --

Q. I'm sorry that did make it in. I apologize, I misread it. Forgive me, I didn't think it was in here. But I don't want to cut you off. You had something to say?
A. Well, I just -- I just had to be careful about the way it was written and the things that I put in there. I couldn't put everything in there. Why would I?

Q. Because --
A. It would just be, you know, probably dismissed or laughed at anyways or think, you know, this is just totally unheard of.

Q. Did you feel like somebody would come after you if you made such allegations?
A. Yeah. That's why they let me leave. They didn't want me on Camp Pendleton anymore.

CC (Mr. Faraj): Can we take a five-minute recess?

IO: Yeah, let's take a five-minute recess.

[The Article 32 investigation recessed at 1452, 21 April 2011.]

[The Article 32 investigation was called to order at 1502, 21 April 2011.]

IO: Investigation is called back to order.

Mr. Faraj.

CC (Mr. Faraj): I don't have any more questions for Mr. Phillips.

IO: Government counsel, any additional questions for Mr. Phillips.

GC (Maj Goode): No, sir.

EXAMINATION BY THE INVESTIGATING OFFICER

Questions by the investigating officer:

Q. Mr. Phillips, just one question for you. As you sit here right now, based on your recollection of the events, I believe you already testified that in your opinion, Duran and Gutierrez were within feet -- I think you said within 5 feet -- of Captain Card shooting this Iraqi individual. Is that correct?

A. Yes, sir. They were within five feet of him and 5 feet of me.

Q. Who else do you believe would have clearly seen what took place or should have?

A. Obviously, First Sergeant Beall -- Gunny Beall. There's no reason that he wouldn't have been within distance of viewing this. Because that's where he was supposed to be. In any case, was right there, you know, maybe -- maybe Tipton. Because Tipton did -- I did have him get up and move into another sort of defensive because he was putting himself into a line of fire in front of me, which he didn't realize. And, you know, maybe once we were up and about and conversating with one another. He was in there, but I would have to say those two. Because they would have been the only two on the ground because most of the Marines were required stay with their vehicle or their weapons system.

Q. The individual who you believe that Major Card shot is that same individual you saw walking along the sidewalk?

A. Yes. I know who it was.

Q. How do you know that that individual wasn't killed by the IED blast since he was still alive at the time he was shot?

A. I put my hand on his shoulder and he looked up at me.

IO: Counsel, any additional questions in light of those?

GC (Maj Goode): No, sir.

IO: Mr. Faraj?

CC (Mr. Faraj): No.

IO: All right. Mr. Phillips, I'm assuming the trial counsel -- excuse me, the government counsel -- they have all

your contact information. If for any reason you move, change phone numbers, if you could, please notify Major Goode or Captain Gordon of your move. Please don't discuss your testimony, either today, any testimony you may give in the future with anyone expect obviously the counsel involved in this case. If anyone attempts to contact you in any way regarding this case, please don't talk to them and notify Major Goode or Captain Gordon or, for that matter, anyone on the defense team as soon as possible.

If you feel threatened in any way -- once again, if anyone contacts you or you feel threatened in any way, make that phone call. Please let someone know, okay? Any questions of me?

[The witness shook his head.]

IO: Thank you for your time. You're excused. Thank you.

WIT: Thank you.

[The witness was excused and departed the courtroom.]

IO: Major Goode, do you need to talk to Mr. Phillips?

GC (Maj Goode): Yes, sir, for five minutes.

IO: Let's take a five-minute recess. You can touch base with Mr. Phillips .

[The Article 32 investigation recessed at 1506, 21 April 2011.]

[The Article 32 investigation was called to order at 1529, 21 April 2011.]

IO: All right. The investigation is called back to order. Government counsel, is that your final witness?

GC (Maj Goode): Yes, sir, it is.

IO: With respect to First Sergeant Beall who was on the government's witness list, I received Investigative Exhibit 38, which is a summary of interview conducted March 1, 2011, by Captain Baehr. And that document has been signed by Captain Baehr. And I will consider that as part of the investigation. Major Goode, with respect to Carlos Gutierrez, what is his status?

GC (Maj Goode): Sir, he has been invited to participate, and through his supervisor he has declined to come.

IO: Is the government going to offer his NCIS statement?

GC (Maj Goode): Yes, sir.

IO: That is investigative exhibit 21?

GC (Maj Goode): Yes, sir.

IO: Very well. With respect to the exhibits that I have in front of me right now that at least have been referenced and that I am inclined to consider in one way or another -- we have Investigative Exhibit -- Exhibit 1 through 38. The exhibits that haven't been referred to during the course of the investigation, Investigative Exhibit 4, which is the map of Ramadi drawn by Phillips. Major Goode, are you offering that? I know we have one we utilized in court, which is Investigative Exhibit 35. Are you also offering a previously drawn one, Investigative Exhibit 4?

GC (Maj Goode): No, sir.

IO: I have not admitted, nor do I think it would be appropriate for me to admit Investigative Exhibit 19, which was the statement of John Stephens from 26 January. He was questioned about that statement and didn't recall making that statement. Obviously, I've got his telephonic testimony, but he does not recall making that statement so I am not inclined to admit that statement.

GC (Maj Goode): That's fair, sir.

IO: Additionally, Investigate Exhibits 22 and 23, that's a of Corporal Burkhalter regarding Justin Britt as well as Justin Britt's statement. I believe it's an NCIS statement which is Investigative Exhibit 23. Government, are you offering that exhibit?

GC (Maj Goode): No, sir.

IO: Very well. Aside from Investigative Exhibits 4, 19, 22, and 23, I'm going to consider the remaining investigative exhibits. They've been referred to in one way or another. I'm viewing the statements of the

individuals who testified as part of their testimony, but I will consider those prior statements to some degree, give them some weight. Mr. Faraj, do you wish to be heard on that? I know the defense had an objection to my consideration of statements from witnesses who testified.

CC (Mr. Faraj): I have a standing objection to all those statements, but let me more important issue and that is Gutierrez. I don't think there's been a proper unavailability determination made. We don't have a letter inviting him, for example, for example from Burkhalter.

AGC (Capt Gordon): Sir, we can call Special Agent Rend and he can describe the efforts that he's done to try to get Gutierrez.

IO: I will take the government proffer. And again, there's two proffers that I want. One, government counsel, he's been invited/

AGC (Capt Gordon): Yes, sir.

GC (Maj Goode): And I have the FedEx and the letter. I can submit it as evidence, sir.

IO: Have you attempted to contact telephonically as well?

GC (Maj Goode): Yes, sir.

IO: Has he returned your phone calls or indicated one way or another whether he was willing to come and testify?

GC (Maj Goode): He has not returned my phone call personally. However, he had his supervisor speak with Special Agent Rendon. The supervisor told Special Agent Rendon that he was not going to be coming.

IO: What do you anticipate Gutierrez would say if called?

GC (Maj Goode): I've had one conversation with him in the presence of Second Lieutenant Sheneman. We had a conversation with him on the phone several months ago. He told us that he doesn't -- well, quote, he doesn't remember shit, and then he ended the phone call.

IO: So if he's called, you would anticipate that his

testimony would be similar to other witnesses who have given different testimony -- or the matters that they testify are to are different than those in their statement?

GC (Maj Goode): Potentially, yes, sir.

IO: All right. I do believe and find that Mr. Gutierrez is an unavailable witness. I will consider his statement, but again, I'm going to give his statement essentially zero weight aside from the fact that he made a previous statement. Unless I heard that witness in front of me, I am not going to assume -- from what you just told me, Major Goode, that statement is really not worth the paper it's written on aside from the fact that he's made a previous statement. Is that a fair assumption?

GC (Maj Goode): Can you give me a second to think about that?

IO: Again, you don't know what he's going to say until he's called, but the initial indication you have is that Mr. Gutierrez is not a witness was expected to come in a court. What you're telling me is, Gutierrez, you've interviewed him and he is -- the tenor of his conversation is consistent with the matters set forth in his statement.

GC (Maj Goode): My interview with him -- my impression of him, sir, is just he was hostile in general and not willing to participate. Whether that means that he suffers from the same memory problems as the other individuals, I can't say, sir -- or he just doesn't want to participate.

CC (Mr. Faraj): We're going to proffer that he would say the same thing.

IO: By same thing, you mean what, Mr. Faraj?

CC (Mr. Faraj): That these -- a lot of these witnesses that don't show up became available as a result of direct government action, that is, the beating up they got from Periard. They may see it differently, but that's our position. If Gutierrez were called to testify, he'd testify consistently with the other witness that have recanted their statements.

IO: Very well.

AGC (Capt Gordon): Sir, I'm sorry. I just want to add -- to add on to that. He's a police officer out in town. I think he understands the ramifications of him getting up and taking the stand. It's my opinion -- the government's opinion, at least partially, that the reason why he doesn't want to cooperate, the reason why he's acting hostile is because he knows if he gets up there, he's going to have to tell the truth. And potentially, the truth is --

IO: All right. I'm not looking for the reasons. What I want to know right now and what I'm getting at is: Does the government -- is the government highly confident if called as a witness, Gutierrez is going to testify consistently with his statement? And my take away is that you don't know what he's going to say.

GC (Maj Goode): Yes, sir.

IO: Certainly, there's no -- I'm not going to put any weight into the fact that he's likely to come in here and testify consistently. It's sort of an unknown. All right? But it appears, based on what you're telling me, that it is probably more likely than not that he could, like the other witnesses, recant his prior statement.

AGC (Capt Gordon): Just as likely that he could concur with his entire statement.

IO: Okay. I'm not going to draw any assumptions. All I is what I write in this report and my consideration, I'm going to utilize the matters that have been put in front of me, either on paper or through testimony. I understand there's a witness out there, Gutierrez, he may or may not have information that may or may not be consistent with his prior and there's not much for me to do with that. Okay? What I wanted to know is that you haven't talked with him, he's just not available due to some family emergency or something else. Okay. I'm going to consider all the statements, again, except for -- and all the exhibits except for 4 and 19. I'm going to consider all the statements. I'm going to admit all the statements. Again, the weight I give those statements could be zero, or it could be more. I know, Mr. Faraj, you have a standing objection to my consideration of any statements from those who testified. Mr. Faraj, does that objection still remain?

CC (Mr. Faraj): I didn't rise. It does. I wasn't rising again for the objection.

IO: All right. I understand the objection. If you would like me to note it in the report, just shoot me an E-mail stating the basis of the objection. Certainly, I will note that in the report. But I will, for lack of a better word, admit and give some consideration to Investigative Exhibits 1 through 38, but not 4 and 19.

CC (Mr. Faraj): Are we on the record?

IO: Yes.

CC (Mr. Faraj): Gunnery Sergeant Beall -- although you have a summary of an interview, was available, became unavailable because of a warning that we think was unnecessary. He -- and I know their trying to make a distinction that he said he was sure at that point and now he's recanting, but its different. Everybody gave a statement under oath, and almost every one of these witnesses came in and under oath, recanted. And so I think Gunnery Sergeant Beall's testimony would have been powerful exculpatory evidence. But we don't have it because of an unnecessary Article 31(b) warning that scared him off. He went to see a lawyer, and so we don't have it anymore. So I'd like you to comment on that. I like you to, one, I don't think his statement should be considered at all because the government made him unavailable through their actions. If they were going to do that, they should have warned everybody. But on top of that, if you're going to consider it, then I'd like for you to -- if this is going to go forward or make any kind of recommendation that the CG should consider granting immunity to this important and potentially exculpatory witness.

IO: We briefly discussed this previously, I don't know if it was on the record. I don't believe, based on the discussion with counsel, that the 31(b) warning was improper. Major Goode, from what you previously told me, you have reason to believe that First Sergeant Beall would state, if called as a witness, that his prior statement was a deliberate lie or a lie as opposed to a memory that he thought was true.

GC (Maj Goode): Yes, sir.

IO: I can't have the first sergeant take the stand and state that under oath on the stand without advising him, either through counsel or myself, saying that he is incriminating himself by saying that. So I will consider his statement. I'm going to consider his statement here -- his prior statement, and I will and give, frankly, equal weight to the proffer, IE38, that was given to me by Captain Baehr.

CC (Mr. Faraj): There is no crime when the lie is under duress. I mean, he made an untruthful statement because he was pressured to make it, and there can not be prosecution for a statement that is given after eight hours of interrogation using the read techniques and the ability to detect deception.

IO: I understand. The government has the right to advise him if they suspect him of an offense, not whether it was an actual offense. That may be a separate court and a separate proceeding. But if the government suspects that he lied under oath, they have an obligation, either they or I, would stop him. Again, it doesn't have to be beyond a reasonable doubt. It's a mere suspicion. They are required to give him that 31(b) right.

GC (Maj Goode): And, sir, we have the video. It's in my office. I'd like to submit it if this will clear up the issue.

IO: To me it's a nonissue.

GC (Maj Goode): Okay, sir.

IO: To me it's a nonissue in the case. I take Gunny Beall as another member who made a prior statement. That statement or his testimony today is or would be markedly different for whatever reason. That evidence is not here. So I will consider his prior statement and, frankly, the only thing I'm going to consider for that statement is that folks made prior statements. They're in-court testimony is really what I'm focusing on. And I understand what he would say if called as a witness. It would not be consistent with his previous NCIS statement.

Government counsel, any additional documentary evidence, witness testimony, I guess, proffer, anything else you want me to consider?

GC (Maj Goode): Sir, I do think because of these issues that the videos are important. I'd like to have -- I'd like the investigation to be open for a couple of days so I can go to NCIS, get copies of them all and submit them for each of the witnesses that testified as well as for White, Gutierrez, and First Sergeant Beall.

CC (Mr. Faraj): We think that that would be inconsistent with R.C.M. 405 because, even based on your rulings that it's not an alternative to testimony, we were entitled to have all the videos for all the witnesses, and we only have a couple of them -- three or four, I think. That would have allowed us to question Periard about the videos, about his techniques and everything else. So we're going to object to that.

IO: I'm not going to consider the videos. You know, I'm looking at this from a military judge, IO perspective. I'm not here, necessarily, to establish guilt or innocence. I'm not here to, frankly, explore whether, you know, the techniques of NCIS were proper, improper. I'm looking at the end result, which is what is the admissible evidence that I have in front of me. So it makes for interesting discussion, but at the end of the day, none of that is coming into a court-martial unless the individual testifies, they could be cross-examined. Those videos, the statements, could be utilized for impeachment purposes only. So I don't view any of that information in those videos as substantive evidence that would be admissible for guilt purposes or innocence purposes -- on the merits. So, frankly, what I'm going to comment in my report is that you should provide those to the defense or take a look at those videos -- obviously, obtain the videos, take a look at them, and allow the convening authority to weigh that in the equation as to what disposition is made of this case. But for me, frankly, I don't care what's in the video.

GC (Maj Goode): Okay sir.

IO: Because it's not going to weigh into my equation of whether or not I recommend this case goes forward. Because I know that evidence is not going to be admissible substantively at a court. But I do recommend you get the videos and view the videos.

GC (Maj Goode): And yes, sir. And to be clear, we have most of them and so does defense for the people who testified

here today. It's just some of them we don't. We have Gutierrez, we have First Sergeant Beall, we have Jimenez and Russell.

IO: Do you have Tipton.

GC (Maj Goode): We do not have Tipton, sir. Jackie Phillips was corrupted and doesn't play. And we have Andrew Wike's, but it's a VHS and we haven't copied it, but it's been made available.

IO: What about Slaughter?

GC (Maj Goode): I do not have one for Slaughter in my possession.

MJ: Does it exist, or you don't know if it exists or not? You don't have it in your possession, but does it exist?

GC (Maj Goode): From the testimony that we heard today from Special Agent Periard, I have reason to believe it exists but I was never given a copy, sir.

IO: Okay. All right.

Major Card, earlier I explained your right to present evidence and call witnesses to testify on your behalf, whether it's in defense, extenuation, or mitigation. Do you or your counsel have any evidence, testimony, or documents -- anything, statement, anything you want me to consider as part of the investigation that hasn't been admitted? I know that there are a number of witnesses on your witness list.

Mr. Faraj, do you intend to call any of these witnesses?

CC (Mr. Faraj): We do not.

IO: Are there any proffers you would like me to consider?

CC (Mr. Faraj): I would like to make a proffer. We raised the issue of capacity. Based on -- well, I know Major Card, and I've known him for a long time. I went to college with him. This may not impact -- it doesn't impact whether or not your evaluation -- or your analysis of whether a crime was committed, but even I have reason to believe that he requires further mental evaluation. He was -- the reason I say that is we were going through something today. We did the exact same thing two days

ago, and I pulled my co-counsel away and I said, Did I forget that we just did this. We asked Major Card, and he says, No, I don't remember doing that. And so these are issues that should be included in the report. I know that they don't really fit into the analysis of whether an offense was committed by Major Card and whether it should go forward to trial. So that's my proffer, that there should be --

IO: Are you telling me that you believe he may lack mental capacity right now to stand trial?

CC (Mr. Faraj): Well, to fully assist in his defense. Because of short-term memory failures that appear to be frequent to us as a defense team. And I, frankly, had to pull him in and say I'm going to say this so I don't embarrass him. And I didn't want to say it in front of Mr. Phillips, but I want that to be part of the record.

IO: I guess, what's the request? Is it for a 706 sanity board?

CC (Mr. Faraj): The reason I'm putting it on the record, Your Honor, is because if this goes forward, I am going to seek expert assistance whether through a neuropsychologist, psychiatrist, or whatever and I want to have some basis to be able to say that. And by creating a record, I'm able to do that -- begin to build my record from there.

IO: From a 706 or sanity perspective, do you have any reason to believe that he lacked the mental capacity at the time or was not manually responsible for these allegations?

CC (Mr. Faraj): No, Your Honor.

IO: And there's no reason from what I understand to question his ability -- his mental sanity now.

CC (Mr. Faraj): Yes, there is no reason.

IO: It's more short-term memory issues, issues related to his motorcycle accident head trauma, and issues associated with that. Is that a fair statement?

CC (Mr. Faraj): I agree with that, but I'm not sure of the consequences of any long-term or short-term impact on

his ability to assist. So I am making a record not necessarily trying to influence the analysis because I don't believe as I stand here that it has any impact on your consideration of the evidence and whether he is competent to go through this process or to stand trial.

IO: If the case went forward to a court, what I'm taking is that --

CC (Mr. Faraj): Then I'd want a 706 board.

IO: -- Okay. You'd be seeking a 706 board and/or expert consultant to inquire into these areas.

CC (Mr. Faraj): And certainly, the 706 doesn't just mean insanity or sanity, but it could talk about levels of his ability to assist, to comprehend. But I guess that could fit into sanity but --

IO: All right. It would require some additional exploration, either in the form of a 706 and/or expert consultant, expert assistance --

CC (Mr. Faraj): Yes.

MJ: -- type of issues. Okay, understood. Is there is there documentary evidence, Mr. Faraj, any additional proffers any -- anything else you'd like me to consider?

CC (Mr. Faraj): Well, it occurred to me that we probably should have included some medical records, but can we ask you to keep this open until tomorrow to discuss the privacy issues of including the medical records the article 32?

IO: Yes. I won't close it out if you wish to have those admitted as an exhibit. I think, just notify me and get me those exhibits.

CC (Mr. Faraj): And we'll share them with the trial counsel.

IO: Yes. Any additional exhibits -- and frankly, for counsel for either side, if there are any additional matters you want me to consider, you can send them to me. I prefer you not send me a bunch of things unless we've discussed them here, but for objections for -- now that Mr. Faraj has raised it, any medical records.

CC (Mr. Faraj): I don't think I want to include any medical

records. We'll leave it as is.

IO: Okay, all right. So Mr. Faraj, no additional no witnesses, no proffers, no documents, no nothing?

CC (Mr. Faraj): No, Your Honor, not besides what we already put in as far as proffers.

IO: Counsel, briefly looking at the charge -- charge and three specifications, government counsel, this has been charged murder times three, essentially, for contingencies of proof?

GC (Maj Goode): Yes, sir, that's correct.

IO: Counsel, any additional discussions regarding the form of the charges?

GC (Maj Goode): No, sir.

IO: Defense counsel?

CC (Mr. Faraj): No.

IO: Mr. Faraj, does Major Card wish to make any type of statement?

CC (Mr. Faraj): No, Your Honor.

IO: All right. Counsel, if you so desire, I'll give you time to comment on the sufficiency of the evidence, the charges, any additional recommended charges, which I don't see any, but if you do -- and disposition. And for that matter, any matter you'd like me to consider, recommend, now's your opportunity to be heard.

Major Goode?

GC (Maj Goode): Yes, sir. Sir, obviously Major Card has been charged with murder under three separate charging theories -- premeditated murder; intent to kill, or unpremeditated murder, and murder while engaged in an act inherently dangerous to another. Murder is obviously a very serious charge, sir. For that reason, the government's goal at this 32 has been to put forth all the evidence, both favorable and unfavorable, to the government so that this hearing would be more than just a mere check in the box probable cause determination.

Our intent for this investigation, sir, has been to be in line with the spirit and the letter of Article 32 of the UCMJ -- a thorough, a forthright investigation.

So first, I want to discuss, I guess, the elephant in the room, which is the unfavorable evidence which is the recanting of the testimony of the majority of the witnesses here this week. At the beginning of this investigation, sir, I told you you'll hear from witnesses who would be recanting their statements and that's what, in fact, happened. There a lot of reasons why this could be.

Special Agent Periard touched on a number of them during his testimony here today. These witnesses could be scared, these witnesses could not want to get Major Card in trouble, perhaps they don't want to get General Mattis in trouble. One witness talked about the fact that he had a great love and respect for General Mattis and didn't want to hurt him. It could be that these witnesses legitimately had memory failures caused by PTSD.

One thing that Sergeant Cotton said that stuck out in my mind the other day, sir, was that a couple days after the incident, he remembers somebody saying the insurgents got what they deserved, we're not going to talk about it anymore. This can perhaps corroborate what was going through these witnesses' minds here this week. They don't want to talk about it. But its serious charges, and we need to talk about it.

So let's talk about Mr. Phillips. Because the truth of the matter is, sir, even if you completely disregard those NCIS statements, what was testified about this week -- there's significant and sufficient corroboration of Mr. Phillips' testimony. His story was that on that day, June 7th, 2004, they went on they went on a convoy to do a route recon, and all the witnesses corroborated that. When they left combat outpost after their first leg of their convoy, they were hit by an IED about 10, 15 minutes later. It was dusk, not quite dark yet, but in the late afternoon. The majority of the witnesses corroborated this. Phillips was in the lead LAV, was the gunner. The LAV that was hit. Phillips testified that right before it was hit, he recalls seeing an individual walking along the side of the road, which he described as an elderly Iraqi male wearing a white

garment.

He testified that in the moments following the IED, he got up on top of the LAV, and he had a clear view of the field that was to the right of the LAV. He had the perfect vantage point, sir. And his observation was looking into that field, they were not being ambushed. In fact, his entire testimony was that what had really happened were the Marines in the jump got scared and they panicked and they fired off some panic rounds. He testified that he can remember Sergeant Gutierrez -- or who he thinks was sergeant Gutierrez -- fire off a burst immediately after the IED. And following that, were some small arms fire coming from the jump team that he described as panic fire.

Now, it's important to note, sir, who Phillips was at that time. He was Corporal Phillips, but he was probably one of the most saltiest corporals in the Marine Corps. He did previous time in the army. He had deployed to Bosnia, Desert Shield, Desert Storm, OIF I. He had a lot of experience. It's safe to say he probably had more combat experience than anyone on that team. He had a level head that day. And he could see into that field, and he saw that they weren't being attacked. Now, this is corroborated, sir, by the individuals who reported on the scene after, the QRF. We heard testimony from First Sergeant Cook and also testimony from then First lieutenant Stephens, and they both testified that when they reported on scene, they saw no evidence of insurgent activity other than, of course, the IED itself.

IO: Let me just stop you real quick.

GC (Maj Goode): Yes, sir.

IO: Assuming the government's theory was incorrect and there was a coordinated ambush, does that change the theory of the government's case at all?

GC (Maj Goode): No, it doesn't, sir.

IO: I mean, we spent a lot of time arguing over whether there was a coordinated or a linear ambush, whatever the correct term is. Does it change the theory of the government's case one way or the other?

GC (Maj Goode): It does, sir. Because what it does is it corroborates the fact there was never any hostile intent such that would justify a Marine pulling out a weapon and shooting someone in the field. Which was what this case is all about. Its all about whether or not Major Card pulled out his side arm and shot a wounded man who was lying in a field. And if that wounded man had posed a threat, if there was hostile, then per the ROE, yes, he would have been authorized to shoot and kill that man. So the fact that there was no evidence of any hostile threat or intent at any time during that engagement goes to support the murder charge, sir.

IO: Okay. Continue on. Thank you.

GC (Maj Goode): When First Sergeant Cook also testified that when he walked around the scene, he saw no enemy weapons. And all the other witnesses who testified here this past week said they never swept for enemy weapons because there were no enemy weapons, sir. When Phillips testified that later on he walked back and he was walking towards his second position is when he saw what he testified to. He stated that he looked into the field and he saw the injured man in the field. And that he walked towards the man. And he looked down, and he saw no weapons.

Even Marco Jimenez -- Marco Jimenez testified that he was down there, that he did see the body, and that he, in fact, helped move the body and that he didn't see any weapons around that individual. And again, sir, this is all important because it goes to a lack of hostile intent, which would justify any killing in the field that day. Marco Jimenez is perhaps one of the strongest corroborators of Phillips' testimony. He testified that he remember seeing Major Card pull a pistol out of his shoulder holster. He remembers seeing Major Card shooting at a man on the ground in the field. And he remembers this taking place after the IED blast and after whatever firefight -- or what they thought was a firefight -- ensued.

So at that time, there was no hostile threat. There was no gunfire. Whether or not there was an ambush or not, sir, at that time there was no hostile intent. Marco Jimenez says that he doesn't remember seeing any weapons around there, and that he does recall seeing Major Card shoot the man in the torso or upper area.

Now, his testimony was also significant because I think it goes to what the command climate of the unit was. Because Marco Jimenez testified that he didn't think it would be a crime to shoot a wounded or injured man who was lying on the ground who didn't have a weapon. Because in his opinion, even a wounded Iraqi who is unarmed is a threat.

Phillips testified that when he went down and he saw that body off the side of the road, that there were two individuals there -- Jimenez -- or I'm sorry -- Sergeant Gutierrez and Sergeant Duran. This is corroborated by the testimony of -- let me find it -- Sergeant Cotton. Sergeant Cotton recalls seeing two silhouettes walk into the field. He stated that he was sure that they were Marines because he could tell because Kevlars are distinctive. I submit that those two silhouettes were the individuals -- Sergeant Duran and Sergeant Gutierrez.

When Phillips walked in out of the field, he testified that he actually touched this man, and that when he touched this man, he was alive but injured. Now, he talked about some injuries that he thought he saw to the shoulder, which could perhaps be the same injury that other individuals saw later on when the body was on the side of the road to the torso. A couple witnesses testified that they saw blood around the chest area, possibly to be the same injuries that Phillips saw in the upper shoulder area. Phillips testified that he walked away. And when he's on the side of the road, that's when he saw then Captain Card walk into the field, pull out his m9, and shoot the wounded man.

Again -- so again, sir, this is corroborated by several pieces of testimony. First I want to talk about HM1 Slaughter. HM1 Slaughter, although he recanted a large section of his NCIS statement, he did say that he saw a dead body. He saw a dead body on the side of the road. And this dead body, he said, had a gun shot wound in his forehead and was wearing traditional Arab dress and had no weapon. This is a good description of the same individual that then Corporal Phillips saw shot in the field. And how do we know that the body got dragged from the field to the side of the road? We know that from Sergeant Gutierrez. Sergeant Gutierrez said that he was the one that actually helped drag this individual by his feet to the side of the road. Or -- I'm sorry.

I keep saying Gutierrez, I meant Jimenez.

Christopher Russell, he's important because he says he remembers hearing shots while standing at the C2 smoking a cigarette. He said he remembers hearing one or two shots, which corroborates the fact that the shooting occurred in that field. He said that when they were at the c2 there was no threat. He doesn't remember ever hearing -- hearing or seeing any insurgents shooting.

Sergeant Cotton, sir, he testified that although he didn't see any insurgents shooting, rushing, or ambushing, he can remember hearing what he thinks was AK fire and the engagement lasted about ten minutes. This also corroborates then Corporal Phillips's description of the events that day. Sergeant Cotton also said that -- I discussed that he saw the two silhouettes in the field. Now, he made some testimony that he was -- he yelled out when he heard some moaning in the field, Let the motherfucker die. Essentially saying that, Hey, there was a wounded guy there; just let him die. And after that, he heard two shots from what sounded like an m9 or an m4, and after that, he heard no more moaning. Again, sir, that just further corroborates the fact that what Phillips said is true -- that there was a wounded man in the field who was moaning who was then shot and the moaning stopped. Why did the moaning stop? Because he was dead, sir.

Gunnery Sergeant Duran. Now, he testified that he heard gunshots immediately following the IED blast. He couldn't tell if it was friendly or not. Corroborates Phillips that what we have here is no hostile action, just a bunch of guys that got scared and popped off rounds. He says he recalls engaging a vehicle that came towards their position, which from all the evidence appears to be the vehicle that Corporal Phillips first engaged. HM1 Slaughter also said he saw Corporal Phillips engage a vehicle. In fact, he testified that he pulled out his m9 and shot at it from across the field.

And Gunnery Sergeant Duran also said that he remembers Major Card walking around with his m9 drawn. He stated that he recalls Major Card walking into the field. He said he recalled hearing moaning at one point. Now, there was some problems with his testimony. At some point in his NCIS statement, he said that he recalls the

moaning before Major Card went into the field, and then recalls it stopping after Major Card left the field. But regardless of the timeline, he heard some moaning in the field which indicates that there was a wounded man there.

And he also corroborates the fact that he saw one or two dead bodies on the sidewalk although he did not get a good enough look at them. So how many bodies -- and this is a good point, sir. How many bodies were there on the sidewalk? There's a lot of different testimony and we've got some testimony from some of the QRF guys as well as some of the guys on the scene where it sounds like there may have been two to three bodies, whether they were two or three dead bodies or two dead bodies plus the injured guy that was playing dead or perhaps one dead body and one guy that was injured. Regardless, we do know that there was a guy who was dead who had a bullet wound through his head. That was corroborated by several of the witnesses. And that's the one that's important because that's the one that Corporal Phillips said he saw get shot.

And it's interesting, Corporal Phillips kept saying that the individual that he saw was an elderly gentlemen about 70 years old. First Sergeant Cook said that the individual he saw on the side of the road with the gunshot wound in his head was about 40 to 50 years old. So not that much deviation in age, an elderly gentlemen on the side of the road. This isn't a military-aged man.

Timothy Kadrie, sir, was also a significant witness. Timothy Kadrie stated that he heard someone on the radio say something regarding there are people still alive or they are still alive or wounded still alive. They said after that, he heard a pause and then someone saying something to the effect, they're taken care of now. He thought that could possibly have been then Gunnery Sergeant Beall because he the one primarily on comm with the other first sergeant. Again, corroborating the fact that something happened in that field, that a wounded man was quote, unquote, taken care of.

Can you give me a second, sir, I'm missing a page.

Andrew Tipton, sir. The significant things about his testimony are he remembers walking back from the LAV,

the first LAV, back to the back and stopping to talk to Doc Slaughter. He continues onto the C-square to talk to Sergeant Britt. And at this time, all these individuals who at one point said that they saw something are all around the c2. Sergeant Gutierrez he said was that, and Sergeant Duran was there. This is at the time he says he noticed a body on the side of the road. Again, sir, corroborating the fact that this is the point where the dead body that corporal Phillips saw get shot was dragged up to the side of the road by the Marines.

And Tipton says that he was the one -- I'm sorry. Let me make this clear. He says he was unsure whether or not he saw any moving or moaning in the field, however he does recall going down to the body in the field, dragging the body by one ankle up to the side of the road -- he had one ankle and Sergeant Gutierrez had the other ankle.

Again, sir, so what we have we have is we have Corporal Phillips -- then Corporal Phillips saying that he sees an individual, an elderly man, get shot in the field. We have Andrew Tipton saying he remembers seeing a dead man in the field, and he remembers dragging that guy to the side of the road. And then we have the QRF who arrived on the scene saying, yes, they saw a body on the side of the road who had a gunshot wound in his head who was definitely dead. Then Lieutenant Stephens testified that he could see his brains coming out of his head, it was like a brain pillow, clearly not an alive individual.

And then the most significant thing out of both First Sergeant Cook and then Lieutenant Stephens' testimony is they testified that Major Card told them, Yeah, I shot that guy. He came at me. I shot and killed him.

So the first element of the murder charges, sir, are proven in that he did kill somebody and that person died. So really the important thing to focus on and the thing that will be most important at trial -- and I keep focusing on this -- is the hostile intent. There's no doubt that Major Card shot and killed somebody that day. He told a couple of individuals that he did, and then we have eyewitness testimony that he did as well. So the real question, sir, is whether or not he had any legal justification to shoot that individual.

Now, Corporal Phillips' testimony was that he did not because the man was wounded and unarmed and was not posing a threat. So then you have to look into the other surrounding circumstances that we do have. We have the fact that there were no weapons around that individual. We have the fact that there were no enemy weapons anywhere in the vicinity. We the fact that from the QRF's analysis of the scene, there were no enemy rounds found anywhere. There was no indication that there was any insurgent activity other than the IED. Therefore there could have been no justification for Major Card to shoot and kill that individual in the field.

How do we know that he was moaning or injured when he was shot and killed? We know that not only from Phillips, but we know it from the individuals that saw him moaning in the field or heard some moaning in the field that there was a wounded man there. We know that from the testimony of Tipton, who said that he went out to the field and drug the body. And also, we just note that from the surrounding circumstances, again, from the QRF that there was no evidence of any hostile action.

And I think earlier, sir, I said it was First Sergeant Cook. It was John Stephens who said that he -- that the victim -- that individual they saw with the bullet wound to the head was in his late 40s or 50s. So what happened that day, sir, from the totality of all of the testimony -- what happened that day was these Marines went out on a convoy, a convoy that they shouldn't have even been going upon to begin with because it was late in the day. The Marines had some uneasiness about going out that day. When they -- and this is significant and I'll tie this in in a second why the route was significant -- when they got to combat outpost, we heard some testimony from Gunnery Sergeant Duran that they took a route that was unadvised and made some of the Marines uneasy that they were going down that route. And ten minutes within that route is when they got hit by an IED. And of course we know that as a result of that IED, one Marine, Lance Corporal Bohlman, lost his life.

The Marines were upset. The Marines were scared. The Marines were panicked. And they in effect went Winchester 360 and fired off rounds in every direction. There was a wounded man left lying in the field after

everything had calmed down. And from all accounts, whether or not they were actually firing at legitimate insurgents or not, by the time everything had calmed down -- it was only like a ten-minute period -- the threat posture had relaxed. The Marines were starting to smoke cigarettes waiting for the QRF to arrive. Everything had pretty much calmed down when we reach that point where there was an injured man left lying in the field.

You heard from Jimenez that in his opinion it was perfectly acceptable to shoot an injured man in the field if he was an insurgent. And for these Marines, the way they were keyed up right then having just lost a fellow Marine in their viewpoint, maybe that was acceptable to them. They were pissed. They were upset. They were keyed up. And perhaps that was Major Card's mental state as well. He was mad. They just lost a Marine. Maybe he felt responsible because he took a route that was not advised at a time of day when it was a little bit more dangerous because it was dusk. And maybe that's what was going through his mind when he walked into that field.

DC (Capt Baehr): Objection, sir, concerning the route. There's no facts in evidence concerning that issue.

GC (Maj Goode): Gunnery Sergeant Duran testified that he overheard some conversations about -- at combat outpost that going down that route -- it was a hot route that was not advised.

IO: All right. Regardless, they went down the route. Whether it was right or wrong, I don't care.

GC (Maj Goode): Yes, sir.

IO: It's not material in my viewpoint. They went down the route. Whether it was ill advised or a great idea doesn't change anything.

GC (Maj Goode): Well, sir, it does sir though because it goes to mental state. And that's really what murder is all about. It's all about the mental state of the accused at that time he pulls out a weapon. And if the mental state of the accused at that time is oh my goodness, what did I just do? Did I just get this Marine killed because I went this route and I shouldn't have gone down

this route? It goes to that heightened state of upset. And perhaps, you know, perhaps this goes more to a voluntary manslaughter theory where what we have here charged on the charge sheet, of course, for obvious statute of limitations issues is a murder theory. But again, mental state is one of the number one elements of these crimes, sir. And I think that's what this goes to.

So when he goes out there that day, and he walks into that field and he sees an insurgent that in his mind at that time he may feel legitimately is responsible for that Marine's death. He may feel that that individual wounded in the field was charging at them at one time or perhaps was the trigger man. And all this is going through his head. That all goes to the mental state that led him to pull out his that weapon and shoot the individual on the ground.

And the government's position is there is sufficient corroboration to Mr. Phillips' testimony to prove that what happened that day was not a lawful killing because there was no evidence of any hostile intent; no evidence that that individual on the ground could have or did reach a for a weapon because there was no weapons around him. So that what we do you have is in effect a murder. We have a body with a number of witnesses who saw the body at the side of the road who was clearly dead. He has brains hanging out and a gunshot wound in his forehead. We have Major Card telling two individuals on the scene, I shot and killed a guy. And then, of course, we have the dead guy on the ground, and we have Jimenez saying that he was one of the -- or I'm sorry -- Tipton saying he was one of the individuals is that drug the body to the side of the road. And this all goes to corroborate Phillips's testimony.

Now, obviously, sir, like I said at the beginning of this Article 32, there's a reason why there's a military judge here. The government is asking for more of an analysis than just a probable cause analysis because these are significant charges. Since murder is on the table and since we're talking about charging a murder, I think it's important that an analysis and a report be made that analyze whether or not there's sufficient evidence to actually be successful and meet that beyond a reasonable doubt burden at a court-martial.

There are clearly some problems with this case in the recanting of the testimony of a significant number of what per their NCIS statements are eyewitnesses. This can and will be -- it could be explored at a trial. There's been testimony -- and as you know, there are some videotaped interviews of all of these witnesses which could be used at a trial to impeach their memory problems. And the individuals that didn't show -- of course, at a trial, we'll have subpoena power so that we can make them come and testify at a trial. It's the government's contention, sir, that there is sufficient evidence to go to a trial at this point based on -- merely on what we heard today or this week at the Article 32. But it's also our contention that there would be more evidence that could be submitted at an actual trial due simply to the nature of the subpoena power.

For these reasons, sir, it's the government's position that this should go to the general court-martial under the charging theories that are on the charge sheet as they stand -- the three alternate theories.

IO: Just clarify that one point -- more evidence at trial with subpoena power.

GC (Maj Goode): Yes, sir.

IO: Who or what are you speaking to?

GC (Maj Goode): I'm talking to Mr. Wike, sir, who did not testify. I'm talking about Carlos Gutierrez who did not testify. And I'm talking about First Sergeant Beall. Obviously, a subpoena doesn't control him since he's is a military witness, however a grant of immunity would.

IO: One second please.

GC (Maj Goode): Yes, sir.

IO: Major Goode, any additional argument?

GC (Maj Goode): No, sir.

IO: Thank you.

All right, defense counsel?

CC (Mr. Faraj): In order to believe the government's theory of the case, you have to believe that there is some sort of conspiracy between all these Marines. But these aren't just any Marines. And I don't want to make a bigger deal than it is, but I need you, sir, to sort of use your experience, think about it, and then consider what the jump CP Marines are made up of. They're normally selected because of their skills. They're good Marines. We don't put problem Marines on a jump CP because the leadership doesn't want to have to deal with the usual problems most units deal with because they have a very specific mission. Kind of like reconnaissance or some of the other units that we create for special reasons.

So that's -- that's these Marines that are included. In fact, yes, Sergeant Phillips was skilled, but so were the other Marines. And these weren't Marines that panicked when they came under fire. They got excited just like anyone would get under fire, but these Marines are Marines that were very well trained at immediate action drills, at setting up security. In fact, you heard from Phillips how he took initiative and did what he had to do to get up in front of the convoy. Their commander immediately gets on the radio and immediate actions are taking place. So this is not some random unit.

And that's the unit that begins this operation, and those are the very Marines who the government alleges is essentially -- are essentially conspiring to protect a man that they really didn't like that much. He just replaced their lieutenant, who they cared about a great deal, and he did business in a different way. So there's really no particular reason to lie for him, to jeopardize careers, or to even carry that moral burden that I'm going to lie to somebody who committed a crime.

They addressed command climate and if there's a command climate problem here, it begins with Lieutenant Thompson who suffers an injury because he had just literally taken over a couple weeks before. And their chain of command goes directly to General Mattis. So if there's a command climate that permits an execution, that's where it begins -- at the division CG level.

But we don't have that evidence here, and I'm not going to defend General Mattis one way or the other. But I remember -- and I hope you can use this information --

that he was always the kind of guy that said we're going to have a velvet fist. No better friend, no worse enemy. We've got to win the hearts and minds.

So if that's the personality, why would the trickle down be kill everybody? Why would it trickle down be let's commit law of armed conflict violations?

I mean, it's not like some of these Marines came in and said I recant and others came in and said, Yes, I did. They uniformly said that didn't happen. They uniformly came in here, took a an oath -- and there wasn't pressure here -- and said that didn't happen. The notion that for four or five hours, some of them were interviewed in some cases eight hours to get a statement that we got here in court after both trial and defense counsel elicited and sometimes questioned by you and we were generally done with each witness in about an hour is a cause for concern.

So the truthful statements -- the ones that deserve consideration are the ones here in court. And of course, importantly, as you've already identified, those are the statements that we'll be able to use in court. Whether they recant these statements, those can be used as substantive evidence in court if they recant. But I suspect they will not.

The government wants you to believe Sergeant Phillips -- Mr. Phillips on some of his testimony and then ignore him on others. They want you to believe that Major Card killed him, but also want you to reject that he saw no bodies on the side of the road where these alleged bodies are. So as I think about it, I think I have an explanation for you. It's the same body. We kept saying sidewalk road, but five to 10 feet from a sidewalk that's blown up in that country is probably not far apart, and we're probably talking about the same person. I'm guessing because the man in the field is probably the same man that the Marines saw near the sidewalk and he said he was about 10 feet away.

And here's the interesting piece: The explosion that took out a HMMWV, took the life of Corporal Bohlman and it was a terrible way to go inside an armored vehicle could have caused the same injury to the head that we've heard about. And Sergeant Phillips was unequivocal that the man was five to 10 feet away from the explosion that

took place.

I took sergeant Phillips through where he was when the explosion went off and where he went to rest to look at his sector of fire. And if you recall, he said he remained in position and did not leave his position for security's sake until the recovery vehicle arrived. Of the three quick reaction forces, that's when he began to relax and pull back. Of the three quick reaction forces that arrived that day -- the medevac, 2/4, and then the quick recovery -- they were the last ones. Why did I say quick recovery? The m88, the tank recovery vehicle. That means that when he finally relaxed and was able to pull back and go to the rear with Sergeant Cotton -- Corporal Cotton, you had QRF Marines around.

A murder could not have happened without the QRF seeing it. Of course, the day before it was different testimony. But again, when you consider this evidence with an eye towards trial, his testimony yesterday is very easily impeachable, but more importantly, it's going to make a lot more sense to a group of Marines sitting down who understand how an area like this would be secured and what he would have done.

We've talked on and on and on and on about weapons -- weapons in the area. I don't think that matters. If Major Card executed somebody, it didn't matter if the insurgent had a weapon right next to him. If the man was incapable of resisting, you have a murder. So I don't know why we keep talking about weapons. He has never said there were weapons. You heard from Lieutenant Stephens, the infantry expert, that if his unit had taken an IED blast and he saw people approaching him, his Marines would probably engage. And that's exactly what this unit did.

Was it right? I think I would betray who I am and where I come from to tell you that I'm going to judge them. It's probably -- that man probably had no hostile intent. But I'm not going to get in a position of someone who just took an IED -- the fear, the excitement, and how they react. And that's not what we're here for anyway.

Here is a piece that -- we don't talk about these things, but you need to consider it -- how many people are we talking about? I'm still confused on the number

of people. I think there was one person -- another person that got up and walked away. There may have been one person dead and another that got up and walked away. Where did the two or three people come from? If there were three people that were killed, what were they doing in the field? Why were they approaching this convoy? What was their intent?

To suggest that there's no hostile intent around means that IEDs must grow by themselves in Iraq. You know, they kind of plant the seed a few years ago, and then they spring IEDs and a vehicle comes by -- an American vehicle comes by and it's blows up. To detonate an IED, you have to have a bad person watching the convoy with a sighting device of some sort. You know, they reach this point and they set it off. That's what these Marines know. That's what they understand at that time. That's what's running through their mind. So the reason they begin to look around and engage when an IED happens is because they have that information. The reason they engage people around them is because they're afraid of that complex ambush. There is no doubt that there was some small arms fire that they were taking.

I mean where does that -- to suggest that they should ignore that and just focus on this supposed murder ignores all the environmental conditions that they have to be going through and the psychological condition of these Marines. So what were these people doing in the field that were eventually dragged in? Because they weren't there when they were driving down the road. If they were approaching, it would suggest there was hostile intent.

Major Goode went on and on and on about Major Card walking around in the field. Even if you were to accept that he fired, you remember the man in the field, sir -- when Lieutenant Stephens and Gunnery Sergeant Cook talk about a man that got up and walked away, that was the man in the field. It wasn't the man with the head blown out on the sidewalk. And perhaps they should be the ones that are most believed because -- I'm not telling you to -- but because they were disconnected and they weren't excited and they have, sort of, a consistent memory.

Okay. So if the man in the field got up and walked away, who did Major Card shoot? Or did he forget

somebody as he was executing people? One reasonable explanation is Major Card shot into the dirt to see if he was alive or not. If you're going to believe that theory.

The silhouettes story -- if Jimenez saw two silhouettes and they were Gutierrez and Duran, then we're missing a silhouette -- the third one that Phillips saw has to be Major Card. If you want to believe Phillips, Card has to be there when -- Card, Gutierrez, and Duran have to be there when the shooting happens. In fact, Phillips has to be there also. That's four silhouettes.

If you want to believe Phillips, the QRF has to be there. And he kept talking about the body being by the C-square, and today the body was by the LAV 25. Based on the statements elicited by NCIS Agent Master Sergeant Periard -- there is a statement that said, Let the motherfucker die, or He won't be setting any anymore IEDS -- exchangeable. That was his testimony based on his consideration of all the evidence. Well, you have an unequivocal statement from Cotton saying, I said that. And Periard himself admitted to you that if -- if he'd recanted that, that would be important for him to consider. So why do I bring that up? That was a big intent piece. That kind of shows the intent to kill.

Now, let's talk about the government's star witness. I was moved by the condition that Sergeant Phillips is in. In fact, I was moved by all these witnesses because it's a tragedy that they suffer from such debilitating PTSD most of them. And I think Periard took advantage of that -- perhaps realizing it, perhaps not.

But Phillips in particular appeared to be delusional in his statements that his letter went to the commandant and to the Joint Chiefs of Staff, and that is going to go directly to his credibility if this ever goes forward to a trial. He is -- appears to be delusional when he talks about his safety, the desire by General Mattis -- the focus, the laser-like focus on General Mattis and General Mattis' desire to be rid of him, to get him out of the Marine Corps; the use of other people to get him out of the Marine Corps; the belief in his superior abilities as a Marine -- and I guess most Marines do or want to believe that -- but that juxtaposed with the command's failure to keep him after he asked to be relieved. I mean, he expected that because he is so

good and they realized it that that proves by kicking him out that there was some conspiracy to get rid of him. The request must that was granted -- an audience for an hour with General Mattis where he could have divulged information but the belief that Mattis knew about it and should have asked him the question.

The apparent -- or the clear guilt of his engaging people on the road -- the vehicles and the consequences of his actions -- he testified yesterday that he didn't understand why anyone would engage if he was engaging. They know he's the best or words to that effect. And you probably know that once -- once a person in a unit engages, that almost always alerts everybody to believe that there is a real target and other Marines engage. In fact, Marine Corps training doctrine uses a term called -- they refer to it as add rack where you alert the description of the target, the range of the target, you assign a target and you give a command to fire. Another way to do that is by firing. And you heard that Major Card, one of the techniques he uses is he uses a tracer to direct people to where he wants them to shoot.

So when Phillips says, I'm the machine gunner, I was firing, I don't understand why they would shoot. He's the cause of the problem. He's the cause why people are firing, but he doesn't make the connection.

Sitting here listening to Major Goode make her argument picking bits and pieces, you almost feel like, yes, a case can be made. But that's not how trials go and certainly that's not why I think you were selected, sir. Because it's more than just the bit and pieces. Juries, as you know, take the entire story. They take everything. And if a witness is not credible, they begin to not listen to that witness. Phillips has huge credibility issues. Not because he's -- it's just his mental condition. I don't think anybody -- I think these are all great Marines, they're good Marines. But I don't think anyone -- I don't think any of them are making things up. But when you have delusions, when you can create things in your mind, when you believe that the Joint Chiefs of Staff made a decision on whether or not to keep you or not keep you in the Marine Corps; that doesn't come from reality. It's delusional. It's delusional.

Major Card has been dealing with this issue for over two

years. He was placed on legal hold in late 2008, early 2009. One general has passed it to another general has passed it to another general, this case. They assigned a military judge to take a look at it. You've heard Major Goode argue up and down about the -- what the witnesses are going to say, how they want you to look at it; all those are indicators to me that this case should not be going forward because the evidence -- we don't have the sufficiency of the evidence to present it at trial. But because these are serious allegations, they must be addressed.

They've been addressed. There isn't any -- there isn't sufficient evidence to go forward to trial. Earlier today, you said, I don't think this has enough to win a conviction. You may have probable cause, but you don't have enough to get beyond a reasonable doubt.

I submit to you that after Phillips' testimony today, they lost the probable cause. He is locked in to where he was and when he left that position when the QRF arrived. He's locked in to where that body was, near his HMMWV, five to 10 feet away. And of course, you heard all the other evidence from him. That alone sinks this case. I don't have any more questions unless you have -- or argument unless you have questions for me.

IO: No, Mr. Faraj. Thank you very much.

CC (Mr. Faraj): Thank you very much.

IO: All right, counsel. I appreciate all your time and your attention. If there are any objections, Mr. Faraj, if you do want me to note objections to the exhibits considered, please send me an e-mail. I've indicated I will include that. I don't anticipate any additional investigative exhibits. I'll hold open the possibility if you desire for medical records, but I think that doors been closed right now.

CC (Mr. Faraj): Yes.

IO: So I think I've got all the exhibits. Any additional matters you want me to consider, shoot me an e-mail. I'm hoping that doesn't require us to get back together and explore those things. If there is some additional argument you failed to make, something -- I'm thinking something fairly minor, not a new piece of key evidence,

but something you want me to consider, something you think about tonight you neglected to argue today, send it to me. It's my intent to have this investigation, my portion completed within ten days. The court reporter will be transcribing the testimony, and I will merry up my report to that testimony. And I think that covers it.

All right. Anything else, questions, comments, Major Goode?

GC (Maj Goode): No, sir.

IO: Defense counsel?

CC (Mr. Faraj): No, sir.

IO: Yes. One additional matter. I'm sorry, thank you. The court reporter pointed out Investigative Exhibit 34, which we didn't formally get into, we talked about it briefly with Mr. Phillips. This is his criminal background indices for Mr. Phillips. I won't consider that. I think we discussed that. None of these offenses are prima facie offenses. They are menacing, disorderly conduct, things that he referenced so I'll take that into consideration.

All right. this investigation is concluded. Thank you.

CC (Mr. Faraj): We do have another exhibit that we failed to submit to you.

IO: All right. One more exhibit.

CC (Mr. Faraj): It's an e-mail that was sent by Mr. Phillips to Major Goode.

IO: That'll be Investigative Exhibit 39, Mr. Phillips e-mail to Major Goode. Very well. We'll --

CC (Mr. Faraj): We're just going to electronically forward it to you. Is that okay?

IO: That's very good. That'll be fine. That will be marked Investigative Exhibit 39. Please send that to me. I'm assuming that the e-mail referencing some type of educational benefits for his kids.

GC (Maj Goode): Yes, sir.

CC (Mr. Faraj): Yes, sir.

IO: Very well. I will consider that. Thank you.

This investigation is closed.

[The Article 32 investigation closed at 1650, 21 April 2011.]

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COURT REPORTER ATTESTATION

In accordance with R.C.M. 807(b)(1)(A) and (b)(2)(D), I am a qualified, certified, and sworn court reporter in the U.S. Marine Corps, assigned to Legal Services Support Section, Camp Pendleton, California, 92055.

I affirm that the preceding transcript is a true and accurate verbatim account of the Article 32 investigation in the case of the *United States v. Major Edward T. Card, U.S. Marine Corps*, on 19-21 April 2011.

K. C. Myers
SSgt, U.S. Marine Corps
Court Reporter

date