

Interviewee: CPT (b)(3), (b)(6)
Legal
JA SOTF-S, Kandahar Airfield

Interviewer:
COL (b)(3), (b)(6)
COL (b)(3), (b)(6)

(Sworn in and read privacy act)

(b)(3), (b)(6)

COL (b)(3), (b)(6) Have you personally been involved in any casualty incidents?

(b)(3), (b)(6) Yes Sir, I don't remember the name of the operation but there was a Special Forces Brigade that was on a routine patrol I think it was a combat recon patrol, they received small arms fire from an AAF approximately four fighters. The team returned fire, and the AAF went into a residential compound, the team followed into the compound and returned fire killing all four fighters. During the (b)(1) they discovered there was a civilian lady that was wounded and a small infant that was killed. It was determined, through the investigation that one of the bullets either went through the fighter or was a stray that killed the woman and child. That was approximately about two weeks ago, that was the only other SIFCAS event.

COL (b)(3), (b)(6) Does the TOC have a Battle Drill once a TIC has been declared?

(b)(3), (b)(6) I do not know and I'm not a part of it, all I know is that they have a wake up criteria for certain events. A TIC is not one of them.

COL (b)(3), (b)(6) What are the events that you're on the wake-up call list for?

(b)(3), (b)(6) Civilian casualties, death of US Service Member or ANSF, serious property, vehicle, or any issue on ROE and Escalation of Force

COL (b)(3), (b)(6) For the declaration of TIC and the declaration of PID there's not a battle drill requiring you to be called?

(b)(3), (b)(6) No Sir, not unless there's some question about the ROE, there's a red light outside of the operation center that goes on once there's a PID going on. I've noticed the light coming on previous TICs through the feed that I have in my office, I get the audio reported through the feed and I've never been summarized to go in there and voice my opinion. I have stepped in there on occasions out of my own

free will. If I'm not in my office or out of my room then there's no wake up criteria to get in contact with me on just a TIC.

COL (b)(3), (b)(6) When they do grab you to do an assessment what is it for and it's referencing an on-going or developing target?

(b)(3), (b)(6) It's common for me to be called to the OPCENT when there's a question on the use of CASS, if it's a level 2 operation that there's a question of using CASS of compound I've been told to be in the OPSENT for those operations for the INFILL. I've been called to consult on matters that relate to the tactical directive, CASS on compound and collateral issues.

COL (b)(3), (b)(6) If there's a potential for women and children at a target site being if it's a mobile or stationary fight do they call you for an assessment?

(b)(3), (b)(6) Yes Sir

COL (b)(3), (b)(6) Is that part of the Battle Drill that they call you for this assessment?

(b)(3), (b)(6) I don't know if it is Sir, I haven't seen anything in writing to the matters of that effect, I think its practice that's how it works out. That's what happened in this case; basically the Battle CPT came in my room to inform me of the potential women and children in this convoy.

COL (b)(3), (b)(6) Who is supposed to read/review this battle drill in your TOC?

(b)(3), (b)(6) The Battle CPT

COL (b)(3), (b)(6) In those Battle Drills it says to review the steps and who is going to participate, are you aware if you are by name, position on the Battle Drills?

(b)(3), (b)(6) I don't know Sir

COL (b)(3), (b)(6) When the Commander is called are you ever called instead of the Commander or without the commander, or is it always a team assessment?

(b)(3), (b)(6) It's me and the Commander Sir, that's always in the case I was called to give my opinion in the OPSENT.

COL (b)(3), (b)(6) What does PID mean to you?

(b)(3), (b)(6) Reasonable certainty that the object of attack is a legitimate military target.

COL (b)(3), (b)(6) What is Hostile Intent to you?

(b)(3), (b)(6) Hostile Intent is the threat of the imminent use of Force against the US Forces or other designated personnel that has protection.

COL (b)(3), (b)(6) What does Imminent mean to you?

(b)(3), (b)(6) It means, its fact dependent, based on all the facts and circumstances are in fact an imminent threat...

COL (b)(3), (b)(6) You can't use imminent threat to describe imminent threat.

(b)(3), (b)(6) The problem is that the SROE...

COL (b)(3), (b)(6) I'm not asking you the problem; I'm asking you what does imminent threat mean to you?

(b)(3), (b)(6) Imminent means Immediate

COL (b)(3), (b)(6) What is TIC?

(b)(3), (b)(6) Troops are receiving affective fire..

COL (b)(3), (b)(6) So if there not receiving affective or any type of fire, then that is not a TIC?

(b)(3), (b)(6) No I don't believe so Sir.

COL (b)(3), (b)(6) Where you apart of the planning at any stage of this fight process?

(b)(3), (b)(6) I review all CONOPS level 0, 1, and 2. I don't review 5Ws or the FRAGOs for 5Ws. I review so many CONOPS that I don't know if this was a level 0, 1, 2 OP.

COL (b)(3), (b)(6) Do you remember this CONOP?

(b)(3), (b)(6) No Sir

COL (b)(3), (b)(6) If I ask you if you reviewed the consequence management of the CONOP you wouldn't know?

(b)(3), (b)(6) I wouldn't have any recollection but I do review 0-2 Level CONOPS

COL (b)(3), (b)(6) The CONOPS that specifically come to you do they all have a sub paragraph that address consequence management?

(b)(3), (b)(6) Yes Sir, It's on the slide that I think of as a contingency slide, but it includes all contingency like SFCAS and any detainee operations.

COL (b)(3), (b)(6) When you were notified, pick it up and go from there about this operation?

(b)(3), (b)(6) I was in my room at 0745-0800; I remember the time because I was trying to get to church at 0845. I was in the shower heard a knock at the door it was the Battle CPT. He said that my Legal Opinion will be needed at the OPSENT and that it wasn't imminent but they wanted me to rush over there right away. So I finished dressing and about 5mins later the Battle OPS NCO came to my room and had a print

out on some MIRC chat or some communications that appeared to be between the team leader and the predator operator. It indicated that there were 30-50 suspected fighters in a convoy preparing to mass on the teams position it also stated that there were possibly 1-3 children in that group.

COL (b)(3), (b)(6): Who told you that?

(b)(3), (b)(6) That was in the initial reports given to me by the Battle CPT (b)(3), (b)(6). It was repeated to me by the Battle OPS NCO when he handed me those what is it for print outs. I read those on the way to the office at approximately sometime after 0800 but before 0815. I arrived in the OPSENT and the Commander LTC (b)(3), (b)(6) the SOTF Commander arrived about 3mins after I did. Soon as I got to the OPSENT before the Commander arrived I asked CPT (b)(3), (b)(6) to get me a situational update on where the team was, and where the convoy was. I asked for a straight line distance between the team and the convoy. One of the NCO's that was on the over head projector I asked to draw a straight line between the two and was calculated at 12.8 Kilometers, CPT (b)(3), (b)(6) told me the general direction travel of the convoy was south, which was parallel to the teams position and not directly towards it. Based on that information I didn't feel like there was any immediate or imminent threat to the team.

COL (b)(3), (b)(6) I need you to be a little more specific than that, did you think based upon your assessment that you had sufficient data, that the Command had sufficient data to strike the target?

(b)(3), (b)(6) No Sir

COL (b)(3), (b)(6) Did you communicate your position and your recommendation to anybody in that talk?

(b)(3), (b)(6) Yes Sir

COL (b)(3), (b)(6): Was it absolutely crystal clear that you made that legal recommendation?

(b)(3), (b)(6) I believe it was clear that it was my legal recommendation I gave it to COL (b)(3), (b)(6)

COL (b)(3), (b)(6) What did you tell COL (b)(3), (b)(6)

(b)(3), (b)(6) I told him that based on the reports that there may be children among the convoy that there was a potential for SEFCAS and that I didn't believe there was sufficient PID of the target and recommend some sort of show of force or potential escalation of force to either obtain PID or to threaten of the convoy.

COL (b)(3), (b)(6) Is this before COL (b)(3), (b)(6) got on the phone with CJ SOTF Commander or after he got off the phone with the commander?

(b)(3), (b)(6) It was immediately after he got off the phone with COL (b)(3), (b)(6)

COL (b)(3), (b)(6) Did he start the discussion or did you?

(b)(3), (b)(6) I approached him and started the discussion, but by the time I approached him he already had the phone in his hand talking to COL (b)(3), (b)(6). COL (b)(3), (b)(6) was already speaking with CPT (b)(3), (b)(6) about other assets that were available for an area vehicle interdiction. When I gave my legal opinion to COL (b)(3), (b)(6) about an insufficient PID and a recommendation of the show of force it seemed to me that he already arrived at the decision to something short of lethal force. He had asked for an example if Task Force 4a, (b) or Task Force 4a, (b) had any assets in the area and if they would be willing to do an area vehicle interdiction.

LTC (b)(3), (b)(6) What were the criteria that you thought was not present?

(b)(3), (b)(6) A Lack of PID Sir and the possible presence of civilians.

LTC (b)(3), (b)(6) Where do those requirements come from, are they in the ROE the ROW?

(b)(3), (b)(6) uhh

LTC (b)(3), (b)(6) Let me put that in a different way, do you think that the target itself would be in violation of the LOW for us to engage based on the Tactical Directive?

(b)(3), (b)(6) No I didn't sir; based on reporting that (b)(1)1.4c indicated that fighters were massing for an attack that the movements of the convoy appeared to correlate to the (b)(1)1.4c about the massing for the attack. I asked the Battle CPT whether we can determine if the (b)(1)1.4a was coming from the convoy, he said no. So I felt that there was a lack of...a lack of PID.

LTC (b)(3), (b)(6) Was it demonstrating Hostile Intent?

(b)(3), (b)(6)... (Pause) I didn't feel like there was a reasonable certainty so it would be a LOW violation to attack the convoy. At that time I was reviewing it under the ROE and I felt a little more restricted.

LTC (b)(3), (b)(6) When can the GFC initiate a force in self-defense?

(b)(3), (b)(6)...when he encounters a Hostile act or a hostile intent and he has PID that the target he's engaging is a legitimate Military target.

LTC (b)(3), (b)(6) How soon does it have to be?

(b)(3), (b)(6) It has to be imminent.

LTC (b)(3), (b)(6) If he has a force that is demonstrating a hostile intent and it's an imminent threat to his condition, what standards for PID does he have to meet in order to engage that target?

(b)(3), (b)(6) He has to have a reasonable certainty that the target that he is engaging is committing the hostile act or demonstrating hostile intent.

LTC (b)(3), (b)(6) Is there any sub standard to arrive to that reasonable certainty?

(b)(3), (b)(6) It's based on all the evidence and information available to him at the time. Including intelligence sources, his personnel observations of others that are transmitted to him through the predator feed, from the pilots that are close to the visual of the target, through his own knowledge of enemy TTPs, and his knowledge of the tactical situation.

LTC (b)(3), (b)(6) So the GFC, based on all of that determined that this was in fact the hostile force that the (b)(1)1.4c was referring to, was there imminent threat as that term is defined in the US Self Defense ROE?

(b)(3), (b)(6).. (Brief pause) As that term is used in the ROE, yes sir there was an imminent threat.

LTC (b)(3), (b)(6) What was that imminent threat?

(b)(3), (b)(6) That the convoy was delivering fighters to the teams position as defined in the SROE imminent is not necessarily Immediate, but as I read other sources that are more descriptive like the Tactical Directive and the Commanders Intent the imminent is defined more strictly in terms of immediate.

LTC (b)(3), (b)(6) Would you agree that there is a difference between violating the tactical directive and violating the LOW?

(b)(3), (b)(6) Yes sir, those are two entirely different things.

LTC (b)(3), (b)(6) Does the tactical directive represent self-defense in anyway?

(b)(3), (b)(6) Yes it does sir

LTC (b)(3), (b)(6) What does it say?

(b)(3), (b)(6) In paragraph four which discusses CASS or IDF compound says the GFC retains the authority to use CASS or IDF in self-defense, if he faces immediate and affective fires after taking into consideration other options by maneuvering, withdraw, escape.

LTC (b)(3), (b)(6) So is tactical directive a limitation on the inherit right of self-defense?

(b)(3), (b)(6) Yes sir

LTC (b)(3), (b)(6) When you told the commander it was not a valid target did you tell him it was violating the tactical directive, the LOW, or both?

(b)(3), (b)(6) I didn't feel like it was a violation of the tactical directive because the use of CASS and IDF is in relation to compounds; however Commanders Intent which is paragraph three is to reduce civilian casualties. I've always read the tactical directive to mean that we should use the rules for CASS on compound in targeting decisions on other objects convoys, individuals out in the desert because the Commanders intent I think on residential compounds is a guide to the use of CASS and ideas in all situations.

LTC (b)(3), (b)(6): Got it, I think you're right on with what the Commanders Intent is. Do you think it would have been cleared to say that this is a LOW violation or if this is a violation of the tactical directive? Did you make that distinction clear to the COL (b)(3), (b)(6)

(b)(3), (b)(6) No I didn't sir

COL (b)(3), (b)(6) That goes back to the question I asked you. What did COL (b)(3), (b)(6) hear or understand? What did you tell him?

(b)(3), (b)(6) I told them that I did not believe that there was sufficient identification of the convoy, to give a report of the presence of civilians in the convoy that there was a risk of civilian casualties. Therefore, I recommended that we do a show of force or an escalation of force and that he not engage the convoys. COL (b)(3), (b)(6) What did he tell you?

(b)(3), (b)(6) He said that he agreed and that he was going to try to do an area vehicle interdiction or an escalation of force.

COL (b)(3), (b)(6) What happened next? Did you have a discussion with the Battle CPT?

(b)(3), (b)(6) I asked him to provide me data the entire time I was in the OPSEC; but I didn't give my legal opinion to the Battle CPT.

COL (b)(3), (b)(6) Is there any way the Battle CPT understood you to believe that was not a legitimate target that could've been strike with no constraints or no concerns?

(b)(3), (b)(6) Absolutely not Sir

COL (b)(3), (b)(6) The dialog and the question is, could he have assumed that?

(b)(3), (b)(6) No Sir, I never gave the Battle CPT my legal opinion on the target; it was a one way conversation trying to get information.

COL (b)(3), (b)(6) The initial information that was given to you at that time when you were providing this opinion, was the term children used or adolescent?

(b)(3), (b)(6) As I recall both terms were used. When The Battle CPT first came to my room the first term that was used was children, when I got to the OPSEC the term being used was adolescents and to me that made a little difference. If the information about the identity of the people in the convoy was coming from two sources, the OH58 pilots and the predator operator (b)(1.4a), (b)(1) and saw the predator feed which was being transmitted on our OPSEC wall on a white space. If someone was being identified as a child through that view, then he must be fairly young because the resolution was fairly poor. It must have been obvious that they weren't a fighting age male.

COL (b)(3), (b)(6) Did anybody express their opinion about the adolescence in the convoy in those last few minutes?

(b)(3), (b)(6) I don't know who it was sir, but in the last few moments before I saw the vehicle explode someone had mentioned that (b)(3), (b)(6) or the OH58 pilots weren't sure if the children were adolescence or actually fighting age males. I don't know who said that sir but it wasn't part of my analysis because I had already given them my opinion at the time.

COL (b)(3), (b)(6) Can you characterize the phone call between the CJ SOTF-A Commander and the BN Commander.

(b)(3), (b)(6) I didn't hear anything from the CJ SOTF Commander, I heard some of COL (b)(3), (b)(6) side of the conversation and I don't recall how long it lasted. I got the definite impression that the CJ SOTF Commander wanted to strike the convoy; I didn't hear that from him, I don't know how I formed that impression.

COL (b)(3), (b)(6) After COL (b)(3), (b)(6) made the decision not to strike due to Escalation of Force did he call back to CJ SOTF Commander?

(b)(3), (b)(6) I don't think so sir

COL (b)(3), (b)(6) Where you present for any future phone calls between COL (b)(3), (b)(6) and the CJ SOTF Commander?

(b)(3), (b)(6) I believe right after the strike within a matter of 10-15mins that there was a phone call between COL (b)(3), (b)(6) and COL (b)(3), (b)(6) but I don't know what was discussed and I don't remember who initiated the phone call. I do remember at some point within the first hour after the strike the Battle CPT did send someone out to get COL (b)(3), (b)(6) and it was COL (b)(3), (b)(6) on the phone waiting to speak to him.

COL (b)(3), (b)(6) How many times are you aware of that COL (b)(3), (b)(6) talked to the ODA Commander on the ground either before or after the strike, or (b)(3), (b)(6) 1.4a, (b)(7) 1.4c

(b)(3), (b)(6) I don't know if he did if so how many times he did. I was concentrating on watching the predator feed, I had a copy of the ROE and the tactical directive with me, and I was making notes on them.

COL (b)(3), (b)(6) What were the notes you were making on them?

(b)(3), (b)(6) Just underlining thoughts that I thought were relevant, it wasn't clear to me the basis on attacking this convoy. If the commander was relying on hostile intent or some sort of declared hostile force, I wanted to be clear on both of those. I was just underlining the ROE that talk about the approval authorities for striking a sensitive target, the definition of a sensitive target, and the parts about hostile act/intent in the tactical directive paragraph 4 that talk about the GFC use of CASS with self-defense against a compound. With my intention divided between the predator feed and the ROE and the Tactical Directive I don't know of any conversation that took place between COL (b)(3), (b)(6) FC, and the GTAC.

COL (b)(3), (b)(6) Following the strike, when was identified in the talk to your recollection? Where there civilians either off or on the objective?

(b)(3), (b)(6) approximately four hours later

COL (b)(3), (b)(6) The TOC did not assume or know that civilians were on the objective or injured prior to that? Or suspect?

(b)(3), (b)(6) No, because right before the strike occurred someone had raised doubt on what the people identified what was either adolescence or children, if they were in fact children. There was some doubt about that fact when the strike occurred.

COL (b)(3), (b)(6) walk me through why it wasn't suspected by a reasonable person a potential for civilian casualties was on the objective or on the target site? Help me understand that, because I can't. This has nothing to do with the decision to strike we are now focusing on the reporting times and getting in front of this. One of the problems was not the 4 hour delay but the ten hour delay before anybody acknowledged anything. This first four hour period was there a belief that there was a probability that there were kids or adolescence in that convoy?

(b)(3), (b)(6)... (Short pause) I don't ...

COL (b)(3), (b)(6) Or before the strike? So if they were not beamed up by star track what is the logic, why did the possibility of children/ adolescence disappear for the next four hours?

(b)(3), (b)(6).. I don't know sir

COL (b)(3), (b)(6) Was there discussion within the TOC at all after that or a directive that indicated "Do not talk about civilian casualties or something along those lines"?

(b)(3), (b)(6) No sir, the only thing I said after the strike that was the determination of the civilian casualties, was I told the commander that the requirements are to conduct BDA within two hours that we have to get boots on the ground and find out if there were any civilians involved in the convoy.

COL (b)(3), (b)(6) What did he say?

(b)(3), (b)(6) He agreed, he instructed the Battle CPT to get in touch with the team leader CPT (b)(3), (b)(6) and to have him do boots on the ground and BDA as soon as possible.

LTC (b)(3), (b)(6) Did you advice the Commander that you had to report the LOW violation?

Cowan: No sir

LTC (b)(3), (b)(6) Did you think that they committed a LOW violation?

(b)(3), (b)(6) No sir

LTC (b)(3), (b)(6) Didn't you tell him before that striking the vehicles would be a LOW violation?

(b)(3), (b)(6) I may have said that sir; at the time I didn't feel that it was a LOW violation. I felt that we didn't have enough information in the OPSEC at that time to determine PID. I felt that I didn't have all of the

information, I felt that... I don't know why but I trusted that the GFC had more information because he was on the scene and he was in direct contact with (b)(1)1.4a, (b)(1)1.4c and the OH58 pilots through his JTAC.

COL (b)(3), (b)(6): Your job is not to read into what your GFC thinks?

(b)(3), (b)(6) That's correct sir

COL (b)(3), (b)(6): Your job is to what?

(b)(3), (b)(6) my job is to advise on the ROE, based on the information that is presented to me.

COL (b)(3), (b)(6): I think you may be uncomfortable with this because you've given us a breath of answers to the same question, anywhere from LOW violation, to recommendations and now indicating that it may be a legitimate target. I'm not asking you for that, he's not asking you for that, we are asking you what your assessment was and the guidance and recommendations you gave to the Commander.

Answer the question, what was your assessment on the situation and what guidance or recommendations did you give to the Commander, and where do you stand today?

(b)(3), (b)(6) The recommendation I gave to the SOTF Commanders is that there were not sufficient PID of the target.

COL (b)(3), (b)(6) Why did you asses that?

(b)(3), (b)(6) Given the distance between the convoy and the team, I think it was too far for the GFC to see with his own eyes. Therefore he was relying on reports from OH58 pilots and (b)(1)1.4a, (b)(1)1.4c. I don't know what the OH58 pilots seen but I could see what (b)(1)1.4a, (b)(1)1.4c was seeing and I didn't see anything in that video feed that would indicate a hostile act or hostile intent, however I didn't know what the (b)(1)1.4c was, and I didn't know what if any reports were between the OH58 pilots and the JTAC. So I felt that I didn't have all of the information.

COL (b)(3), (b)(6): When you made the recommendation, recommending that they shouldn't do this because this is in violation of the LOW or were you making the information on the fact that you weren't comfortable with the target.

(b)(3), (b)(6) The ladder, I felt that I wasn't comfortable that this was the target.

COL (b)(3), (b)(6) At any point in this process did you think that there was a LOW violation?

(b)(3), (b)(6) No sir

LTC (b)(3), (b)(6): Were you briefed on the actions that the target was taking?

(b)(3), (b)(6) Yes that the convoy had stopped...

LTC (b)(3), (b)(6) Not what actions that were taken in the past, but what actions that they expected the targets to take in the future?

(b)(3), (b)(6) The GFC expected the target to come to the village from the south and deposit fighters in the residential compounds near the teams' position.

LTC (b)(3), (b)(6) How did you know that?

(b)(3), (b)(6) It was communicated to me by what I believe was the Battle CPT

LTC (b)(3), (b)(6): That the GFC believed that?

(b)(3), (b)(6) Yes Sir

LTC (b)(3), (b)(6): From your estimation did that make it imminent threat?

(b)(3), (b)(6)... (Brief pause)... Yes sir, this is why I asked for the distance. When I think about imminent threat I go back to the SROE, it's not necessarily immediate. As an example the person that is placing an IED on a route that might not have any convoys on it for 24hrs but it's still considered an imminent threat.

LTC (b)(3), (b)(6): That's why I'm asking imminent not immediate threat; did you think it was an imminent threat?

(b)(3), (b)(6) Yes I do.

LTC (b)(3), (b)(6): Were you briefed on what happened, what actions this convoy was taking observed prior to that time?

(b)(3), (b)(6) yes Sir

LTC (b)(3), (b)(6) Based on what you were told did you believe that if they were accurate, the enemy was either demonstrating or committing a hostile act or demonstrating a hostile intent?

(b)(3), (b)(6) Yes, the reports that I received was that the convoy was making several stops. In one stop it appeared that the occupants got out to pray, which I was told is Enemy TTP to pray before battle. It looked as if things were being loaded into the vehicles at different locations, and those items appeared to be weapons. The convoy was stopping to pick up other passengers. Those were the things that were described to me.

LTC (b)(3), (b)(6): Is it fair to say your soul concern on this target was whether or not there was sufficient PID that was in fact a hostile force.

(b)(3), (b)(6) That was one concern, but my other concern was that there was that there was either a child or children in the convoy.

LTC (b)(3), (b)(6) If you take the tactical directive out of the picture, how do you assess the fact that...How many MAMs (Military aged males) were in the vehicle?

(b)(3), (b)(6) 30 -50 Sir

LTC (b)(3), (b)(6) Did you assume that all of them are hostile acts?

(b)(3), (b)(6) Yes, sir

LTC (b)(3), (b)(6) and there were two children in there, without the tactical directive how do you evaluate that target to determine that it's lawful?

(b)(3), (b)(6) Under the principles of necessity and proportionality, were the military advantage is to be gained out ways the collateral affects.

LTC (b)(3), (b)(6) In this case the collateral affects would be.

(b)(3), (b)(6) The two did children or civilians sir

LTC (b)(3), (b)(6) Did you go through that in your mind or you just sort of assumed because a tactical directive is more restrictive?

(b)(3), (b)(6) I may have gone over that in my mind, but preeminent in my mind was the Tactical Directive paragraph 3, to reduce civilian casualties. What I understood to be the Commanders intent would be to consider all options...

LTC (b)(3), (b)(6): I think you got it I'm just trying to be clear because obviously there are different consequences depending on what was violated. As you sit here today based on what you knew then, 30-50 MAMs, two children; if the Tactical Directive is not there is that a lawful target, based on proportionality and necessity?

(b)(3), (b)(6).. (Pause) Yes sir

LTC (b)(3), (b)(6): but because of the Tactical Directive, does it direct you to take lesser action?

Cowan: The Tactical Directive is more restricted so I would want to know can the GFC fire, can he maneuver, can he escape, can he do a show of force to scare the target of, and is there a time to do so. I wanted to know before advising to engage a target that there was no other option for the GFC, that he was pinned down taking affective fire and couldn't move.

COL (b)(3), (b)(6) I'm okay with all those answers, just not from the same guy in the same conversation. You provided different answers to the same questions from what I asked you in the very beginning, what was your recommendation and what did you assess, did you believe it was a violation of the LOW? You drew a complete circle that didn't come back exactly to the starting point. I don't know if you're still thinking through this I can't get in your head. I can only evaluate with answers I've been given and at best there inconsistent so I need you to explain to me again, why did you recommend to the BN CDR that you should not strike the target?

(b)(3), (b)(6) I felt that in the operation center we didn't have enough information for PID.

COL (b)(3), (b)(6): What were you looking for, with the information that you had to help you in determining the PID?

(b)(3), (b)(6) Something either from the GFC or the pilots to say that they either saw males in the vehicles with weapons and that the convoy was headed in the direction of the team. As I understood it at the time I gave my advice to COL (b)(3), (b)(6) that the convoy was not headed towards the village. There was some terrain features between the convoy and the village, and the convoy had not made the turn east to head directly to the village.

COL (b)(3), (b)(6) Just to clarify, I'm going to introduce another number. Were you told 21 MAMs in the convoy or 35-50 in the convoy?

(b)(3), (b)(6) I was told 30-50 sir.

COL (b)(3), (b)(6) you were never told anything less than 30?

(b)(3), (b)(6) No sir, not until after the strike.

COL (b)(3), (b)(6) Were you told that it was an armed convoy or unsure?

(b)(3), (b)(6) I was told that there were weapons identified on the convoy

COL (b)(3), (b)(6): Was the density of weapons identified?

(b)(3), (b)(6) no sir

COL (b)(3), (b)(6) You had a convoy that was armed to some level, and what were you looking for to see Target Identification to help you get comfortable?

(b)(3), (b)(6) weapons, something more than just AK47s which are not an indication of hostile intent. Everybody has a weapon in this country. Something bigger, something crew served, some mortar system, a large number of weapons more than just a few, also hostile actions of the convoy in the direction of the team.

COL (b)(3), (b)(6) When you were asked earlier you said yes, then you were on sure and you said no, in your mind when you made that recommendation to when you saw that target get struck did you think it was a violation of LOW?

(b)(3), (b)(6) No sir, I didn't think it was a violation of LOW because the GFC is the one who made the call and he's the one who has the authority to determine PID.

COL (b)(3), (b)(6): did you think at that time that it was in violation of the Tactical Directive?

(b)(3), (b)(6) No sir

COL (b)(3), (b)(6): When did you start to formulate an opinion or assessment that it may be a violation of one or the other, or did you?

(b)(3), (b)(6) No I never came to that determination sir

COL (b)(3), (b)(6): Then why did you come to that determination in here when he asked you that question?

(b)(3), (b)(6)... (Pause)... I may have mess understood when I gave that answer sir

COL (b)(3), (b)(6) The question was do you think this was a violation of the LOW?

(b)(3), (b)(6) It would have been a violation of the LOW to attack a target without PID.

COL (b)(3), (b)(6) This target?

(b)(3), (b)(6) yes sir

COL (b)(3), (b)(6): have you since come to the conclusion that it was a violation of either or both?

(b)(3), (b)(6) No sir, I apologize for my earlier answer at the time I didn't think it was a violation of LOW and even now I don't, I felt that in the operation center we didn't have enough for an indication of PID but since the GFC can determine PID based on the information that he has in front of him, I suppose I work on the assumption that he had enough information that did not reach me.

COL (b)(3), (b)(6) I'm not saying that it has to be a black and white answer every time you make the assessment; I'm just responding to your answers that you gave. I want to go back; you still recommended them not to strike the target, why?

(b)(3), (b)(6) I didn't feel like it was an imminent threat to the team.

COL (b)(3), (b)(6) I would suggest to you that you continue that independent assessment and analysis, and I will also suggest to you that you don't consider the information you don't have when you make that informed recommendation to the commander, that's just what you did.

LTC (b)(3), (b)(6) You lost me on the last answer you said that it wasn't an imminent threat to the GFC.

(b)(3), (b)(6) Based on the information that I had.

LTC (b)(3), (b)(6) Wouldn't you have an allegation at that point to find out whether or not the GF had more information that made it an imminent threat?

(b)(3), (b)(6) yes sir... (Brief pause) Imminent to me means immediate...

LTC (b)(3), (b)(6): Is that your decision, what documents are you using to suggest that imminent and immediate are the synonyms?

(b)(3), (b)(6) There not synonyms, in trying to carry out the Tactical Directive when using CASS I think of imminent and immediate as different terms.

LTC (b)(3), (b)(6): So when you said that what did you mean?

(b)(3), (b)(6) I meant, I didn't think it was an immediate threat. Even based on the limited information we have in the OPSCENT at the time, I think I mess spoke. Even based on that limited report it was an imminent threat but not an immediate, and for that reason I recommended to COL (b)(3), (b)(6) not to strike the target, he needed to do something more to way them off. Other information that I had that I haven't shown yet was that there was an AC130 was in the vicinity earlier in the day. That (b)(1)1.4c indicated that the formation that was massing the MAMs was not willing to move as long as the AC130 was on station. I don't know who but someone had asked that the AC130 to move beyond a visual range and when the AC130 complied this three vehicle convoy began movement south. That was also a part of my consideration when I was giving advice to the BN Cdr. It accord to me that if this enemy force was willing to move while the AC130 was on station then the show of force would prevent their movement towards the team. A show of force would have achieved a same effect as engaging the target, which would be to protect the team from the convoy.

LTC (b)(3), (b)(6) Is there not two parts to your job at advising the Commander, one to make a recommendation and two to tell him what actions are and are not lawful?

(b)(3), (b)(6) Yes sir

COL (b)(3), (b)(6) Did you remain in the OPCENT after the strike?

(b)(3), (b)(6) yes sir

COL (b)(3), (b)(6) Did you monitor any of the post strike reports that came in?

(b)(3), (b)(6) No sir, I stayed in the OPCENT for approximately 30 more minutes after the strike... (Brief pause) I continued to go in and out of the OPCENT for the rest of the day, and then I received the report that the team did conduct BDR when I was in my office.

COL (b)(3), (b)(6) About what time did you get this report?

(b)(3), (b)(6) It was approximately 4-6 hours after the strike.

COL (b)(3), (b)(6) What was the report?

(b)(3), (b)(6) That there were 15 KIA in the convoy and 12 wounded, that none of the killed and wounded were women and children, and that there were 3 surviving women and children. It wasn't clear if there were 3 each of women and children or 3 totals. I believe talking to my paralegal saying that's strange, that only MAMs will be killed in a convoy. It was at that time that I was told that the BDA couldn't find any weapons and that's when I believe there was a legitimate report of civilian casualties.

COL (b)(3), (b)(6) Where did you hear this report, or where did you get this report from?

(b)(3), (b)(6) It was someone from the OPCENT; I don't remember who bought the report sir

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COL (b)(3), (b)(6) Are you aware of any attempt to consciously remove any information from the report of any type or any communication that was either the decision of the SOTF HHC or direction by CJ- SOTF of civilian casualties?

(b)(3), (b)(6) No sir

COL (b)(3), (b)(6) The reason why we ask this question is because of your dialog and very original description on imminent threat and not understanding it. If what you meant was immediate threat that changes the game. If you meant the target that was imminent then it's a legitimate object to strike the trucks, if it's not imminent then it's probably not a legitimate target to be struck.

(b)(3), (b)(6) let me apologize for not being careful with my words. I did not believe that the convoy posted an immediate threat to the team, but I do believe at all times and I still do that it does meet the definition of imminent threat.

COL (b)(3), (b)(6) I think your analysis and recommendation was pretty solid.

(b)(3), (b)(6) Okay Sir

LTC (b)(3), (b)(6) How often do you do ROE training with the SOTF people?

(b)(3), (b)(6) In the 6 weeks since our arrival, none sir. During our pre-deployment planning I was giving an ROE brief and training every week, sometimes more than that to different people. We also practice ROE training and I also at JRTC during our rotation there sir.

LTC (b)(3), (b)(6) How many Battle CPTs are there?

(b)(3), (b)(6) To my understanding there are two, the night and the day shift.

LTC (b)(3), (b)(6) How well do you think they understand the ROE?

(b)(3), (b)(6) I don't know if I have a way of gauging that, all my sign in sheets I left in my classified safe back in the rear.

LTC (b)(3), (b)(6) How would you say the BN S3 understands the ROE?

(b)(3), (b)(6) I would say very well

LTC (b)(3), (b)(6) Would you say the BN Cdr knows the ROE very well?

(b)(3), (b)(6) very well sir, I've discussed it with both of them on numerous occasions. Both during training and in casual conversations in their offices, I have the indication that they understand the ROE.

COL (b)(3), (b)(6) Would you be surprised if I told you that the only Soldier that we talked to so far in that unit that has articulated the ROE and its elements towards the target and when you should strike is the airman.

(b)(3), (b)(6) Yes, that comes as a surprise to me

COL (b)(3), (b)(6) Don't let it be a surprise.

(COL (b)(3), (b)(6) closes)

You have some responsibility in educating those Soldiers and there is several within this unit that needs some retraining, and I would at least start with those two Battle CPTs because there at the point end of the sphere when it comes to making decisions. The other thing is to see what Battle Drills you are a part of, and if you're not a part of those especially TIC...then I think you need to fix that because you're a critical guy. You'll be come more critical with the introduction of the Tactical Directive from COM ISAF last summer. Have any questions?

STATEMENT OF

(b)(3), (b)(6)

TAKEN AT

DATED 2010/03/01

STATEMENT (Continued)

AFFIDAVIT

I, (b)(3), (b)(6), HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 19. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this ___ day of _____, at _____

ORGANIZATION OR ADDRESS

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

PAGE 19 OF 19 PAGES

Interviewee: (b)(6)
Interpreter
Not Applied for American Visa
#631762
(b)(6)

Interviewers:

(Sworn statement and privacy act)

COL (b)(3), (b)(6) Who do you translate for?

(b)(6) CPT and SF, under my term (b)(1)1.4c

COL (b)(3), (b)(6) Let me just make sure we got this correct, CPT (b)(3), (b)(6) with the (b)(3), (b)(6) (b)(1)1.4c

(b)(6): Yes Sir

COL (b)(3), (b)(6) At (b)(3), (b)(6) (b)(1)1.4c

(b)(6) (b)(3), (b)(6) (b)(1)1.4c

COL (b)(3), (b)(6) How long have you been doing this?

(b)(6) More than 2 years sir.

COL (b)(3), (b)(6) Always at (b)(3), (b)(6) (b)(1)1.4c

(b)(6) This is my 3rd rotation; this is my 2nd rotation... actually sir this is going to be two years when I'm done with this rotation. This is my 2nd Rotation (b)(3), (b)(6) (b)(1)1.4c

COL (b)(3), (b)(6) So you've been doing this a while? This particular mission the 21st of Feb which was about 5 days ago, you're familiar with the mission?

(b)(6) Yes sir

COL (b)(3), (b)(6) Objective Khod, Where were you located during the mission?

(b)(6) On the objective Khod

COL (b)(3), (b)(6) Were you co-located with anyone? Were you standing with anyone during the mission?

(b)(6) JTAC and CPT (b)(3), (b)(6)

COL (b)(3), (b)(6) For clarity, you were standing with JTAC and the GFC CPT (b)(3), (b)(6) throughout the mission?

(b)(6) Yes sir

COL (b)(3), (b)(6) Okay, even before we get into the mission. During the preparation before the mission, during the planning was there any discussion about reducing the potential for civilian casualties, was that discussed?

(b)(6) No sir

COL (b)(6) Once the mission began were you inserted via helicopter with CPT (b)(3), (b)(6) and the JTAC?

(b)(6) Yes sir

COL (b)(3), (b)(6) (b)(1)1.4c

(b)(6): Yes the (b)(1)1.4c of course sir

COL (b)(3), (b)(6) what did you hear?

(b)(1)1.4c

MG: (b)(1)1.4c

(b)(6) (b)(1)1.4c

COL (b)(3), (b)(6) (b)(1)1.4c who were you translating the message to?

(b)(6): CPT

COL (b)(3), (b)(6) CPT (b)(3), (b)(6)

(b)(6): CPT (b)(3), (b)(6)

COL (b)(3), (b)(6) Do you remember at one point during this mission the vehicles that were located to the north, they were found and how they were found?

(b)(6): According to JTAC, because I was close to him and my CPT they were saying that aircraft had PID the weapons and 3 trucks were moving from our south, yeah I heard all the things they were talking about.

COL (b)(3), (b)(6) Did you hear the discussion about PID and what did you hear about the discussion about PID?

(b)(6): The first thing sir which came from the aircraft was like. The trucks they'd dismantled about 20 dudes. But it was night so the aircraft wasn't able to see that they had weapon, but they had backpacks and stuff. Then (b)(3), (b)(6) said all in the morning we need to wait for the daylight to see if they have weapons and stuff.

COL (b)(3), (b)(6) Just for clarification, which aircraft are you talking about providing these reports?

(b)(6): Sir I'm sorry I don't remember the name but it was the aircraft that was doing the night scanning.

COL (b)(3), (b)(6) Was it the Predator UAV or was it the AC130?

(b)(6) I think it was the AC 130. There are 3 that just look for people and they were just looking in.

COL (b)(3), (b)(6) As this mission went on, did you hear any discussion of these reports and the discussion between the JTAC and CP (b)(3), (b)(6) about women or children being with the vehicles?

(b)(6) After shooting the vehicles

COL (b)(3), (b)(6) So you did not monitor any discussion of women and children prior to the helicopter shooting the vehicles?

(b)(6) Yeah, after the shooting the information from the helicopter was like there are 2-3 women and some children which came out of the 2nd truck and 2 guys that are missing right now they were (inaudible) in their hands and something I don't know. People said they moved back towards the Day Kundi Kazarahn just next to Khod. It's based on the Day Kundi province of Afghanistan.

COL (b)(3), (b)(6) Did you participate in the (b)(1)1.4c when CPT (b)(3), (b)(6) flew to the site of these three trucks?

(b)(6): Of course.

COL (b)(3), (b)(6) Could you describe what you found what you saw.

(b)(6) Three trucks, injuries and dead bodies, three women, one baby, and another little kid missing a leg. About eight guys, I'm not sure sir, because that was my first time seeing such an incident. And so about 16-17 dead, eight injuries that got MEDEVAC.

COL (b)(3), (b)(6) Did you see any dead women and children?

(b)(6): No sir.

COL (b)(3), (b)(6) No women and children among the dead.

(b)(6): I didn't see any dead. But I did see one injured. I was trying to help everyone that was injured. I was trying to give water to everyone that was injured. Then I moved to where (b)(3), (b)(6) was because I was with him for the mission.

CO (b)(3), (b)(6) Did you hear when CP (b)(3), (b)(6) issued the order for the helicopters to shoot these vehicles?

(b)(6) No sir.

CO (b)(3), (b)(6) When did CP (b)(3), (b)(6) get this information that was women and children in the vehicles?

(b)(6) After viewing the vehicles.

CO (b)(3), (b)(6) How did he get that report?

(b)(6): Through the aircraft.

CO (b)(3), (b)(6) What was his reaction at that point?

(b)(6) They had stopped shooting, and then after that the aircraft provided information. He said it was two women running around, two MAMs walking from the second vehicle to the third vehicle. Then we walked to the third vehicle. We didn't see anyone walking around just dead bodies.

MG McHale: You said people were asking for water, what language?

(b)(6) They were speaking Dari.

MG McHale: No Farsi?

(b)(6) Those people were all Hazaras. That was Dari; there is different kinds of Pashtu.

MG McHale: Did you know any weapons in trucks?

(b)(6) No sir.

MG McHale: Did you look for weapons?

(b)(6) Yes sir.

MG McHale: Did you assess any personnel amongst the dead or wounded that you assumed were insurgents?

(b)(6) No sir.

MG McHale: What would have indicated to you if they would have been Taliban?

(b)(6) I am Shir Muslim and I know my history. Most of the injuries, one name (b)(6) I asked where are you going. He said we are going to get work because there is no work in Afghanistan.

MG McHale: Why do you think they were starting in the middle of night in those vehicles?

(b)(6) On the highways to different provinces this is normal; however I am not familiar with that province. I asked one of the women why they traveling so late and she said that is normal for them to travel late.

MG McHale: Did you ask them where they were from?

(b)(6) Kanduz, Zurgulon, Bagwan, three villages.

MG McHale: Is this in the area of Karswan?

(b)(6): Yes sir, all three villages.

MG McHale: Could you show me that on map?

(b)(6) No sir, sorry sir. Talking to the people, the first village is Zurgulon is the main, largest village. The other two are located just north and south of that village.

MG McHale: So it's probably here, we will have to verify it on a different map. So they were from three villages?

(b)(6) Yes sir. The MAMs, were going where, the vehicle in the middle, according to the information provided from those women, they were coming to Kandahar to get treatment.

(b)(6): In the first truck they all were MAMs. They were traveling for work.

MG McHale: Have you had any interaction with any of these villages since this incident?

(b)(6): No sir.

MG McHale: Are you familiar with a gentlemen (b)(6)

(b)(6) Yes sir.

MG McHale: Who is he?

(b)(6): He is (b)(6) brother who is the [unintelligible] commander for the Kanduz province working for us in

(b)(7)(F), 1.4a, (b)(1)1.4c

MG McHale: We had gotten a report that maybe some of the killed and injured were related to him, is that true?

(b)(6): No one was related to him. Since he is from this area people were calling and he was talking to him.

MG McHale: What town was that?

(b)(6): They are from the Kanduz province from Kity.

MG McHale: Is there anything that is important that we need to know?

(b)(6) For those people is say sorry and pray for them.

MG McHale: What are your thoughts of (b)(7)(A), (b)(7)(D), (b)(7)(E) do they work very hard to avoid CIVCAS?

(b)(6) Yes sir, they work against the Taliban and hard to protect the civilians. Every week two or three times we are getting people MEDEVAC to TK. We have done everything, but unfortunately those civilians don't like their country.

MG McHale: Who is this?

(b)(6) The people of Shaheed-e-Hassas, sir. Let me tell you something I forgot, Karazan, there are no coalition forces there. The people there are fighting against the Taliban. The incident that happened I don't blame CP (b)(3), (b)(6) we were in a dangerous area. Maybe the (b)(1)1.4c was blaming those trucks. They said they were moving down and up, but would never say words like north, south, east, or west. But they were saying they were moving down and up, down and up.

MG McHale: (b)(1)1.4c

(b)(6): And right after the mission because this incident happened; we could not complete our mission. We could not search every compound. Some of the information said we had to paid the Taliban commanders named (b)(6) [unintelligible] they were in that village. One Taliban's member dead body was in the village. We could not retrieve it however, because of this incident.

MG McHale: So under Muslim religious rights they were buried within 24 hours?

(b)(6) Yes sir.

MG McHale: Do you know or can we find out where they were buried how do we find out?

(b)(6) Everybody was, because when we send injured to TK, then I personally call the Karazan police but they cannot respond because that is Taliban area. So the aircraft was up ahead and we said we would support them. After the people came and got the bodies we waited until they left, and then we left. After we received information from (b)(6), they were buried within 24 hours in their own villages.

MG McHale: Do you know who those people were that took the bodies?

(b)(6) They were from the village, some were the people's family and some were religious people from Karazan they were all Hazari, they came and took the bodies and went back to Khod.

MG McHale: Do you have any recommendations for me on this investigation of what I should look into?

(b)(6) The incident was an accident sir. The aircraft PID the weapon in the first truck but it was completely destroyed but I cannot tell you what was in the second and third trucks. That's all I got for you sir.

MG McHale: You know very much, and you understand the culture. We are here to protect the people. And so we do this investigation to understand, and you have given me a lot insights of what you have seen, and this is very important to me.

(b)(6) Thank you sir.

MG McHale: And we want to prevent something like this from happening again. What do think is the atmospherics MG McHale: of the people in that area when they lost these family members, how was that taken?

(b)(6) Those people in those areas, they are on the borderline in Karazan. Two things they lost their people, and their enemy lost some too. The Taliban got on the radio and was saying the Americans killed some of their people. Because the Azaris are against the Taliban and are for the Americans. Those people lost their families but also some of their enemies, because the Taliban is enemy to all the people in Afghanistan.

MG McHale: Those people are Shia Muslims?

(b)(6) Yes sir, 100% sure.

MG McHale: What do you think the atmospherics are against ISAF, do you think they are against?

(b)(6) No sir, nothing yet. We talked to the people, CPD (b)(6) he talked to them. He told them that the incident was our fault sir. They don't blame the Americans. They said crying to my religion, believing in my book, whenever my God needs me he can take my life away. So they said God took them, they were martyred not killed.

MG McHale: That will be all. Thank you, thank you very much.

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: The solicitation of personal information in conjunction with this investigation is authorized under Title 10 USC 3012.

PURPOSE: The purpose for collecting this information is to obtain facts and make recommendations to assist the Commander in determining what action to take with regard

to The 21 Feb 2010 air to ground engagement
resulting in civilian casualties

ROUTINE USES: Information obtained during the course of this investigation will be used to document relevant facts regarding the matters investigated. It will be used to determine the facts leading up to the matters investigated, establish individual responsibilities, negligence, and to make recommendations for corrective actions and/or appropriate administrative actions. Any information you provide may be disclosed to members of the Department of Defense who have a need for it in the performance of their duties.

DISCLOSURE MANDATORY OR VOLUNTARY AND THE EFFECT OF NOT PROVIDING INFORMATION: The private information you furnish is voluntary. There will be no adverse effect on you for not furnishing private information, other than that certain facts or information might not be otherwise available to the Commander for his decision in this matter. The other information you furnish is mandatory. Failure to provide the requested information could result in disciplinary or other adverse action against you under Article 134, UCMJ.

Having been advised of the provisions of the Privacy Act, I hereby agree to provide information concerning this investigation.

<div style="border: 1px solid black; width: 150px; height: 25px; margin: 0 auto;">(b)(3), (b)(6)</div> <p>Printed Name/Rank</p>	<div style="border: 1px solid black; width: 150px; height: 40px; margin: 0 auto;">(b)(3), (b)(6)</div> <p>Signature</p>	<p>02 MAR 10</p> <p>Date</p>
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SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).
PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.
ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.
DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION	2. DATE (YYYYMMDD) 2010/03/02	3. TIME	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME (b)(3), (b)(6)	6. SSN (b)(6)	7. GRADE/STATUS SrA	
8. ORGANIZATION OR ADDRESS			

9. I, (b)(3), (b)(6), WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

STATEMENT ATTACHED

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF <u>10</u> PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____"
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

000664
DRONES / CENTCOM / 000726

STATEMENT OF SrA (b)(3), (b)(6)

SrA (b)(3), (b)(6)
Intel Analyst

Interviewers:

MG McHale

COL

COL (b)(3), (b)(6)

LTC

(Privacy Act Notification/Recording Notification provided by LTC (b)(3), (b)(6))

MG: How long have you been in the Air Force?

SrA: Since July 2005, 5 years.

MG: Coming in right out of high school?

SrA: Yes sir.

MG: What kind of training did you have?

SrA: I went to 1NOX1 tech school, Intel Analyst.

MG: Where was that at?

SrA: San Angelo TX.

MG: Who long of a course is that?

SrA: Six months or so.

MG: What skills did they teach there?

SrA: Multiple skills, we learned about ISR, personnel recovery, analyzing Intel data.

MG: Your first assignment was?

SrA: Aviano.

MG: How long were you there?

SrA: I was there for 3 years sir.

MG: And then you were assigned where?

SrA: Nellis AFB, NV. Las Vegas.

MG: And when did you come over here?

STATEMENT OF SrA (b)(3), (b)(6)

SrA: I was assigned here Oct 1.

MG: And you have been the OPS analysts since you been here?

SrA: Well, first I went the J35 did the planning side. And then they moved me to J2 OPS.

MG: When was that about?

SrA: That was about one month after I got here in October.

MG: What kind of turnover training did you have with the previous person?

SrA: About 4 days with the guy that was here previously.

MG: That was very quick, was that enough time?

SrA: It was enough I don't think J2 Ops in tells a lot. I learned ISRs, how to quick build, eveything else I learned on the job.

MG: On the day of the 21, when the strike happened, what time did you come on duty that day? When did you conduct shift change and with who?

SrA: I come in about 0900. I complete shift change with PO (b)(3), (b)(6)

MG: What time do you normally do shift change?

SrA: About 0900, so I will come in a few minutes before 0900.

MG: How long does he stay on?

SrA: We just pass whatever is pertinent and then he goes home and gets rest.

MG: You got there shortly before 0900 that day?

SrA: Yes.

MG: Did you hear what was going on?

SrA: They had the feed up on the screens and I walked in and they said you missed it minutes ago. There was some drops.

MG: What did they mean by drops?

SrA: Some enemies were engaged.

MG: When you shift end, what are your duties and responsibilities?

STATEMENT OF SrA (b)(3), (b)(6)

SrA: I consider myself a liaison between the J2 and J3. Basically when I come in I look at the ATO missions and confirm those with LT (b)(3), (b)(6) I stand by in case there are any TIC incidents. I start building slides on those if needed. Whatever the JOC needs from the J2 I provide.

(b)(3), (b)(6) What communication systems are you monitoring?

SrA: I monitor the MIRC.

(b)(3), (b)(6) Are you listening to any voice radios as well?

SrA: The radios are up in the JOC so I listen to those as well too.

(b)(3), (b)(6) You mentioned a TIC, what are your actions if a TIC is declared?

SrA: I'll pull my TIC slide shell and I get all the information from our CONOP tracker. I will see where the team is and I will put into the slide. Everything that comes through including the SALT report and MIRC traffic, I will put all of that into the slide. I will get an image from Google earth and put that into the slide. I sent it out on my distro list.

(b)(3), (b)(6) Are you the primary monitor for the JOC of the MIRC?

SrA: No we all monitor it sir.

(b)(3), (b)(6) Is there anyone person tasked to be the primary for that?

SrA: We keep more than one window up, everyone is monitoring.

(b)(3), (b)(6) Are you familiar with the commander's critical information requirements?

SrA: I probably cannot list them sir.

(b)(3), (b)(6) But are you familiar with the context?

SrA: Yes sir.

(b)(3), (b)(6) Can you describe the shift change between you and PO (b)(3), (b)(6)

SrA: We had the TIC slide going. I walked in he said there was some engagements. He said we are following these guys; this Predator is up and watching.

(b)(3), (b)(6) Was there any mention of adolescents, women and children in the engagement?

SrA: I don't remember any.

(b)(3), (b)(6) At what point were you aware there could potentially be women and children in the engagement?

STATEMENT OF SrA (b)(3), (b)(6)

SrA: I was looking at the MIRC chat, I remember the information coming up saying 15 KIA, no women and children but the information kept changing. I remember it saying no women and children injured at one point sir. I cannot remember a specific numbers sir.

(b)(3), (b)(6) 0439z, MIRC chat at least three females and 1 child near the second vehicle do you remember reading that?

SrA: I do remember the mention of women and children.

(b)(3), (b)(6) Did that queue you to take any actions, was anyone in the JOC taking actions?

SrA: No sir, the engagement had already happened.

(b)(3), (b)(6) Do you remember any discussions of women and children in the area being injured when you came on shift?

SrA: I just remember the BDA changing and saying women and children were in the area and they were okay.

(b)(3), (b)(6) How did you hear from them?

SrA: Just in the MIRC traffic. The feed was up, and I saw one woman holding a child.

(b)(3), (b)(6) Did anyone else in the JOC declare women and children were in fact on the scene?

SrA: Not that I know of sir. The feed was up we saw them waving the garments.

(b)(3), (b)(6) the JOC was a big screen showing the Predator scene?

SrA: Yes sir.

(b)(3), (b)(6) Were the guys looking at that?

SrA: I cannot recall I am sure they were.

(b)(3), (b)(6) Did you monitor any discussions at all post strike saying that there are women and children on the site?

SrA: All I saw was the BDA and the feed; I didn't hear anyone else talking about it.

(b)(3), (b)(6) what point did you hear anyone in the JOC discussing that we had a CIVCAS event?

SrA: I never heard that confirmed.

(b)(3), (b)(6) Were you every queried about the MIRC chat log?

SrA: No

STATEMENT OF SrA (b)(3), (b)(6)

(b)(3), (b)(6) you assist when it comes; you noted that you were building TIC storyboard. Who do you submit that to?

SrA: Everyone on the JOC floor, the collection manager, the J2;

(b)(3), (b)(6) that TIC storyboard did you note the women and children after the strike?

SrA: I would have to pull that up sir. When the BDA comes through that is what put on my TIC slide.

MG: We need a copy of the one you sent.

SrA: I also keep it on the share drive.

MG: Once you depart here get us a copy of that.

SrA: Roger sir.

(b)(3), (b)(6) think I asked this, at what point were you aware that there were CIVCAS?

SrA: I was never aware that that were sir.

(b)(3), (b)(6) later in the day, the assessment was uninjured. Before your shift ended was there ever any report of women and children.

SrA: Yes sir, uninjured.

(b)(3), (b)(6) Was this a storyboard you would have helped create?

SrA: Negative sir, this looks like something the battle captain would have done.

(b)(3), (b)(6) When you hear the term PID, what does that mean?

SrA: Positive ID.

(b)(3), (b)(6) of what?

SrA: Of an enemy or whatever is positively identified.

(b)(3), (b)(6) What about hostile intent?

SrA: Sounds like and any.

(b)(3), (b)(6) Has anyone walked you through these terms?

SrA: No sir.

(b)(3), (b)(6) The term imminent threat?

SrA: There's a near, in time or distance threat.

STATEMENT OF SrA (b)(3), (b)(6)

(b)(3), (b)(6)?

SrA: Troops in contact that means our guys are in danger.

(b)(3), (b)(6) on those last two terms have you had any formal instruction or explanation of what they mean?

SrA: I received a general description when I got the job but nothing formal.

(b)(3), (b)(6) when you see TIC come up on the MIRC chat, what are the activities that occur in the JOC?

SrA: The JOC will yell it out. We wait for the SALT report; turn on the flashing red light. We will read the SALT report out loud. The LNOs call down to their SOTFs. They will print out the operation that they are on. If they request ISR, I work that request. The Fires guy works the CAS request. The JOC chief oversees everything.

(b)(3), (b)(6) how about you when you identify a noncombatant is there a set of activities that occur upon that notification?

SrA: That is monitor at all levels, I have never had to take any action on something like that.

(b)(3), (b)(6) when you came on station this day, were there any other activities or operations go on that day?

SrA: I don't remember another TIC going on at that time, but there were other operations. This was the TIC we were focused on.

(b)(3), (b)(6) as you came on station who was in there, leadership wise? Was the chief director there?

SrA: The JOC chief?

(b)(3), (b)(6) yes.

SrA: Yes sir.

(b)(3), (b)(6) and who is that?

SrA: MAJ (b)(3), (b)(6) and MAJ (b)(3), (b)(6)

(b)(3), (b)(6) when you guys do the shift change who supervises that?

SrA: There is an official CUB that happens every day at 0900. On Sundays it is a little later.

(b)(3), (b)(6) was the J3 in there, LTC (b)(3), (b)(6)?

SrA: I don't remember if he were there.

(b)(3), (b)(6) was the brigade lawyer?

SrA: I don't remember.

STATEMENT OF SrA (b)(3), (b)(6)

(b)(3), (b)(6) What goes into the development of your TIC slide?

SrA: I look at the MIRC from the SOTF and I post that stuff on the right-hand of the TIC slide and I paraphrase as necessary for the CUB.

(b)(3), (b)(6) There is a lot of stuff that goes into the MIRC chat is there anything in particular that you are supposed put into your TIC slide?

SrA: Everything that the ODA commander reports goes on my slide.

(b)(3), (b)(6) Do they mention of women and children?

SrA: If it is in the BDA sir.

(b)(3), (b)(6) Before the BDA when you first your TIC slide and you put information on there, as they are tracking the target; is there certain information that should go on there?

SrA: Just what is on the MIRC screen sir, Yes sir.

(b)(3), (b)(6) You weren't on at night, but if you were monitoring the vehicle and they said, we had PID of three weapons, would that be on the slide.

SrA: Yes sir.

(b)(3), (b)(6) Do we have two possible children?

SrA: If the team is reporting it, yes sir.

(b)(3), (b)(6) What if there wasn't any information from the team?

SrA: The pilot talks with the JAG over radio. The team will say here is what we think.

(b)(3), (b)(6) How often do you send out this TIC slide?

SrA: I'll send it when it first starts and after it closes. Put a file BDA on there and send out an intermittent form.

(b)(3), (b)(6) You said you reported the BDA that reported three women and children unharmed.

SrA: Yes sir.

(b)(3), (b)(6) Was there any discussion of others being seen by the Predator?

SrA: Not that I remember sir.

(b)(3), (b)(6) There was less people in the vehicles?

SrA: I would assume as a result of the numbers reported after that strike.

STATEMENT OF SrA (b)(3), (b)(6)

(b)(3), (b)(6) everyone just assumed all the women in the vehicle got out the vehicle?

SrA: That is not my call to make, I go off the BDA.

(b)(3), (b)(6) where did you get the BDA?

SrA: It came off the MIRC.

(b)(3), (b)(6) who reported that do you know?

SrA: The team.

(b)(3), (b)(6) this was after the team was already off the ground doing their sensitive exploitation?

SrA: They were on the ground doing another BDA.

(b)(3), (b)(6) the BDA that you reported what time did you report that BDA?

SrA: I would have to pull it up I don't remember specific times.

(b)(3), (b)(6) after this I need you to retrieve the TIC slides you created and PO (b)(3), (b)(6) created.

SrA: MG: SrA (b)(3), (b)(6) we are here to not only find the truth but learn. What recommendations would you have to improve on the process so we can preclude having another CIVCAS?

SrA: Specifically related to this event sir, I think that is out of my league to recommend changes. It seemed we were going through all the right procedures we had a Predator watching the whole situation. I didn't see anything that needed to be improved or was done wrong.

MG: When you are on the MIRC chat are you passive, do you talk on the MIRC.

SrA: I keep a window open with the collection manager, if he sees something. I will ask questions on what's going on the screen. If the routes of the aircraft change, things like that.

MG: Any other recommendations?

SrA: I don't think we get enough ISR support sir. We only get one Predator at a time; it's hard because our priorities fall under the RC the SOTF is sting under. So if we have a number 1 priority it falls to a number of 3 or 4 because the way we are sitting under the RC.

MG: Okay. This investigation is ongoing. You are prohibited from discussing this investigation with anyone, until this investigation closes.

STATEMENT OF

(b)(3), (b)(6)

TAKEN AT

DATED 2010/03/02

STATEMENT (Continued)

STATEMENT ATTACHED

AFFIDAVIT

I, (b)(3), (b)(6)

HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 10. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of _____ at _____

(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

PAGE 10 OF 10 PAGES

LTC (b)(3), (b)(6) OPERATIONS OFFICER 11th INTELLIGENCE SQUADRON

COL (b)(3), (b)(6) What I called you for about 40 minutes ago. As we were talking in here it was pretty illuminating to us that internally you guys did not feel as if it were hostile intent. Did that feeling that it was not hostile intent go forward to the JTAC or anybody?

LTC (b)(3), (b)(6) To answer accurately I would have to enter the chat. It would be pretty tough to answer off the top of my head.

COL (b)(3), (b)(6) Did your guys, to your knowledge, did they ever declare that it was hostile or think that it was hostile or that there were acts that had a potential for hostility?

LTC (b)(3), (b)(6) I am fairly certain the answer to that is no. They told me they were rather surprised when the targets were been engaged.

COL (b)(3), (b)(6) Go ahead and introduce yourself and tell everyone here who you are.

LTC (b)(3), (b)(6) LTC (b)(3), (b)(6) Operations Officer for the 11th intelligence squadron we are an FMV exploitation squadron at Air Force Special Operations Command, 23rd Air Force specialize in supporting the National SOF units and theater SOF. We exploit 24/7 365 in support of those 2 elements. Almost all Predator and Reaper and sometimes we do fixed wing manned MV platforms. We also deploy people forward and embed them with national SOF elements in Iraq and Afghanistan including CJSOTF-A and (another abbreviation I could not understand).

LTC (b)(3), (b)(6) My boss thinks the comments about flanking being too far away are in the chat so we are pulling the hard copy of that chat that we have and are trying to find that comment right now.

COL (b)(3), (b)(6) says that it is in the chat.

(b)(3), (b)(6) Is the audio that you have with (b)(1)1.4a, (b)(1) recorded or is it clearly a MIRC conversation?

LTC (b)(3), (b)(6) It is clearly in MIRC form unless we pick up a phone and call them on one of the VOIPs that we have. Depending on some of the systems we support we can use the Giant and talk through the wave system, but that was not the case in this aspect.

(b)(3), (b)(6) Is the audio between (b)(1)1.4a, (b)(1) and the JTAC on the ground recorded?

LTC (b)(3), (b)(6) I cannot speak to that for sure (b)(1)1.4a, (b)(1) is usually the call sign used by the pilot. That is flying in the ground control center that was from CREECH. I do not know if they record the utilization of the (b)(1)1.4c line of sight radio, but I know that we do not, because we cannot even hear that conversation.

COL (b)(3), (b)(6) We were told earlier that (b)(1.4a, (b)(1) was the mission Commander the guy that does the coordination, and that you guys were the pilot/ or it came from ya'll...that's not accurate?

LTC (b)(3), (b)(6) Sir, you're saying something came from us? Can you describe that in a little more detail?

COL (b)(3), (b)(6) : They had the screen as being separate from the two.

COL (b)(3), (b)(6) Okay disregard

LTC (b)(3), (b)(6) Roger Sir

COL (b)(3), (b)(6) : When can we talk to this hero?

LTC (b)(3), (b)(6) We're hoping for, it will be 1645 Afghanistan time for you.

COL (b)(3), (b)(6) Tomorrow night?

LTC (b)(3), (b)(6) Yes

COL (b)(3), (b)(6) : Perfect

LTC (b)(3), (b)(6) Correspond 0615 in the morning; it's the best time for you and our crew schedule.

COL (b)(3), (b)(6) That's fine; our boss just explained that we will be here one more day putting our shit together before we start digging in deep, so that will be perfect.

(Confirming number and schedule for VTC)

COL (b)(3), (b)(6) : Can you just share with MG McHale and the team what your overall census was and if there's anything to continue enhancing what we've said in the last hour?

LTC (b)(3), (b)(6) Roger that, this is an unclassified line so I'm only going to go over a couple things. My take with going over this with the guys over there after the mission after they had some sleep for about 12 hours was that; We also had a team that spent about 8 hours and had 8 different sets of qualified guys running through this and replaying it and spending time going through the things they did. So they were very accurate in their analysis and call outs. Then by the time we had the vehicles in questioning corresponded with several of the Special and other Forces of intelligence, it may have seemed like they were something that they weren't when you looked at it hours later. At the same time when this was going on the guys were calling out that there where possible weapons and one of the key takeaways that we saw is that there were times that there were reports of possible weapons but when it was transferred into another room the word possible disappeared, and that is a very important word. They did not get a sense of overtly hostile acts. There were a few things that were done that kind of raised some eyebrows. There is a point where almost all the males got out to pray and wash themselves. You normally don't see that from a large group. That is one thing that you can distinguish through FMV. You do see a couple indications of weapons but I don't think we ever called a definite weapon. We did say

possible a couple times. The last sense that I think the team had is that they were getting pretty far west to be a threat. Our overall sense was that these individuals were probably armed, but we didn't see any overtly hostile act coming from them.

COL (b)(3), (b)(6): When you say probably does that mean that a couple maybe or possibly all are armed and you just have the indicator of three?

LTC (b)(3), (b)(6) think there were less than 10 times that we called out possible weapons in a convoy of 30-40 people. So I cannot make the assumption that everyone was armed.

CO (b)(3), (b)(6) you have a sense that there were women and children in the car before the strike?

LTC (b)(3), (b)(6) Yes and that was called out in the chat room.

CO (b)(3), (b)(6) you have a guess of how many women and children

LTC (b)(3), (b)(6) We had a sense of less than five

CO (b)(3), (b)(6) The JTAC had a conversation with KKSCR and asked if he seen women or children and I KKSCR said no. I think that question was in a context of that exact moment but I cannot make that assumption I would have to hear it from him. (READS FROM THE CHAT LOG AT TIME 0307) So that is what we need clarified.

LTC (b)(3), (b)(6) am reading that chat right now. I read through that and I would have to go back and look at exactly what we are looking at because we were focusing on one vehicle for a period of time.

CO (b)(3), (b)(6) Again we are just trying to find out what the guys on the ground are getting information wise.

LTC (b)(3), (b)(6) I understand that and that question would be best to talk to the actual screener at that specifically.

LTC (b)(3), (b)(6): Please do not talk to them about any of this before we talk to them.

LTC (b)(3), (b)(6) Roger I will not talk to them about it.

LTC (b)(3), (b)(6) If your guys think the people on the ground are making wrong calls are they told to express that?

LTC (b)(3), (b)(6) It is simply advisory. If we don't feel that they understand then it is our responsibility to confirm with them. We will not try to counteract the declaration of hostile intent.

LTC (b)(3), (b)(6) If they say that they have PID with weapons and you have only seen three, would you come up to verify that you have only seen three?

LTC (b)(3), (b)(6) It all depends on the situation and it is a sensitive topic. Sometimes we will chime in and ask what they are verifying PID and that normally gets a pretty nasty reply from the other end.

(b)(3), (b)(6) have been on that other end before so I know what you mean, and I know what I would have said and it wouldn't have been real kind.

LT (b)(3), (b)(6) That being said everyone has to be thick skinned. It kind of depends on how much of the communication on PID is pushed back to us. As you can see in the chats, if we are told PID is declared based on a HELO pilot seeing something, we are not going to weigh in unless we feel they are missing something.

(b)(3), (b)(6) Did you get a sensing that the GFC felt he was getting enveloped by other forces?

LT (b)(3), (b)(6) I cannot answer that for sure.

(Verifying numbers)

MG MCHALE gives his investigation information and what they are looking for as an end state.

[Unintelligible]

Unidentified Male: Well, it was a team effort. Yes do you speak good English?

Unidentified Male: Alright, we went to work, we received a number for seven eventually we got six. Six went over to the US Embassy, one needed to go to KAF really soon. So we had five, eventually two went up ICU off to surgery and three went up to the ward. We got one female approximately 50 years old, still on the ICU right now. We got one kid 5 years old he's on the ward. He is doing alright, considering the circumstances he lost his right hand, lower amputation and three other guys [unintelligible]

MG: Where was the amputation?

Unidentified Male: Below the, really [unintelligible].

MG: Did they talk much about the incident, were they all sedated?

Unidentified Male: No. One is sleeping and going to sleep right now, the woman is ventilated and on the ventilator, and the rest is [unintelligible] We have a classroom this morning and people talking [unintelligible].

MG: Okay thank you.

SFC (S) (b) (6). Can I get your name and rank?

Unidentified Male: My name is [unintelligible], I am a LTC.

SFC (S) (b) (6) German?

Unidentified Male: Dutch.

SFC (S) (b) (6) Dutch, I'm sorry. Entering the room with patient.

[Foreign language conversation]

MG: How is he feeling?

TRANSLATOR: Good.

MG: Are they taking good care of him?

TRANSLATOR: Yes they are taking good care of him.

MG: Does he remember what happened that night?

TRANSLATOR: They were going somewhere and the airplane shot down on them.

MG: Where were they going and where were they coming from?

Unidentified Male: They were coming from Katron, they had a patient with them, so they going to Kandahar. There were some other passengers who wanted to go too for work.

MG: And they had a patient that needed to go to Kandahar?

TRANSLATOR: Yes

MG: And what was wrong with the patient?

TRANSLATOR: The patient had a mental problem.

MG: Okay. And there were three vehicles?

TRANSLATOR: Yes.

MG: And were they all together all that night, all three vehicles, or did they marry up with the other vehicles?

TRANSLATOR: all the three vehicles were driving on the same road. And the first one a little ahead of us.

MG: Did they leave the same town together?

TRANSLATOR: yes.

MG: About what time did they leave to go to Kandahar?

TRANSLATOR: Dawn, the time of dawn early in the morning.

MG: Okay, how many people were there all together in the three vehicles?

TRANSLATOR: Twelve guys in one vehicle, in our vehicle was nine guys, and in the last vehicle was fifteen guys.

MG: Which vehicle was he in?

TRANSLATOR: he was in the vehicle which was right in the middle.

MG: In the middle. How many women and children all together, out of all those vehicles

TRANSLATOR: In the first vehicle there were no, at all, there were no women. In the second and the third vehicle there were two and three women so a total five for you.

MG: Were they are a part of the same family grouping?

TRANSLATOR: We were all from one village. [unintelligible] Baluj.

MG: And their main language?

TRANSLATOR: Dari.

MG: And this gentleman, his name is?

TRANSLATOR: (b)(6).

MG: Can you tell Mr. (b)(6), we hope he recovers fully. Does he know these people very well?

TRANSLATOR: He's my cousin and that one also is his cousin. This one his brother's, mother's brother's brother son and this one is his father's brother's son.

MG: Were they, his father's brother, were they on the convoy too.

TRANSLATOR: His father was on the convoy, but he was killed. His father was not on the convoy, his brother was in the convoy and his brother was also killed.

MG: I am very sorry for these deaths.

TRANSLATOR: Ta Shakur (Thank you).

[MOVEMENT] [MEDICAL EQUIPMENT BEEPING]

MG: How his neck wound, will it heal up okay?

DOCTOR: Yeah probably, yeah. This is the kid that lost the leg, the left leg.

MG: So he's probably about five or six years old.

DOCTOR: Yes five years, that's what they reckon. Under the circumstances he's doing alright, he's eating he's hungry. He's sleeping right now but if you talk to him, he's doing alright.

MG: How do they handle it? How long will they keep him and how long before he is fixed, fitted with prosthesis, how does that work?

DOCTOR: What we are now doing, getting a list of what we need for the patients extra care. And we will discuss that with the MEDOPS CAV to make sure that he gets it. They might end up in particular hospital because they [unintelligible], he will need prosthesis and longtime care. And there is a woman about 50 years old. She will need an oral mask surgeon or plastic surgery. She had a big laceration on the head so she will need that. We will get her to OT today because of her leg, and then maybe tomorrow or the day after that we will get her to KAF that may be part of it. Plastic surgery is not something you want to do in theater, so we will discuss that with MEDOPS.

MG: Plastic surgery, where will she probably go?

DOCTOR: It depends on what the capabilities are. There is an oral mask surgery in theater, in KAF. But it might even be that they are going to look somewhere outside theater, I don't know. We'll have to discuss that.

MG: So he goes in and out of sleep naturally?

DOCTOR: Yes.

MG: It's his left leg?

DOCTOR: Yes it is.

MG: This gentleman, his injuries?

DOCTOR: He had several shrapnel wounds on the back and so they removed that. And for rest he is doing okay. He came in unconscious but after surgery [unintelligible] he's doing alright. He had some facial burns here, second degree.

MG: His name, do you know?

DOCTOR: (b)(6).

MG: Okay, thank you.

DOCTOR: You're welcome.

FEMALE: Leaving room. Can I get spellings of names?

TRANSLATOR: (b)(6).

FEMALE: And also the boy's name.

TRANSLATOR: (b)(6).

FEMALE: (b)(6)

TRANSLATOR: (b)(6) yes.

[unintelligible, conversation shifts]

TRANSLATOR: The male, he's about 35 he will go to OT. He's got damage to the left leg, pretty damaged; we're going to take a look at that. He will end up in the ward. He will need extra care after that also.

MG: Names?

MALE: We can get that.

FEMALE: You're a General right?

MALE: Sorry?

FEMALE: you're a General sir? Your rank sir?

MALE: Oh mine, Captain.

MG: So and the lady.

MALE: She is in the second bed?

MG: Third floor?

MG: Yes.

DOCTOR: So we can't go in and see her?

MALE: Well it's not, they are in the process of getting into [unintelligible]. So I really wouldn't suggest it.

MG: I see.

DOCTOR: Sorry about that.

MG: That's okay, that's fine. And so then they'll do some surgery, and how about her?

DOCTOR: They will try to fix her leg. She's got a broken left lower leg and we'll get an x-ray on that. And after that she will be excavated tomorrow or day after we'll get her to KAF.

MG: So you'll fly them KAF.

DOCTOR: Yes that's the normal procedure.

MG: And which hospital is at KAF, I'm new here?

DOCTOR: That's US, it's two level threes up there.

MG: And they'll be up there a little while?

DOCTOR: Depending on what they can do there. They might end up in level three in Bagram. Depending on what, where we can get her to plastic surgery. It might be out of theater I don't know.

MG: Okay, there might be on in Bagram?

DOCTOR: Yeah and we took one out after an hour of recess, we took him out to Kandahar because he needed a CT scan. He had some facial injuries, shrapnel in the head and shrapnel in the chest. So we needed to get him to KAF because they have a CT scan and we don't.

MG: Okay, I wonder if he still is at Kandahar now.

DOCTOR: Well the clinical director talked with, I think he talked to capital three. Well we heard he doing alright, he had surgery.

MG: Well alright, thanks for your time thanks for your service.

DOCTOR: You're welcome.

MG: You were very informing. Thank you for letting us spend time, trying to understand a little bit the tragedies of war. So where's your OR room, do people come here?

DOCTOR: It's here.

MG: Can I see it?

DOCTOR: Yeah, sure.

[female speaking, unintelligible]

DOCTOR: So we got, two ICU units, one for Afghan local nationals. [unintelligible]

[surrounding noises]

Hello yes, how are you?

DOCTOR: We have Australian surgical team.

MG: Please to meet you.

AUSTRALIAN FEMALE: Unfortunately changing at the moment. [laughing, talking, unintelligible] Sorry about that.

AUSTRALIAN FEMALE: I'm (b)(6) [last name unintelligible]

MG: So, you're all doctors?

AUSTRALIAN FEMALE: Nurse and doctors.

MG: What's your specialties?

AUSTRALIAN FEMALE 1: Anesthetics and intensive care nurse.

AUSTRALIAN WOMEN: [unintelligible] he does more pediatrics. But I have pediatrics. And we have general surgeon, we have two general surgeons we have one Dutch general surgeon and one Australian general surgeon to cover all types of injuries.

MG: Well let me get out of your hair, you have to get ready for surgery. Thank you for all that you are doing. I was appointed by Gen McChrystal to be the investigating officer, so that's why I am down here.

AUSTRALIAN WOMEN: Thank you very much.

MG: Thank you very much, thank you.

[Unintelligible. Walking, movement]

MG: Thank you.

DOCTOR: Besides the Australians we got a Singaporean team with doctors, nurses, and their medics. So it's a multicultural national hospital.

MG: Yeah. That's the lady in there?

DOCTOR: Yes it is.

MG: A great tour in Iraq with a bunch of Aussies. Can you tell me about her?

[Unintelligible, whispering, medical beeps]

[Walking, foreign languages]

[Unintelligible]

MG: Gen McChrystal appointed me as the investigation officer of this incident and I just wanted to see the patients. You guys are doing a great job with what you have to deal with.

Thanks sir. The team works incredibly well, it all seems to be coming along well.

MG: We just saw a couple in OR 1 a gentleman went in to get some surgery. It's kind of interesting, (b)(6) was telling me a nurse attending, Afghan it's hard to tell the Afghan ages because they had such a hard life. But she made some guess based on x-rays, and even then it's hard.

Because all the crisis happened so much faster than for our guys. And this is overwhelmingly the oldest Afghan female [unintelligible] and it's also hard to match up how she's going to fit with it, because they live hard lives. They keep on doing stuff to people, where as the biology in our community would be kicking back and not doing too much. So she's doing alright she's going to need a lot of treatment down the track. But so far so good.

MG: I tell you what, the boy what's your thoughts on him? He lost a leg and still has a neck wound?

The neck wound is coming along good.

MG: He probably just missed a carotid artery or something, very lucky.

He missed everything important from a very small distance, so he's very lucky on that one. His leg was smashed so we had to amputate on the first night. I tell you the biggest thing in this community will be managing the sequentially increasing size prosthesis and needs, they will need a lot of backup. In the

states or Australia it would be easy to come back to the clinic, but here in Afghanistan, that's not going to be that straight forward. We'll get him suited up initially, but he'll need to come back every so often as he grows. In terms for the rest of him, he'll get on with this but he'll need some help along the way.

MG: So you have quite an international team here.

Yeah. So obviously the Dutch are too on our contingent and Australians both in the role 1 IP of surgical teams. And Singaporean calling in the ICU ward environment. Thankfully everyone else speaks English better than speak Dutch or [unintelligible]

MG: Well thank you (b)(6) And thanks for all you guys are doing

Pleased to meet you.

MG: Pleased to meet you.

Alright we will get out of here you have more important things to do. Alright sir

MG: Alright thanks again.

TRANSLATOR: All six of them, their names?

~~SAC~~, (b)(6) (b)(6)?

The guy who flew to Kandahar his name is (b)(6)

(b)(6) KAF?

Yes there's one in KAF.

How about the kooky old lady?

The lady in the ICU (b)(6)

The guy in ICU (b)(6)

The little kid, [unintelligible, phone ringing during the spelling of name]

Ma'am that was six, miss?

[walking, cuts off]

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: The solicitation of personal information in conjunction with this investigation is authorized under Title 10 USC 3012.

PURPOSE: The purpose for collecting this information is to obtain facts and make recommendations to assist the Commander in determining what action to take with regard to The 31 Feb 2010 CIVCAS Incident

ROUTINE USES: Information obtained during the course of this investigation will be used to document relevant facts regarding the matters investigated. It will be used to determine the facts leading up to the matters investigated, establish individual responsibilities, negligence, and to make recommendations for corrective actions and/or appropriate administrative actions. Any information you provide may be disclosed to members of the Department of Defense who have a need for it in the performance of their duties.

DISCLOSURE MANDATORY OR VOLUNTARY AND THE EFFECT OF NOT PROVIDING INFORMATION: The private information you furnish is voluntary. There will be no adverse effect on you for not furnishing private information, other than that certain facts or information might not be otherwise available to the Commander for his decision in this matter. The other information you furnish is mandatory. Failure to provide the requested information could result in disciplinary or other adverse action against you under Article 134, UCMJ.

Having been advised of the provisions of the Privacy Act, I hereby agree to provide information concerning this investigation.

(b)(3), (b)(6)	MAJ	(b)(3), (b)(6)	_____	<u>J. MARIANO</u>
Printed Name/Rank				Date

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).

PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.

ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION	2. DATE (YYYYMMDD)	3. TIME	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME (b)(3), (b)(6)	6. SSN (b)(6)	7. GRADE/STATUS MAJ/AD	

8. ORGANIZATION OR ADDRESS
Combined Joint Special Operations Task Force

9. I, (b)(3), (b)(6), WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Original statement was taken on 2 March 2010. The statement begins on page 2 and ends on page 16.

The rest of this page was intentionally left blank.

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 16 PAGES
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ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____"

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

STATEMENT OF MAJ (b)(3), (b)(6) ON 2 MARCH 2010

(S)(b)(6) Give me a little of your back ground.

MAJ: I was commissioned in 1996 as a signal officer I went Korea for my first duty station. I was then sent to Fort Gordon where I did my PL time and then I went into the FLEP program. 1st CAV was my first JA duty position with a deployment with 3 BCT. I then went to Eustis and did some contract law and military justice. I went to the GRAD course after that and was assigned to 3D group for the last two years.

(S)(b)(6) How long in this billet?

MAJ: Two years I did a previous rotation from January to August 2009.

(S)(b)(6) Who was the previous CJSOTF-A Commander before COL (b)(3), (b)(6)

MAJ: COL (b)(3), (b)(6)

(S)(b)(6) you were with him last time?

MAJ: No I come with whomever I am placed with I am in HHC 3D group. I deployed with COL (b)(3), (b)(6).

(S)(b)(6) What is PID?

MAJ: The positive identification or reasonable certainty that the object you are striking is a lawful target

(S)(b)(6) What is hostile intent?

MAJ: An action that indicates that absent force, using lethal force to stop a force from committing an act against you, it is not instant...

(S)(b)(6) Hostile intent, what is hostile intent?

MAJ: That is a good question. It is an action perceived by a US Soldier that someone is going to commit an action against them.

(S)(b)(6) What is imminent threat?

MAJ: 312101B SROE states it as information know at the time to believe that deadly force is going to be used against you or impeding the US mission.

(S)(b)(6) that the ISAF or...

MAJ: That is SROE OEF.

(S)(b)(6) What is TIC?

STATEMENT OF MAJ [REDACTED] ON 2 MARCH 2010

MAJ: Troops in contact, that is a free flowing doctrinal term it is used differently here, CAOC uses a different term, I think everywhere throughout the CJOA everyone uses it differently.

(S) [REDACTED] Don't forget the CJSOTF definition; tell me what you believe the CAOC definition to be and the ISAF definition to be.

MAJ: Facing imminent threat.

(S) [REDACTED] Whose definition is that?

MAJ: I want to say the OEF.

(S) [REDACTED] I want to share with you that it is not. The one in the joint publication that the CAOC uses means that lead is being shot at you. The ISAF does use the word imminent but not from the same meaning as imminent threat but they refine it to mean immediate. I am asking because no one in this command has gotten more than one. If a TIC is declared is there a formal battle drill that is executed?

MAJ: Yes.

(S) [REDACTED] Are you part of that battle drill?

MAJ: Yes. It is impossible to be present for the full TIC process.

(S) [REDACTED] Is your role codified in the battle drill for a TIC and what is it?

MAJ: I am not always brought in for a TIC. It depends on the situation. If we have a casualty I am notified, if we are in a high collateral area I am notified, if I am walking around I have a pager...

(S) [REDACTED] You have an incredible reputation with your staff brothers. This isn't about your willingness to be in there, we haven't spoken to one person in your command who has say that you weren't the energizer bunny. What does the TOC think?

MAJ: It depends it is a good relationship with the JOC Chiefs and the SGM.

(S) [REDACTED] Struggle with battle drill, which means a prescribed set of activities that will get executed when an event starts, and your term depends. When Airmar [REDACTED] sees TIC does he know that the lawyer is coming in to participate on the declaration?

MAJ: Probably not.

(S) [REDACTED] Is there a reason why, regardless of density that you would not be involved in the initial battle drill upon the declaration of TIC which requires the JOC to go through its process?

MAJ: When the TIC light goes on for the first time my duty place is the JOC and I walk across to be briefed in.

STATEMENT OF MAJ [REDACTED] ON 2 MARCH 2010

(S) [REDACTED] Are there other battle drills that the JOC executes that you believe you participate in as a member?

MAJ: Detention, CIVCAS, any KIA those are the ones that I know I am a direct participant in.

(S) [REDACTED] Here is a scenario, I want you to describe your action and tell me if they come and get you for stuff like this: a target has been evolved over time and PID has been declared and it is a hostile force, then TIC is declared consecutively, and then sometime between TIC and the decision to drop ordinance the potential identification of women children or adolescents as part of the target set. If that happens are you contacted?

MAJ: If it was a preplanned strike I would be called, but if there is a TIC going on at the site I wouldn't necessarily be called in for that. The difference from the conventional Army here is that we see this every day.

(S) [REDACTED] Here is one of the things that you see daily that doesn't occur in the conventional force, the declaration of TIC. This is only one example that TIC was declared at 0517, and not a bullet was fired until they dropped ordinance until 0848. So back to the scenario and lets add this in to the scenario, the target is moving away from the objective site or blue forces. What are your instincts? Should you be called?

MAJ: Women and children possibly involved I figure that I would be called.

(S) [REDACTED] On this particular night when TIC was declared did they call you?

MAJ: Not when TIC was declared. I knew there was a TIC before I went into the JOC. I got up checked email and hit the head before I went running so that was before 0700 and before church. I came back listened to the WAVE radio in my office. I was looking at the operational updates and listening to what was being reported over the radio and there was nothing that I seen that was different from what I would see six out of the seven days in a week.

(S) [REDACTED] At 0517 when TIC was declared and the red light went off but you didn't know because you were down, what is the mechanism they use to get you on the floor?

MAJ: Send a runner or page me.

(S) [REDACTED] Did anyone do that?

MAJ: No.

(S) [REDACTED] When the people on the JOC floor to include the J2 and JOC Director, identification of children did they come and get you?

MAJ: Negative, not until after I read the mIRC chat did I know that they were there.

STATEMENT OF MAJ [REDACTED] ON 2 MARCH 2010

(S)(b), (b)(7)(C) What time do you remember coming aware of the potential of women or children on the objective?

MAJ: When 1-2s JAG called me and said that they were getting a report from RC-S that there were women and children on the objective.

(S)(b), (b)(7)(C) Do you remember when you got that report?

MAJ: I think it was around 1200z.

(S)(b), (b)(7)(C) What did you do with that information?

MAJ: First I gave the 1-2 JAG some instructions to find out who said it, where are they getting it from, and to confirm that the GFC has not made mention of this. I then went to MAJ [REDACTED] and told him and he said that he had the same thing.

(S)(b), (b)(7)(C) What did MAJ [REDACTED] say?

MAJ: He said they had the same RUMINT and that they were trying to track it down.

(S)(b), (b)(7)(C) Did you share that with anyone other than the JOC Chief?

MAJ: The 3 was already tracking it, and once the 3 knew about it I didn't say anything else.

(S)(b), (b)(7)(C) LTC [REDACTED] knew it?

MAJ: Yes.

(S)(b), (b)(7)(C) You told him around 1200?

MAJ: Yes, to the best of my recollection.

(S)(b), (b)(7)(C) Would a window of 1100 to 1330 be good enough to say that you told him in that time frame?

MAJ: It would have been after lunch.

(S)(b), (b)(7)(C) I am trying to target a time and the purpose so you know it is not a got you situation, we are trying to figure out how many opportunities we had to start the IO fight because we didn't start it until 2015. We know we had opportunities at 0900, 1200, 1425, 1600, 1845, and then the one that we executed at 2015 that evening.

MAJ: The time line to get it accurate would be whenever the MEDIVAC had come in because in hindsight that information had come from the MEDIVAC.

(S)(b), (b)(7)(C) that is around 1340ish

STATEMENT OF MAJ (b)(3), (b)(6) ON 2 MARCH 2010

MAJ: I don't know the exact, but when the MEDIVAC came back there were reports of a wounded woman and child.

(S) (b)(3), (b)(6) Did you ever share that with the BDE CDR?

MAJ: No.

(S) (b)(3), (b)(6) Do you have any dialogue with the BDE CDR from strike prior to 1600L?

MAJ: Yes. (but before the rumors of CIV CAS came to light)

(S) (b)(3), (b)(6) Is there a reason why you didn't share that with the BDE CDR?

MAJ: No.

(S) (b)(3), (b)(6) I am a former BDE CDR and I have had the privilege to work with a couple of JAGs. Were you concerned at 1345 or whenever it was about this potential report of CIVCAS?

MAJ: No I wasn't, because the GFC and the SOTF had reported 15 EKIA and no CIVCAS and the GFC in on the ground.

(S) (b)(3), (b)(6) When you shared this with the JOC Director what did he say?

MAJ: He told me that they were trying to confirm where it came from.

(S) (b)(3), (b)(6) Did that send a signal to you?

MAJ: Yes.

(S) (b)(3), (b)(6) Did you go to the DCO with this?

MAJ: No. Throughout the whole day the COL was in and out getting updates and such as well as the DCO.

(S) (b)(3), (b)(6) Was the COL aware at the same time?

MAJ: I am not sure.

(S) (b)(3), (b)(6) Was he there with you?

MAJ: I don't believe he was.

(S) (b)(3), (b)(6) Did MAJ (b)(3), (b)(6) indicate that he had shared this with CFSOCC-A?

MAJ: I don't remember.

(S) (b)(3), (b)(6) Did you contact the JAG above you?

STATEMENT OF MAJ [redacted] (b)(3), (b)(6) ON 2 MARCH 2010

MAJ: Once we got some fidelity that there was CIVCAS I did a "Hey unconfirmed that we may have some CIVCAS and I am standing by".

(S) (b) (6) Did you contact the subordinate JAG?

MAJ: The subordinate Jag told me.

(S) (b) (6) Who called you but you didn't notify your higher JAG?

MAJ: That is right.

(S) (b) (6) Are you aware of the CCIR for your command?

MAJ: Yes.

(S) (b) (6) When it talks about CIVCAS what are the two conditions that it associates with it?

MAJ: Any allegations of CIVCCAS.

(S) (b) (6) Would you consider this an allegation of CIVCAS?

MAJ: Yes. RC-S Knew about it. That battle space owner knew about it.

(S) (b) (6) Your reporting chain is through whom?

MAJ: CFSOCC-A.

(S) (b) (6) At ISAF headquarters that works with the SOF (S) (b) (6) (a) (4) Is it you directly to let you know of an allegation of CIVAS. How many times in the past has RC-S contacted you guys directly with an allegation of CIVCAS?

MAJ: None that I am aware.

(S) (b) (6) You have a first time event from a season two-star command providing you an allegation of CIVCAS. Why didn't you share that with your legal higher?

MAJ: Because it was a, hey they said this was happening and my commander (S) (b) (6) (a) (4) is working on the FIR. I want some fidelity on that report. I know it is an allegation, but I am not going to pick up the phone and say "someone is saying CIVCAS, but I don't know who, where, or how many".

(S) (b) (6) When you see the term alleged it doesn't really mean alleged?

MAJ: It does.

(S) (b) (6) Is there a level of allegedness that you need to have?

MAJ: A credible allegation.

STATEMENT OF MAJ [REDACTED] ON 2 MARCH 2010

(S) [REDACTED] That is not what it says. It says confirmed or alleged. It doesn't say credible and when you start putting adjectives onto things it starts getting confusing.

MAJ: Fair enough.

(S) [REDACTED] you have an alleged CIVCAS, is there reason to believe that RC-S is all wet because they do this all the time?

MAJ: No, I wanted to make sure that it was us. I am listening to radio traffic all morning long saying no CIVCAS, I have a commander on the ground who has conducted a MEDIVAC and no CIVCAS, I come back and I get a phone call saying there was CIVCAS, not that I don't trust CPT [REDACTED] he is a smart guy, way smarter than me. I asked him who told him that, and what did they say. I want something that I can report to higher.

(S) [REDACTED] he gave you something.

MAJ: He said we have CIVCAS. I asked him, and I remember the question [REDACTED] "from where, from who?"

(S) [REDACTED] What is the reticence to call higher with that? What is the reticence in this command to act on an allegation?

MAJ: When something happens in the CJSOTF it is automatically; how did CJSOTF screw this up? Whenever something comes up and it is not a full report, it is a jump down our throat. I wasn't even looking for a full report.

(S) [REDACTED] The SOP used to say confirmed CIVCAS, then your boss probably with your help put in the term alleged. I believe that was so you could get out in front of this so you're not at the back end of the whiplash of something that takes us longer to confirm it takes the Afghans to do.

MAJ: That is right.

(S) [REDACTED] So your reticence in reporting is that oh shit they are going to point the finger again?

MAJ: It is more than that. When I report something I want to know what I am reporting. In every allegation of CIVCAS that came out that involved coalition forces we have been called and said hey you did it. I have to ask where at.

(S) [REDACTED] What kind of reporting do you think you are going to generate from your subordinate units when they report CIVCAS and you shoot them down? What are you really telling them to do?

MAJ: To provide a full report.

(S) [REDACTED] is it alleged CIVCAS or something greater than alleged that you are asking for a report on?

STATEMENT OF MAJ [REDACTED] ON 2 MARCH 2010

MAJ: It is suspected CIVCAS. A wounded woman and child in Afghanistan, we could have caused it, there is no doubt that we could have caused it, the Taliban could have caused it, they could have stepped on a UXO and it could have been caused that way. I want reporting but I also want some fidelity in the reporting. If I go to my higher and say I got this report, but I don't know who did it, where it is at, or how many, then that is not going to help me. What I am trying to get my guys to do is when they get those reports is to ask the pertinent questions like where, when, how many, and by who.

(S) [REDACTED] (b) (6) GEN McCHRISTAL wants suspected CIVCAS reported then why are we saying the old man is all wet?

MAJ: I look at it different, but if that is the intent then we will go forward with it. When I have someone telling me that someone said this happened and I don't know any more than someone said there was CIVCAS. So I ask who caused this and they say I don't know. Then I get someone reported to RC-S...

(S) [REDACTED] (b) (6) get the term someone, it is an interesting noun. RC-S two-star command, US one-star director of operations is the one authorizing all of this coordination. This isn't someone; this isn't an adjacent unit that has immature leadership.

MAJ: I am not saying RC-S is immature. I just ask for definition as to who at RC-S is saying that. We flow through the JOC chief and the J3 we are more structured than a BCT and looser than a BCT is in some ways so we are structured. Information flows through the JOC that is our conduit for information and that is where information is released from this command.

(S) [REDACTED] (b) (6) Who is your next higher JAG?

MAJ: [REDACTED] (b) (3), (b) (6)

(S) [REDACTED] (b) (6) He in your technical chain?

MAJ: No he is not.

(S) [REDACTED] (b) (6) Who is?

MAJ: CO [REDACTED] (b) (3), (b) (6)

(S) [REDACTED] (b) (6) You having that unique line to the Commander and having your hand in on writing of SOPs before they are approved, we need to be getting more in line with the tactical directive.

MAJ: I thought I was in line with the tactical directive and I thought that my command was in line with the tactical directive, because the reporting...

(S) [REDACTED] (b) (6) Do you still believe that now?

MAJ: Reports should generate from the bottom up. I have the guy who no shit has the truth, the GFC not reporting it, only reporting EKIA and EWIA.

STATEMENT OF MAJ (b)(3), (b)(6) ON 2 MARCH 2010

(b)(1) (b)(3), (b)(6) 1349 were you aware of the MEDIVAC report?

MAJ: No. That is another thing, when the MEDIVAC report came in I asked for the 9 line but there was never a 9 line sent and I asked who got off at the hospital. When we got the report from the AOB at FB (b)(1) 1.4a, (b)(1) that there were women and children right then ...

(b)(1) (b)(3), (b)(6) This is the first time RC-S has ever contacted you in this manner right?

MAJ: To my knowledge yes.

(b)(1) (b)(3), (b)(6) It turned out the report was accurate right?

MAJ: Yes.

(b)(1) (b)(3), (b)(6) What do you think the next time RC-S reports that you are still going to say pushback prove it?

MAJ: I disagree with the term push back prove it. It was like hey I got two different reports that are 180 degrees off. I have no CIVCAS and I have CIVCAS. BOG from my subordinate units was that there were no CIVCA, JAG doing the right thing getting the ball rolling thinks let's get to the bottom of this.

(b)(1) (b)(3), (b)(6) are we going to remove the term alleged or alleged only by CJSOTF units?

MAJ: I think alleged is fair.

(b)(1) (b)(3), (b)(6) I think it is great. I think in writing you guys are closer to the tactical directive than any other unit but in execution you are farther away than everybody else.

MAJ: If we get a report of CIVCAS and I am getting from my guy on the ground no CIVCAS and the two-star command who could have gotten the information from any F6 source walking in off the street, then I am going to believe the GFC, but what we are going to do is get to the bottom of it.

(b)(1) (b)(3), (b)(6) Did you check with the RC-S LEGAD to see if they had any information on it?

MAJ: No I had asked CPT (b)(3), (b)(6) to do that. I do not know if he did it, but the first real report that I got of CIVCAS was from CPT (b)(3), (b)(6) saying hey our guys are reporting CIVCAS. That is a flaw in the system is reporting and we need to do better reporting. I do not think that anyone in this command is going to say that we are 100% at reporting, but we are going to follow the reporting from higher to lower. RC-S may have more assets available to them than the ODA commander, but they did not have more assets on the ground than he did.

(b)(1) (b)(3), (b)(6) Were you aware of OH58s on scene?

MAJ: Yes.

(b)(1) (b)(3), (b)(6) What is the best thing next to BOG if OH-58s are there?

STATEMENT OF MAJ [REDACTED] ON 2 MARCH 2010

MAJ: Those are probably the best thing because they are low and slow and can see what is going on.

(S) [REDACTED] Who do the OH-58s belong to?

MAJ: RC-S.

(S) [REDACTED] They also own the MEDIVAC platforms right?

MAJ: Yes.

(S) [REDACTED] Form with you, but I am not, because that is the closest thing with eyes on until the BOG BDA team shows up at 1245.

MAJ: Yes it was just under four hours until we could get BOG out there for the SSE.

(S) [REDACTED] Following the (1)14, when was the first time that you are aware that the JOC knew collectively of the potential for CIVCAS? Either civilians on the objective not injured, or civilians on the objective injured? When was that window that you are aware of?

MAJ: About 1040L or maybe a couple of minutes after. I saw on the big screen that there was a woman, but I was briefed that people had been walking onto the site from a village about a half mile away. That was the fight that we had to keep the FMV is because people were coming onto the objective and we wanted to keep eyes on to preserve the area.

(S) [REDACTED] Are you aware of the analysis from the predator crew as it pertains to the ground rumor of contamination?

MAJ: I saw the PowerPoint. My understanding now is that the people scattered and then came back to the area. What I was under the impression about was that at 1045 folks were coming onto the objective and that they were coming from the village about a half a mile away.

(S) [REDACTED] Do you play any role in dynamic targeting?

MAJ: Yes.

LTC R: Do you play any role when they have an emerging target that is being engaged in US self defense?

MAJ: Yes.

(S) [REDACTED] Any idea on why they didn't call you in on this target?

MAJ: No. The first time I talked to anyone from the JOC is when I was leaving church and MAJ [REDACTED] said "hey we just struck something".

(S) [REDACTED] Do you have a paralegal?

STATEMENT OF MAJ [REDACTED] ON 2 MARCH 2010

MAJ: Yes

(U) (S) (b) (1) (b) (6) Cost the two of you?

MAJ: Yes.

(U) (S) (b) (1) (b) (6) Think on these situations you should pull information from people, because in this situation there was some bottled up information that would have been interesting to know and would have changed the situation considerably but they didn't recognize it for what it was. How often do you do ROE training?

MAJ: On a regular basis.

(U) (S) (b) (1) (b) (6) Do both JOC Directors attend that training?

MAJ: Yes.

(U) (S) (b) (1) (b) (6) Do the J2 OPS guys attend that training?

MAJ: Yes.

(U) (S) (b) (1) (b) (6) Does the J3 attend?

MAJ: Yes.

(U) (S) (b) (1) (b) (6) Am going to tell you this. You are going to have to put a mechanism into place to ensure that the training was understood.

MAJ: There a lot of terms in ROE and there are some difficulty in expressing what those terms mean.

(U) (S) (b) (1) (b) (6) What ROE do you guys follow?

MAJ: OEF ROE.

(U) (S) (b) (1) (b) (6) ISAF?

MAJ: We should not be following ISAF ROE.

(U) (S) (b) (1) (b) (6) What about ISAF terms?

MAJ: Yes, and I will give you an example: the JPEL targeting process, we do not have an OEF targeting process. We have to go through a JPEL ISAF program, and what does it say on the back page of every JPEL target? It talks about 429 ROE. We also have to use 421 and 422 less recently than in the past for coalition aircraft that come in with self defense for us in planting an IED up the road. That is a fundamental fault in the system that we have here that we are an OEF Force that the USFOR-A/ISAF requires us to default to ISAF.

STATEMENT OF MAJ [redacted] ON 2 MARCH 2010

(b)(3), (b)(6) is only to use that asset, you have other means to apply appropriate self defense. There is nothing flawed with ISAF withholding tools.

MAJ: ISAFs system isn't flawed it is that we operate under one ROE and there is another ROE. If I want to declare someone a hostile force, then I have to talk to IJC with ISAF ROE to get someone put on the list. I think that is a flaw.

(b)(3), (b)(6) from what perspective?

MAJ: It defaults us to ISAF, and if you look at 429 ROE and look at the definition of a designated hostile force in the OEF ROE the supplements do not match up perfectly and more than just an academic point I think there is a difference in some cases. That is part of the reason that there is an OEF ROE that is currently being staffed.

(b)(3), (b)(6) where does the tactical directive apply?

MAJ: All forces.

All the time or just when targeting something near a compound?

MAJ: The intent is that it applies all the time.

(b)(3), (b)(6) is it your professional assessment that the tactical directive is counter to US ROE?

MAJ: No.

(b)(3), (b)(6) when it prescribes or implies imminent as immediate then you are ok with that?

MAJ: Yes and I think it falls back to a US caveat and when it is immediate it falls back to the SROE.

(b)(3), (b)(6) you think it is not working against you because you don't have to comply with a component as a caveat?

MAJ: As it is defined to us I don't think there is a...

COL [redacted] So if you don't apply the US caveat is it in concert with US ROE?

(b)(3), (b)(6)

LTC [redacted] Without the use of the caveat is the tactical directive in intent, consistent with US self defense ROE?

MAJ: I am confused.

(b)(3), (b)(6) Are there times when US self defense ROE would say that it is perfectly ok for you to destroy that target, but the tactical directive tells you to take some other action?