

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 _____

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)

Printed Name/Rank

Signature

3 Mar 10
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) 2010/03/03	3. TIME	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME (b)(3), (b)(6)	6. SSN	7. GRADE/STATUS LTC	

8. ORGANIZATION OR ADDRESS

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

Statement begins on page 1, transcribed statement from pages 2-5

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 5 PAGES
-------------	---	-------------------

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.

LTC (b)(3), (b)(6)
CFSOCC Aid J6
Kabul, Afghanistan

(Sworn in by MAJ (b)(3), (b)(6))

COL (b)(3), (b)(6): LTC (b)(3), (b)(6) how long have you been in the J6?

LTC (b)(3), (b)(6) 5mth sir.

COL (b)(3), (b)(6): and your duties as a J6?

LTC (b)(3), (b)(6) I'm responsible for OPS communications within the theatre for SFSOCC, for the Special OPS. We work with... between our CJ-SOTF we have insight to them. We work with USFOR-A J6 for communications for here as well.

COL (b)(3), (b)(6): Are you responsible to insure e-mail connectivity between the HHC and SFSOCC?

LTC (b)(3), (b)(6) Yes sir. Part of my duties... we rely on the (b)(1), 1.4(a) SIGNAL BN for our BOSCOMS or standard communications. Our network is on the (b)(2) Domain. The CJ-SOTF is on the SOCCENT domain out of (b)(1), 1.4(a) We're on two separate domains as part of connectivity.

COL (b)(3), (b)(6): being on two separate domains does that create any challenges as far as email connectivity?

LTC (b)(3), (b)(6) Yes sir it can. On the 2ND of February the exchange e-mail servers down at Cutter crashed and went down completely. They rebuilt those exchange servers and after that transpired, after they got the systems back up it was noticed that about a week and a half to two weeks ago that there were delays in e-mails coming to reports that were coming up through and into our JOC and those Offices up here. Primarily in reporting up, we do a lot of reporting up to the IJC and that ISAF SOFT operations that are coming from the CJ-SOTF. We have just corrected that over the last couple of days but during this period of time there was a significant e-mail delay. On the 21st we did not have complete understanding or it wasn't known to all the users out there that this delay was out there. The e-mail was not sent out to everyone saying there is a mail delay in the reporting between the CJ-SOTF and us. It wasn't a widely known...not all users on the network could have known that sir.

COL (b)(3), (b)(6): was it a set time delay? Did the delay vary and what was the delay approximately?

LTC (b)(3), (b)(6) Sir the delay is in e-mails depending upon when an e-mail was sent through a range from anywhere to 3-4hrs to 10hrs is the most we've seen on some e-mail delays. I did bring a copy of the report that we submitted the helpdesk request where it's gone through the 25th and then there's a little bit of information if you like that as well.

COL (b)(3), (b)(6): Absolutely, and you said this was corrected yesterday?

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

COL (b)(3), (b)(6): The 2nd of March?

LTC (b)(3), (b)(6): Yes sir.

COL (b)(3), (b)(6): So from your professional perspective based on what you know with this, would it be reasonable that an e-mail sent from CJ-SOTF on the 21st might have taken approximately 4.5hrs to reach CIVSOC?

LTC (b)(3), (b)(6): Roger sir. That would have been a possible situation. It's very likely that would have or did occur. We can go back and look at the logs and verify when the user hit send and when it actually hit the mail servers here for the person to actually open it up.

COL (b)(3), (b)(6): One last question on that. For the person you sent the e-mail, if they print out what you send... which time does it show, does it show the time sent?

LTC (b)(3), (b)(6): Correct yes sir.

COL (b)(3), (b)(6): Does the person that receives, when they print it out what time does it show?

LTC (b)(3), (b)(6): It should show a time received on the e-mail

COL (b)(3), (b)(6): So there will be two different times for the same e-mail that would reflect this delay?

LTC (b)(3), (b)(6): Yes sir. When you look in your outbox in your sent mailbox it will have the time stamp of when you hit send. Then you can look and see when it was received at the mail server when the person opens up that mail, it will say when it was received.

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

MAJ (b)(3), (b)(6): What was the blockage was it in the sending or was it in the receiving or who was the stove pot?

LTC (b)(3), (b)(6): sir I do not have the... I have not been backed briefed on that. What the actual corrective action was to fix that problem.

MAJ (b)(3), (b)(6): The reason why I'm asking is because I know that on some of them if it's blocked on the receivers end then it will show to the received at a certain time even know that actual stove pipe right above where the receiver is going to be, similar to the chimney philosophy where it all comes into an area and it's all blocked through a stove pipe and it comes up.

LTC (b)(3), (b)(6): Well we traced an e-mail that went from CJ-SOTF up to here and it took , the one that we actually traced took 6hrs to go from the CJ-SOTF to the SOCCENT on mail exchange server, it took 6sec after it hit the (b)(2) server to get to the users box. So there's... we had gone in through are investigator process but we determined it was on the SOCCENT side of the... you'll get organizations that will sit up there and say it's not me, it's always nice to point the finger at somebody else but when we actually went through that investigation process on the SOCCENT side of the... It was in the domain that was causing the problem.

MAJ (b)(3), (b)(6): Would the sender receive a notification of a delay that message was sent?

LTC (b)(3), (b)(6): Not always, no sir. Depends upon how your exchange servers set up whether it actually sends those out. I don't believe theirs are set up to show that there or respond back to the sender that delays are occurring on the network.

MAJ (b)(3), (b)(6): When you say they is that the individual user or the system administrator?

LTC (b)(3), (b)(6): It would be the system administrative user or whoever built the network. Different people develop... there's no standard process within the military that says I have to turn on those kind of notifications back to the user. It's a very nice thing to do but it's not required.

MAJ (b)(3), (b)(6): what about bandwidth? Was there a problem with bandwidth being low and you were trying to send PowerPoint presentation that wouldn't go through?

LTC (b)(3), (b)(6): No sir...there's sufficient bandwidth that shouldn't have been a problem.

MAJ (b)(3), (b)(6): So it wasn't a problem with the ones with PowerPoint's we gave off, but the ones with pure text was flowing through?

LTC (b)(3), (b)(6): No sir.

MAJ (b)(3), (b)(6): So the size of the email or attachments didn't matter?

LTC (b)(3), (b)(6): It would not it just was a configuration problem within the network.

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

STATEMENT OF

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

TAKEN AT

DATED 2010/03/03

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 5. 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 5 OF 5 PAGES

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 results 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.

(b)(3), (b)(6)		<u>3 Mark</u>
Printed Name/Rank	Signature	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			

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

Original statement was taken on 3 March 2010. The statement begins on page 2 and ends on page 6.

The rest of this page was intentionally left blank.

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF <u>7</u> PAGES
-------------	---	--------------------------

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.

COL [REDACTED] Before we get started for context of your background, walk me through when you joined the Air Force and information into your assignments.

MAJ: I went through the ROTC program at Syracuse 1995-1999, on a scholarship, went to law school on an educational delay. I was commissioned in May 1999. July of that year I went on inactive reserve status for three years while attending law school. I competed in an educational delay out board, which examined my law school records and the evaluation I received from my internship. I took the bar exam, and passed. I was brought onto active duty as a designated JA. My first assignment was at Hurlburt Field, FL. I worked in the installation legal office. From there I was sent to Mildenhall, England for a newly created position, where I was the Air Force JAG attached to 52d Special Operations Group. I was tempted by AFSOC to try to put someone with a special Ops background, Top Secret Clearance, and a few of their attributes that they wanted at the group level. I was there two years, and then moved over to be a defense counsel at RAF Lakenheath, England. I was there for about a year. I PCS'd from there to Maxwell AFB, AL as an instructor for the JAG school.

COL [REDACTED] The CFSOCC-A HQ, is that a JMD HQ or is that a HQ that's built out of the core of a command?

MAJ: It's kind of in between the two. There are RFFs which are filled which make up a significant portion of the manning up there, as of right now. About a year now of the command being in existence. I fill one of those RFFs position right now. Other billets are however are built from the command itself. Individuals form SOCCENT, for example we have a captain who's in the Intel shop.

COL [REDACTED] Didn't ask that clear, does it come as a single number unit, 7 SF, 3d SF, 10 SF, that's the core, that's the preponderance of people of that HQs up there.

MAJ: Not that I am aware of sir.

COL [REDACTED] When does CJSOTF-A become assigned to CFSOCC? Is it something that just happens in theater, do you employ them while in theater and when they go back they are no longer assigned?

MAJ: It exists only in theater.

COL [REDACTED] Is there any reason why, training that you guys do in support of the deploying CJSOTFs before they get into theater that you are aware of?

MAJ: Not CFSOCC-A as a command.

COL [REDACTED] What we are trying to figure about is who knows what about the technical terms in particular when it comes to the threat. What is PID to you?

MAJ: To me, positive identification as a number of terms in the operational law context. But it's an individual who can confirm that what they are looking at is what they are looking at.

COL [REDACTED] What is hostile intent to you?

MAJ: It is a demonstration by another individual or organizational that they intend to use force imminently.

CO [REDACTED] What is imminent threat using the US definition?

MAJ: Imminent threat is based upon all of the factors at the time the US force currently faces. It can be based on the perceive threat, the actual threat, capability and timeline to react. It does not need to be instantaneous for imminent, but then again based on the certain number of factors.

CO [REDACTED] What is TIC?

MAJ: Troops in contact.

CO [REDACTED] What does that mean to you?

MAJ: When the US Forces is engage by the hostile forces.

CO [REDACTED] What does that mean is it physical, bullets or is it proximity?

MAJ: I would think it was some form of use of force.

CO [REDACTED] As we have this discussion when I say PID it will be identifying a military target that it is now to posed to military risks to your formation, or what our guys are doing on the ground. As we are discussing forget what you can see. What is the role of CFSOCC-A HQ as it relates to tactical operations in this theater that you are aware of?

MAJ: Other than passing over arching guidance, the CJSOTF handles the tactical operations through oversight and involvement of the SOTFs on the ground.

CO [REDACTED] What is the role of the CFSOCC-A HQ for the operational strategic fight?

MAJ: Primarily as a liaison element with both ISAF and USFOR-A providing a general officer's voice to interact with those other higher HQs but also become collocated with those HQs.

CO [REDACTED] What do they battle track upstairs as it relates to ongoing operations to your knowledge?

MAJ: Depending on the level of CONOP it may come through for approval from Gen Reeder for a level 2 or time sensitive target. I know they have the capabilities, but I don't know if that is done all the time. And then we receive daily SITREPs which come back identify the outcomes of mission, detained officials or objects that would be sensitive in a nature or not.

CO [REDACTED] What are the commanders' wake-up criteria, to your knowledge?

MAJ: I don't know off the top of my head.

CO [REDACTED] Are you involved in any type of wake up criteria?

MAJ: No sir.

COL [REDACTED] Are you aware of any battle drills that TOC does?

MAJ: No sir.

COL [REDACTED] Do you know what battle drills are, is there a time when a certain activity occurs that the JOC does a series of things that requires you and the commander to participate with?

MAJ: No nothing requires my physical presence in the JOC.

COL [REDACTED] Is there something that requires your presence on the computer, MIRC chat window or something?

MAJ: No sir.

COL [REDACTED] Who was the approval authorities within CFSOCC-A for dynamic targeting? Specifically is Gen Reeder a part of that to your knowledge?

MAJ: Once the CONOP has been approved, no. If it is in the midst of the operation of ongoing no authority that I aware of.

COL [REDACTED] So when we start doing CD levels, is Gen Reeder in or you a part of that assessment process?

MAJ: No sir.

COL [REDACTED] So when determining patterns of life are you guys participating in that process?

MAJ: No sir, I am not at least, I do not believe the general is.

LTC [REDACTED] Do you review M targets?

MAJ: Those would come through as either a level 2 or TST CONOP. There is an objective, if it is a detention action, if it is individuals we will be going after. Things along those lines. I am not involved in the targeting process.

COL [REDACTED] If there is a five high CDE, do you know what that means?

MAJ: No sir I am not involved in that process.

COL [REDACTED] At the designation of a significant TIC by your JOC and the developing of a target, correction, the subordinate formations have declared a TIC and sometime after before ordinance drop there is an identification of non-combatants, have you ever been notified to come it to provide your tactical guidance?

MAJ: No sir.

COL [REDACTED] To your knowledge has the JOC ever called or executed a set of activities that resulted in having the commander come in and provide his judgment or estimation on a target that had developed that had civilians in it?

MAJ: Not at CFSOCC-A, sir.

COL [REDACTED] What do you do up there? I know what you do in the operational strategic fight. Are there any tactical assessments that you are being asked to participate or help with or is this just singularly Gen Reeder and his staff?

MAJ: The second sir, Gen Reeder and his staff. We identify ourselves as purely operational HQs. We review the CONOPs as they come through. But again my concern for a legal review on those CONOPs is compliance with ROE and tactical directives from ISAF. When the teams infill until they exfill I am not involved in the process.

COL [REDACTED] Here is the concern I have, throughout these operations particularly those that are not one hour operations, designated raids that have a very start stop, it's too fast in developing and we are relying on the judgment of the operation centers to be able to influence it. He has extended operations that span hours. The JAG community is often called and codified at every level below this. That they come in to assist with the analysis of the target the threat the application of the ROE. They are not the decision, but they provide that guidance. I guess I'm just alarmed that you are roped into the process in CFSOCC-A.

MAJ: I am not involved in it at all sir.

COL [REDACTED] At any point in time were you aware of this operation that happened on the 21st?

MAJ: No sir not until the first one was complete.

COL [REDACTED] At any point in time did folks talk to you or the commander to your knowledge about the potential of civilians after the strike on the objective?

MAJ: Yes but it was later in the day on the 21st.

COL [REDACTED] How much later in the day?

MAJ: I first became aware that there had been a strike on three vehicles. At the time I was under the impression that it was against inbound insurgents. It was around 1500 that afternoon.

COL [REDACTED] When was the first time you became aware of the potential that civilians were injured at that strike?

MAJ: It was sometime that evening. I believe it was either our J3 or DCO. That there was concern that the initial report, of the individuals that were wounded, one was a female and one was a child.

COL [REDACTED] Did MAJ [REDACTED] ever talk to you throughout the day about concerns that they were generating around 1400 local?

MAJ: Just phone calls and according to my phone log at 1520 from MAJ [REDACTED] He had said he was concerned that there had been a strike that morning, striking three vehicles, here is all of the communications that we had, they believed they were inbound insurgents, but there may be more to it.

COL [REDACTED] Did he explain what more to it was?

MAJ: No sir.

COL [REDACTED] He never spoke of women, children, adolescents at that time?

MAJ: I do not recall.

LTC [REDACTED] If he had told you that there were reports of women and children MEDEVAC from the sight but they had boots on the ground who said no women and children injured what would you have done with that information, conflicting reports?

MAJ: First thing I would have done was go to the JOC talk to the J333 and find the 3 as well to see if they had anything else to confirm or deny those two reports. Ensure we were following through with the 5 W's with that FIRR from the teams for the possibility of civilian casualties.

LTC [REDACTED] Despite the fact that they had boots on the ground and to them boots on the ground trumped any reports?

MAJ: Presuming we had no reason to question the validity of the MEDEVAC report yes.

COL [REDACTED] Okay that's all we have then. This is an ongoing investigation do not share any information regarding this investigation with anyone until its completion.

Warned and Excused.

STATEMENT OF MAJ (b)(3), (b)(6) TAKEN AT _____ DATED _____

STATEMENT (Continued)

Original statement was taken on 3 March 2010. The statement begins on page 2 and ends on page 6.

The rest of this page was intentionally left blank.

AFFIDAVIT

I, _____, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE _____. 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)

(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

PAGE 7 OF 7 PAGES

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 a CIVCAS incident occurring on 21 Feb 2010

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)

28 FEB 10
Date

RIGHTS WAIVER/QUESTIONING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION New Kabul Compound	2. DATE 15 Mar 10	3. TIME	4. FILE NO.
5. NAME (Last, First, MI) (b)(3), (b)(6)	8. ORGANIZATION OR ADDRESS		
6. SSN	7. GRADE/STATUS CPT		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army USFOR-A and wanted to question me about the following offense(s) of which I am suspected/accused: Making a False Official Statement in violation of Article 107, UCMJ and or False Swearing in violation of Article 134 UCMJ
 Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

- I do not have to answer any question or say anything.
- Anything I say or do can be used as evidence against me in a criminal trial
- (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE
1a. NAME (Type or Print)		
b. ORGANIZATION OR ADDRESS AND PHONE		4. SIGNATURE OF INVESTIGATOR
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR MG Timothy McHale
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR

Section C. Non-waiver

1. I do not want to give up my rights
 I want a lawyer I do not want to be questioned or say anything

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

AT ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

RIGHTS WAIVER/INQUIRY PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

PRIVACY: Title 10, United States Code, Section 3012(g)

PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.

ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.

DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION New Kabul Compound	2. DATE 8 Mar 10	3. TIME	4. FILE NO.
5. NAME (Last, First, MI) (b)(3), (b)(6)	8. ORGANIZATION OR ADDRESS		
6. SSN	7. GRADE/STATUS CPT		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army USFOR-A and wanted to question me about the following offense(s) of which I am suspected/accused: Making a False Official Statement in violation of Article 107, UCMJ and or False Swearing in violation of Article 134 UCMJ
 Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

- I do not have to answer any question or say anything.
- Anything I say or do can be used as evidence against me in a criminal trial.
- (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE
1a. NAME (Type or Print)	b. ORGANIZATION OR ADDRESS AND PHONE	4. SIGNATURE OF INVESTIGATOR <i>MG Tim Mc Hale</i>
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR

Section C. Non-waiver

1. I do not want to give up my rights
 I want a lawyer I do not want to be questioned or say anything

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

(DA FORM 2023) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

ADVISEMENT FOR MILITARY SUSPECTS

The AR 15-6 investigating officer, MG McHale is investigating the Civilian Casualty incident occurring on 21 February 2010. He now suspects you of committing the offense of Making a False Official Statement in violation of Article 107 UCMJ and/or False Swearing in violation of Article 134 UCMJ. Before proceeding with this investigation, I want to advise you of your rights under Article 31 of the Uniform Code of Military Justice. You have the right to remain silent, that is, to say nothing at all. Any statement you do make, either oral or written, may be used against you in a trial by court-martial or in other judicial, nonjudicial or administrative proceedings. You have the right to consult with a lawyer prior to any questioning and to have a lawyer present during this interview. You have the right to military counsel free of charge. In addition to military counsel, you are entitled to civilian counsel of your own choosing at your own expense. You may request a lawyer at any time during this interview. If you decide to answer questions during this interview, you may stop the questioning at any time. Do you understand your rights? Do you want a lawyer? Have you already consulted an attorney about this matter? Are you willing to answer questions? Do you understand that you are free to end this interview at any time?

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) 2010/02/28	3. TIME	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME (b)(3), (b)(6)	6. SSN (b)(6)	7. GRADE/STATUS CAPTAIN	
8. ORGANIZATION OR ADDRESS 2d BATTALION, 1st SPECIAL FORCES GROUP AIRBORNE			

9. I, (b)(3), (b)(6), WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH.
 INITIAL STATEMENT WAS TAKEN 28 FEB 2010.
 ADDITIONAL QUESTIONING OF CPT (b)(3), (b)(6) OCCURED ON 16 MAR 2010 AND IS INCLUDED.

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF <u>88</u> PAGES
-------------	---	---------------------------

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.

(Sworn in and read Privacy Act Notification/Oath/Recording Notification provided by LTC (b)(3), (b)(6))

MG: CPT (b)(3), (b)(6) could you tell me about your Army career. When did you enter the Army?

CPT (b)(3), (b)(6) entered the Army 16 Jun 01; I was commissioned through ROTC, Cal Polly Technical Institute. I went to FT Benning for Infantry Officer Basic course, concluding in 2001. Then I PCS'd to Howenfelt, Germany I was with the 1 BTN Forward Infantry Regiment as OP4 for a year or so sir.

MG: After that what did you do? Can you tell us when you went to the Q course and right into Special Ops?

CPT (b)(3), (b)(6) went to Special Forces assessment selection in 2005, following being successfully selected. I went to Ft Benning for the infantry Command Career Course that was summer to winter. In 2006 I started Special Forces Qualification Course in Ft Bragg, NC; I graduated 2007, in July. I had already PCS'd to Ft Lewis, Washington, there I was assigned to 2d BTN, 1 SFG, and immediately went to an operation detachment that was already deployed to Iraq, sir. So I did 24 months as the detachment commander for ODA (b)(3), (b)(6) right before they turned into 1235. Following 24 months I came up to battalion as the BTN Assistant 3, and have been that job ever since sir.

MG: Your position rate is now what?

CPT (b)(3), (b)(6) Sir I am the daytime battle captain for the SOTF OPS center.

MG: What's your unit now, since when?

CPT (b)(3), (b)(6) Officially sir, late 2006, because I actually had to do language school for eight months. I went back to FT Bragg finished the qualification course, and then got assigned to 2d BTN, I believe it was 2007.

MG: And what language is that?

CPT (b)(3), (b)(6) Sir I speak Toalog, its Philippino sir.

MG: When did you deploy here?

CPT (b)(3), (b)(6) Sir I deployed in early January 2010.

MG: You have been assigned as the day battle captain?

CPT (b)(3), (b)(6) That is correct sir.

MG: Describe your duties and responsible as the day battle captain.

CPT (b)(3), (b)(6) Sir I am responsible for battle tracking all the ODAs and platoons that are conducting operations. I believe we have between 24 and 25 elements that continually conduct daytime and nighttime operations. At any one time, we probably have 8 to 10 operations occurring simultaneously with help

from a MSG, who is my operations sergeant. We are able to track based on what the teams are reporting up. At what point they start the operation, how far along from the operation they are, when they reach their objective, so on and so forth. I am also assisted by a SGM who is a Special Forces E9. He sits on one side of me and the MSG sits on the other side of me. Together with the MAJ of the S3, OPSCENT director, I give the information as accurate as possible, to both SGM and both OPSCENT; they ultimately give that information up to the OPSCENT commander, LTC (b)(3), (b)(6). From time to time the colonel or the SGM will come in, directly to my desk and ask me what is currently happening. I have a very good idea, if not the best, of what is occurring on the field at one time.

MG: Who is the MAJ S3 that you work with?

CPT (b)(3), (b)(6) Sir his name is MAJ (b)(3), (b)(6)

MG: And is he there most of the time when you are there?

CPT (b)(3), (b)(6) His office is adjacent to the OPSCENT floor sir.

MG: Can you tell me about the process of CCIR, commander's critical information requirements, PIRs, FIRs, how do you do your reporting?

CPT (b)(3), (b)(6) We have a matrix that is on my desk that clearly lists all the CCIR, FIR, and PIR. If any of those events occur there is a coordinated timeline that must be followed in the event one of those events is reported. In the event of a situation like this, the reporting clearly states what is expected us, of our lower unit to report to us, and us taking that information, screening it, and then passing it forward to our higher, CJSOTF sir.

MG: What was your training going into this assignment of where you are at not as a day battle captain?

CPT (b)(3), (b)(6) Sir it was September of 2009. Our battalion deployed to JRTC in order to conduct pre-deployment, pre-mission training sir. I was assigned as day battle captain. That's where I got my training sir.

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

CPT (b)(3), (b)(6) Positive identification sir, based on the aircraft or GFC commander sir?

CO (b)(3), (b)(6) What does it mean to you?

CPT (b)(3), (b)(6) It means positively identifying a target or hostile threat. Has been confirmed by one or two more sources, the ISR, fixed wing, via SIGINT.

CO (b)(3), (b)(6) What does imminent threat mean to you?

CPT (b)(3), (b)(6) When a unit is under duress, potentially to be engaged by units that would out number it sir or a potential threat, i.e. a suicide VBIED that was going to come into enemy position that would be under imminent threat if it broke through check points sir.

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

CPT (b)(3), (b)(6) Sir, to me it means that element is moving towards friendly forces and intends to cause damage, loss of life, limb and basically harm our forces.

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

CPT (b)(3), (b)(6) Troops in contact sir, to me that means the element is receiving affective fire. Via small airs, RPG, mortars.

COL (b)(3), (b)(6) Okay I heard a term today that I haven't heard in a little while. AIRTEC, what does that mean to you?

CPT (b)(3), (b)(6) Sir and AIRTEC can be declared by a force that feels that they are not necessarily under immediately or a hostile threat is not immediately towards them. But an AIRTEC will allow us to move fixed wing or rotary wing assets to support them sir.

COL (b)(3), (b)(6) Do you have an idea what that means to the air crew that's having to respond to the declaration of AIRTEC?

CPT (b)(3), (b)(6) Yes it do sir.

MG: What is that?

CPT (b)(3), (b)(6) I believe that if the crew is spun up or if it moves over that location, their impression must be that these forces are under hostile or immediate threat or need to directly support those forces.

COL (b)(3), (b)(6) So on the activities of the air crew in your assessment does an accelerated manner or at the same rate and pace they would do if this was a deliberate preplanned time?

CPT (b)(3), (b)(6) Sir based on this particular situation I think the aircrew was a little be more deliberate. They had been off station my understanding...

COL (b)(3), (b)(6) No, from the declaration of AIRTEC, the activities of the air crew, when they are told AIRTEC from when they are on the ground to get to the site, are their actions, did they take an accelerated approach to their actions or a normal deliberate step to their actions?

CPT (b)(3), (b)(6) Sir I would concur that they take an accelerated approach to the mid, situation at hand sir.

COL (b)(3), (b)(6) Okay let's go ahead and nail this thing down now to the event that we can. What did you, did you know anything about what had occurred prior to coming on to assume duties as the day's battle captain?

CPT (b)(3), (b)(6) Sir I did not.

COL (b)(3), (b)(6) Okay. Walk me through the shift change brief or whatever occurred when you came on to do the battle captain duties.

CPT (b)(3), (b)(6) Yes sir. We have shift change every day at 0745. That's the night time handing over to the daytime and again at 1945 in the evenings. Daytime passes to the evening. So when I arrived probably before 0745 the night battle captain, nighttime operations NCO as well as the FCO all were fixated on our, the big screen watching our predator feed. They immediately brought me and our daytime crew on what was occurring and what they and seen and tried to give us the best possible picture of what the team was encountering the SIGNIF that was being collected what they had observed based on the ISR feed and let us know exactly what was happening best as possible sir.

COL (b)(3), (b)(6) Could you characterize for me that discussion, and I may ask some questions as you are characterizing that just for clarification.

CPT (b)(3), (b)(6) Yes sir, obviously I walked in we have multiple one eye projectors that have maps of the current situation which are updated by our CPOC manager we have another one eyed projector that has the ISR feed on one side. The battle captain and NCO explained this is the situation we have been monitoring for several hours now. Obviously they told me what team was on the ground and I knew it because of the operations was going on from the day prior. And they walked me through everything that they knew up until that time sir.

COL (b)(3), (b)(6) Okay now, narrowing it down can you express to me, what that discussion was about the activities that the team had experienced and the current situation as you were getting in the TOC

CPT (b)(3), (b)(6) Yes sir. The battle captain informed me of the location of the ODA or the ground force was. He informed me about the numerous assault reports that had been reported up which talked about SIGNIF that was being collected about enemy forces mustering preparing to attack and what the ISR had been tracking. Vehicles moving about, how vehicles had collected people, had people then walking behind them. They discussed weapons that had been identified by the ISR.

COL (b)(3), (b)(6) Okay, keep it separate for me. I don't have the same common operational picture you do. You just described the people walking around on the objective site of Kohd. Now you telling me, you think about weapons identification in the convoy. If you just keep those two things separate as you express this thing. Go ahead and use that map. That's good. What you understood at the objective site were, the ODA commander was and then what you understood in terms of the convoy. And let me have the pointer and I will point to make sure we are tracking. This is what we believe the ODA commander was operating in and around, pointing at the objective site Kohd, K-O-H-D, and then here is the path that we understand the vehicle convoy took until it was engaged at this point. So if you would, when you came on you seen that, that, and that point. Just walk us through what you understood at handoff. Then we will go beyond handoff after you describe this.

CPT (b)(3), (b)(6) My understanding was ODA, ground force with our partnered forces were the location right there that's shown on OP1 and OP2. They had reported anywhere from a dozen to 15 assault reports; size, activity, location, time of enemy forces and essentially I was coming through the SIGNIF I believe the team had a collection asset with them via the SATA or the ISR feed was about to collect SIGNIFs sir. Everything that I read and was passed off by the battle captain was that enemy forces, were alerted of the ground force their location that enemy forces were going to muster, gather weapons, equipment,

and move towards friendly forces on those two OPs right there and engage them. Based on my understanding of this particular location in Aruzan. And this team in particular, this is a hot bed, for certain activity there is very little light space or frame of movement. Very rarely does this ODA when they leave the fire base, do they not encounter IED, do they not encounter mortars, do they not encounter some kind of enemy contact. So when the daytime battle captain, as I was, when the nighttime battle captain explained this to me it did not, it was not a shadow of a doubt that, what he was showing me was indeed accurate. It was very plain to me okay enemy forces know our guys are there, they are waiting to daylight. They are going to come together and they are going to attack our guys. Because that is what we have observed since we have been here sir. And that particular team has been in that particular location this is their second time there. So they have a very good idea of situational awareness. And they know the terrain, and they know the enemy. Getting back to the map right here, as we see on this, as we see down here, I believe when I entered the OPS cell and was getting handover, these vehicles were down in this, alright excuse me sir, were somewhere in this location. What we did observe through the ISR with these vehicles moving down and it looked like they were actually moving towards friendly forces.

LTC [REDACTED] When you say in this location, is that where the map shows a town or something that begins with an M, Mandrah?

CPT [REDACTED] You know sir; I am not necessarily familiar with this map. I am familiar with map dog so I was looking at which is a Google image. As clearly as I can make it we have forces moving down, and that move down towards the element. It had stopped several times; more forces joined some forces left.

LTC [REDACTED] Was actually trying to get, so when they are typing this up to have some reference points. Where you were pointing was on the map where the word begins with an M, looks like two words that begin with an M Mandrah, Manda is that correct?

CPT [REDACTED] Yes sir that is correct. Getting back the ISR that was stationed overhead had been tracking this convoy that had started out, as my understanding a group of people a group of people had expanded. Vehicles had arrived; the ISR and the nightshift had been tracking this for several hours. So when they explained to me, we are watching up here on the feed these guys are moving down here to our guys the guys on the ground have a tremendous amount of SIGNIF collection, they reported several times. They feel that these forces are moving in to attack. I said okay I understand that. That was probably 0745, 0750 that was probably in that amount of time. Furthermore, as we set back and continue to observe we saw the vehicles, I mean, they came and they look like they were moving towards our forces, they seem to back off and move back towards this location.

COL [REDACTED] The handoff that you got from the night battle captain, just trying to narrow this down. Did the night battle captain, how did he characterize the threat to you along with the fires officer and fires airman, the Airman [unintelligible] I think that is his name. How was that characterized to you at this point when they handed off to you?

CPT (b)(3), (b)(6) My understanding sir was that these forces were moving in to engage our friendly forces and that we had, a C130 was on station, we had some kind of fast cast on station I believe and that CCA had been called and was currently off station.

COL (b)(3), (b)(6) What was your understanding of the composition of these threat forces?

CPT (b)(3), (b)(6) My understanding is that they were in three vehicles with there was anywhere from 30 to as many as 50 individuals.

COL (b)(3), (b)(6) What was current understanding of any civilians, women, children in the convoy?

CPT (b)(3), (b)(6) I have been told the ISR manager said early on when we first started observing these there had been one or two kids sighted in or around the SUVs. I don't recall if women were being used or that were reported up.

COL (b)(3), (b)(6) When they handed off to you did they re-characterize the composition of what was in the convoy?

CPT (b)(3), (b)(6) Yes sir. They said its approximately 30 to 50 personnel, three vehicles possibly one or two kids were seen earlier; we haven't seen them for some time.

COL (b)(3), (b)(6) Okay as you watch this, matter fact before we get to that, lets back up a bit. When you did the handoff, did you review any of the chat that you review the logs, what are the procedures you do when you come on?

CPT (b)(3), (b)(6) Roger sir, actually the first thing I reviewed was the dozen or so SOF reports that the team had passed up and that the night time battle captain had reported and logged into both the Merck chat window and we have a running log on one of our monitors, battle captains activities sir.

COL (b)(3), (b)(6) What were some of the SOF reports that jumped out at you as you review them?

CPT (b)(3), (b)(6) I would have to say, enemy forces aware of friendly forces positions; enemy forces commanders requesting additional help from outlying villages in the areas; and enemy forces were planning on attacking friendly forces at daybreak or at first flight.

COL (b)(3), (b)(6) Did you see any SOF referencing AIRTEC?

CPT (b)(3), (b)(6) No I did not sir that I can recall.

COL (b)(3), (b)(6) Was there anything in the log that triggered you that should have actually keyed in at battle drill?

CPT (b)(3), (b)(6) Not at that time sir I think we were still allowing the situation to develop.

COL (b)(3), (b)(6) Okay when were you aware reviewing the log, that a PID was declared?

CPT (b)(3), (b)(6) I do not recall.

COL (b)(3), (b)(6) A PID had been declared, does an associated battle drill get executed?

CPT (b)(3), (b)(6) Yes I believe so sir.

COL (b)(3), (b)(6) If a TIC had been declared, does an associated battle drill get executed?

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

COL (b)(3), (b)(6) Who was involved in those battle drills?

CPT (b)(3), (b)(6) Battle drills start with the OPS NCO based on the information reported by the team on the ground. I don't declare TIC no one in the OPS declares TIC. TIC is declared by forces on the ground. At no time had I heard time, nor was TIC reported. Once I initiate the TIC battle drill we wake or call, if he is not there, we go to OPSCEN, SGM.OPSCEN director, the XO, CSM, CJSOTF commander.

COL (b)(3), (b)(6) Is the lawyer involved in the battle drill?

CPT (b)(3), (b)(6) Yes he is depending on the situation sir.

COL (b)(3), (b)(6) What does that mean?

CPT (b)(3), (b)(6) If the situation is CIVCAS we have definitely the JAG come out.

COL (b)(3), (b)(6) Okay I am confused with that, what do you mean CIVCAS?

CPT (b)(3), (b)(6) In the event that there is civilian casualties as a result from kinetic strike, the JAG would be summoned to advise SOTF commanders.

COL (b)(3), (b)(6) Let me back up a little bit. On the declaration of TIC, or the declaration of PID you indicated that there is a battle drill that gets executed. My question is during that battle drill, is the lawyer brought into the process to your knowledge

CPT (b)(3), (b)(6) No it is not sir. And I think I probably see where you are leading this. And that's part of why the JAG was called to come onto the OPCEN floor.

COL (b)(3), (b)(6) We'll come to that later, I'm looking strictly for the procedures of the battle drills on both the declaration of PID is what you correctly identify as threat force and the declaration of TIC which now empowers the ground force commander with a lot assistance that he would not normally have it his disposal.

CPT (b)(3), (b)(6) Yes.

COL (b)(3), (b)(6) Picking up you said you saw the vehicles change directions. What I would like you to characterize what your actions were about when they were and at the end of this I would like you to characterize the assessment of the threat as they continued west. But do that at the end.

CPT (b)(3), (b)(6) Yes sir, understand. Getting back, to the vehicle convoy that was maneuvering down towards the southwest. We were at that point continuing to observe the vehicles that looked like they were moving towards the ground force essentially back up and then start moving down southwest. I

reviewed, I opened up the folder that we have there reviewed the tactical directive based on, at what point if those forces needed to could they call potentially call fire from any of those assets that were on station. And actually I believe those assets were pushed off and waved of the ground force commander as he was trying to pull enemy forces in. This situation I had never particularly seen before and I sent a runner to ask the JAG to come on into the OPS and help us to review what we are seeing and to put it into his own eyes. Hey in this particular situation, what is, you know based on the tactical directive, what we are seeing here, what can and cannot be done in this particular situation. I want to say he entered about 0810 and basically we just re-reviewed the situation and we looked at the tactical directive and he gave some comments and advise.

CO [(b)(3), (b)(6)] What was the comments and advise?

CPT [(b)(3), (b)(6)] He said this convoy appeared to be hostile forces and they appeared to have hostile intent. Based on the SOF reports reported by the ground commander, based on the SIGNIF that we were receiving both from the ground and from the ISR.

CO [(b)(3), (b)(6)] Was there any reference to imminent threat?

CPT [(b)(3), (b)(6)] Sir I don't recall if there was an imminent threat at this particular time but essentially I was waiting for the, you know, I'd come into the situation it had been monitored for several hours. The nighttime crew had not done the wake up procedure to wake up the SGM, to wake up the MAJ, so my actions, was I was going to wait until 0830 and I was going to go through the notification procedures because at this time I was not under the impression and I did not feel that the ground force commander would use any kind of close air support whatsoever, to engage these vehicles.

CO [(b)(3), (b)(6)] Why did you make that assessment?

CPT [(b)(3), (b)(6)] Based on the information that I had and looking at the vehicles move away it did not appear that were moving towards the grounds forces, I mean they were moving away. But we did try to, we tried to figure out what could these guy be doing, could they possibly be moving south coming down and hooking up from the south to link up with enemy forces here to do an attack on friendly forces from the south. All these kind of scenarios were playing in our minds. Really we were just observing these vehicles. I would not have thought and you know, we did not perceive the ground force using, rotary wing or fixed wings casts on these vehicles.

CO [(b)(3), (b)(6)] When did you notify, or did you notify the battalion commander?

CPT [(b)(3), (b)(6)] Yes sir.

CO [(b)(3), (b)(6)] And why?

CPT [(b)(3), (b)(6)] Approximately 0820, about 10 minutes after the JAG had come on the floor. CJSTF commander placed a phone call to our OPSCEN asking for the SOTF commander. I said sir; he is not in the OPS center at this time. He said no, you will go get the SOTF commander and he will be on this pone. I said roger sir, I understand. I myself went to the SOTF commander's room, woke him up; explained to him the

situation. As we were walking to the OPS center explained to him exactly what was happening, and he got on the phone with the SOTF commander.

COL (b)(3), (b)(6) Can you characterize your end of the phone conversation, your understanding?

CPT (b)(3), (b)(6) My understanding was that CJSOTF commander call to enquire about the situation that was developing and why these forces were still maneuvering around.

COL (b)(3), (b)(6) What does that mean, which forces?

CPT (b)(3), (b)(6) The convoy of forces, strikers?

COL (b)(3), (b)(6) need the exact language.

CPT (b)(3), (b)(6) They convoy with three vehicles with 30 to 40.

COL (b)(3), (b)(6) What do you mean by maneuvering around?

CPT (b)(3), (b)(6) Sir my understanding the CJSOTF commander called the SOTF commander to find out why these vehicles weren't being engaged. Now I don't know if that is a hundred percent accurate. Now the CJSOTF commander has called maybe three times, it's never taking a message, it's always go grab the commander right now.

COL (b)(3), (b)(6) So, I want to make sure I characterize this before I ask the next question. You wake up the commander you gave the commander a brief on the way to the phone. What was your brief to the commander on the way to the phone?

CPT (b)(3), (b)(6) said sir we have obviously the team (b)(1)1.4a they are in their location right now. They have been getting SIGNIF about imminent attack. They have enemy forces commanders reporting to muster forces they are going to attack at dawn; they know where their locations are at. There has been an ISR feed for approximately four to six hours and it has been reporting a convoy of personnel from the north down to the south.

COL (b)(3), (b)(6) What was the commander's response?

CPT (b)(3), (b)(6) The commander absorbed what I was saying and he picked up the phone sir.

COL (b)(3), (b)(6) When you were characterized, you said you had interpreted that the question was why haven't you attacked them yet what was the battalion's response to the CJSOTF commander?

CPT (b)(3), (b)(6) The battalion commander was obviously coming up to speed with what was happening at that moment, trying to answer his commander and get an idea of what's happening in a very short amount of minutes. He had a short conversation with him, hung up the phone. Immediately or near real time we have a mission secret phone and an adjacent unit called us saying we are observing the same situation here. We have been observing it, we have been watching, we pose that we want to send our aerial vehicle interdiction element up to Taran Kaht and we can go and conduct an aerial vehicle interdiction rather than a dynamic strike.

COL (b)(3), (b)(6) And what is an aerial vehicle interdiction different options that they have that you are aware of for their employment?

CPT (b)(3), (b)(6) Sir my understanding of an aerial vehicle interdiction or AVI, you (b)(1), 1.4(a)

(b)(1), 1.4(a)

stop or halt that threat sr.

COL (b)(3), (b)(6) Who made that recommended course of action?

CPT (b)(3), (b)(6) That course of action, the phone call was from TF South, so when LTC (b)(3), (b)(6) got the phone he understood okay these guys are going to offer an AVI packet. Course of action will be an AVI followed by kinetic based on what these guys are doing.

COL (b)(3), (b)(6) Okay did that make since to you, in your two years of a battle captain?

CPT (b)(3), (b)(6) It did sir, it did make since to use escalation of force procedures in this particular scenario that seemed like the best bet. Because we could have used escalation of force procedures to stop that threat we could also have boots on the ground to conduct BDA which we would not been able to have with what we were seeing.

COL (b)(3), (b)(6) About what time was this when LTC (b)(3), (b)(6) got off the phone with TF South, specify his course of action?

CPT (b)(3), (b)(6) want to say it was about 0830 sir. I mean he was basically going from CFSOTF commander TF South, CJSOTF commander, and TF South commander called back. And I don't call who he was on the phone with, I might have been on the phone with mission secret. But as we were watching the predator feed the first vehicle exploded. And everyone in the OPSCEN was immediately shocked. We thought those guys hit an IED we thought those guys hit a land mine. You know, it wasn't passed up to us by the ground force, hey we are looking to use our CCA to interdict these vehicles at the time.

COL (b)(3), (b)(6) I'm asking this timeline we are just trying to figure out the activities that occurred. LTC (b)(3), (b)(6) gets off the phone to determine the course of action. The strike isn't until about 15 minutes later 0830 is the time, that's why, it's not perfect. Can you register when that was and how much time about when COL (b)(3), (b)(6) said code 1 is what we are going to do to strike?

CPT (b)(3), (b)(6) It seemed about 3 to 5 minutes sir.

COL (b)(3), (b)(6) What was the actions of the TOC and the commander to get that information to the subordinate commander.

CPT (b)(3), (b)(6) He was on the phone. Course of action 1 and things exploded, I mean essentially that's what happened.

CO (b)(3), (b)(6) understand that, if you could just articulate one more time why there wasn't an immediate phone call, what was your assessment at that point?

CPT (b)(3), (b)(6) mean it did not seem to be an imminent threat it was still a hostile threat. I mean, I hate to say that things happened so fast I couldn't put a minute on it. I mean, I'm talking with the commander, he's on the phone the other guy calls me, I'm on the phone we look up on the screen and we see vehicles exploding. Right after the commander said okay we are going to do an AVI.

CO (b)(3), (b)(6) We'll go back to the battle drill in just a second. You indicated earlier a couple of minutes ago, when you said a couple of notification procedures weren't down.

CPT (b)(3), (b)(6) That's correct sir. Based on the situation I was seeing I did not notify my operations SGM, and I did not notify my operations director.

CO (b)(3), (b)(6) Okay before that, the team that was on before you. Does it seem that the notification procedures were consistent with what should have happened?

CPT (b)(3), (b)(6) Honestly sir I think they could have alerted the operations director so he could come in and address the situation prior to me coming in. I think that, you know they were there watching several hours, why they chose not to notify the SGM or the OPSCEN director I don't know. I got there about 0730 that morning. At that point we were just observing. We hadn't heard TIC we hadn't heard we are going to use CAS or CCA to interdict this convoy.

CO (b)(3), (b)(6) Do you have a procedure that the day comes on to replace the night there is a review of the logs of all the logs, by the battle officer, the battle NCO, battle captain, battle NCO?

CPT (b)(3), (b)(6) Yes and no sir. For situations that are ongoing like this obviously we are going to review all the logs, it is station to station so to speak. I did not go back to the fires to review the fires log.

CO (b)(3), (b)(6) Just to clarify then, when TIC is declared, when PID is declared, is there or is there not suppose to be a battle drill performed?

CPT (b)(3), (b)(6) That is correct sir when a TIC is declared.

CO (b)(3), (b)(6) Is there, correction, any CCIR to include host nation information requirements, that may or may not be your level, but are there are information requirements that require the notification of the chain of command when there are potential children, women or civilians in a targeted site?

CPT (b)(3), (b)(6) Following this strike?

CO (b)(3), (b)(6) Before when the identification of strike force has been determined and there is a potential for civilians, women and children in that formation in that targeted site, is there an information requirement of the notification of the leadership to your knowledge?

CPT (b)(3), (b)(6) Not to my knowledge.

CO (b)(3), (b)(6) What was the follow-on discussion you had with TF South that the TOC had with TF South after the initial decision to execute code 1?

CPT (b)(3), (b)(6) Essentially as we discussed, commander discussed, course of action one AVI saw the vehicles explode and shortly thereafter, TF South not sure if we are going to conduct the hit. I hate to say that I had a meeting I had to go to, and majority and the chunk of the morning when I am not on the floor because I have a required meeting I have to be at every day. However based on the fact that the battalion commander witnessed it, he is standing there, you know I am not, not sure exactly.

CO (b)(3), (b)(6) This is your opinion with two years as a battle captain. Who is on shift you during the day, I just want to hear that again. I know I'm asking the same questions but who's on shift on days, you and who else in the leadership positions?

CPT (b)(3), (b)(6) Sir I have a MSG, who's an operations sergeant I have an E9 SGM, going from right to left.

CO (b)(3), (b)(6) You can stop there; go to night shift, who's on night shift there?

CPT (b)(3), (b)(6) We have a captain, we have an E7 SFC, and the SGM is on call sir.

CO (b)(3), (b)(6) Okay. What is the shift times of the ISR managers, when do they change shifts?

CPT (b)(3), (b)(6) Sir they change out from midnight to 12 o'clock noon.

CO (b)(3), (b)(6) And what's the purpose of that?

CPT (b)(3), (b)(6) That's the times that they have arranged. There's a LT on the day shift and an SrA on midnight swing shift sir.

CO (b)(3), (b)(6) Part of the transition handoff, the shift change, does the ISR manager brief at the shift change whoever it is?

CPT (b)(3), (b)(6) Yes it does.

CO (b)(3), (b)(6) Did you guys do a formal shift change this day?

CPT (b)(3), (b)(6) Yes we did.

CO (b)(3), (b)(6) Did the ISR manager, the young airman brief?

CPT (b)(3), (b)(6) I believe he did sir.

CO (b)(3), (b)(6) Can you characterize what he shared with the group?

CPT (b)(3), (b)(6) I would characterize him to say we have been observing the situation for several hours, earlier on there was two young people walking around the SUV we have seen some weapons and were keeping a track.

COL (b)(3), (b)(6) Okay did he characterize the threat, where the threat became a greater threat or lesser of threat in his characterization of what you guys were tracking?

CPT (b)(3), (b)(6) No sir, I think the threat, in his estimation was probably the same that he had been watching the same.

COL (b)(3), (b)(6) Did the fires officer ever sit down with you and share with you his characterization of the threat?

CPT (b)(3), (b)(6) Yes he did sir.

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

CPT (b)(3), (b)(6) We need to secure this based on what he had seen. He said these guys are moving. They came into the objective area backed up for whatever reason now they are moving down towards this location. At this point we observed. I said well hey that makes sense, because these guys are no longer moving in. There is pretty good distance between the ground force and this convoy.

COL (b)(3), (b)(6) What was your understanding of the where the OH58's were at this time? When you took this shift and 15 to 20 minutes into it?

CPT (b)(3), (b)(6) My understanding was that the OH58's were off station refueling. They had been on station early AC130 and I believe there was some fixed wings as well. But the enemy had reported had been collected that the enemy was aware that the systems were on station. So my understanding was that the ground force commander wanted to wave them off to allow the enemy to come in sir.

COL (b)(3), (b)(6) Okay I think the last question that I have before I hand it to (b)(3), (b)(6) I just want you to re-characterize something for me. When you were done talking with eh legal guy. What was your assessment of what you were being told by him?

CPT (b)(3), (b)(6) My assessment was that this was a hostile threat but the hostile threat did not display an immediate threat.

COL (b)(3), (b)(6) Let me ask you, now I am asking you how did you internalize that what did you think that met?

CPT (b)(3), (b)(6) I thought we should continue to observe continue to monitor what this convoy personnel was doing, but in my estimation that was not the time to use a kinetic strike.

COL (b)(3), (b)(6) I know what yours was, I'm asking you what you interpreted from what the legal guy was telling you, what you read from the words he was telling you?

CPT (b)(3), (b)(6) That this was a hostile threat but at the time it was not necessarily an immediate threat?

LTC (b)(3), (b)(6) Do you recall if the attorney used the word imminent threat?

CPT (b)(3), (b)(6) Yes sir. I understand hostile threat, immediate, and imminent. Is imminent and immediate two different things sir?

LTC (b)(3), (b)(6) Did you, was your interpretation that the lawyer was telling you that it was legal for you to strike the target?

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

LTC (b)(3), (b)(6) That it was not legal?

CPT (b)(3), (b)(6) Obviously as the battle captain I don't have the authority to launch any kind of dynamic kinetic strike sir, but the situation that he explained, this convoy, based on everything, that these were hostile forces but they weren't displaying an immediate threat to the forces on the ground.

COL (b)(3), (b)(6) Do you have the authority to stop?

CPT (b)(3), (b)(6) The authority that I would have is to contact the element on the ground and ask them what they plan to do, go through the kinetic strike criteria.

MG: Did you contact them on the ground?

CPT (b)(3), (b)(6) Sir I did not sir.

LTC (b)(3), (b)(6) What would the ground force commander have to determine in order to order a strike?

CPT (b)(3), (b)(6) He would have to determine if he were about to be overrun about to be overwhelmed by a significant force.

LTC (b)(3), (b)(6) So in your explanation the only time he can order a strike is if he about to be overwhelmed?

CPT (b)(3), (b)(6) Well looking at the tactical directive, if he is fixed, cannot move, whether or not he can contact BDA, and potential CIVCAS.

LTC (b)(3), (b)(6) And there is no other circumstances where he can order that it be destroyed?

CPT (b)(3), (b)(6) As far as this situation sir?

LTC (b)(3), (b)(6) Any target, does he have certain things he has to determine about the target in order for him in his authority to destroy it.

CPT (b)(3), (b)(6) If the forces, if he is being engaged in forces or if hostile forces are displaying an immediate threat to him. At the ground force command level I do not think that he has the authority to call it a preparatory strike sir. I think that's signed off at a much higher level than the ground force commander sir.

LTC (b)(3), (b)(6) But you said that there is a difference between an immediate threat and an imminent threat?

CPT (b)(3), (b)(6) Yes sir I believe so sir.

LTC (b)(3), (b)(6) Does he have the authority to destroy a target that is not an immediate threat but is an imminent threat?

CPT (b)(3), (b)(6) believe so sir, however in this particular situation the hostile forces were not displaying an immediate threat.

LTC (b)(3), (b)(6) Which one is closer in time an immediate threat or imminent threat?

CPT (b)(3), (b)(6) The immediate threat sir.

LTC (b)(3), (b)(6) The immediate threat is closer in time.

CPT (b)(3), (b)(6) Correct.

LTC (b)(3), (b)(6) So it could destroy the threat if it is an immediate threat?

CPT (b)(3), (b)(6) Correct.

LTC (b)(3), (b)(6) So if it is an imminent threat, so it's a little further away in time, can it still destroy that target?

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

LTC (b)(3), (b)(6) He can an imminent threat?

CPT (b)(3), (b)(6) I believe so sir.

LTC (b)(3), (b)(6) And do you know whether or not the attorney said it was an imminent threat?

CPT (b)(3), (b)(6) I don't recall sir, he said it was a hostile threat. That it was not displaying the immediate characteristic.

LTC (b)(3), (b)(6) Do you believe that he was telling you that it would be unlawful for those forces to destroy those forces at that time?

CPT (b)(3), (b)(6) No I do not.

COL (b)(3), (b)(6) Okay let's go back to just a couple questions not a whole lot here. You talked about in your handover, of some mention of earlier reports of children. Did you hear any of the discussion of the terms adolescents?

CPT (b)(3), (b)(6) I believe so sir, that would of have been the term most likely used.

COL (b)(3), (b)(6) And who did you hear use that term?

CPT (b)(3), (b)(6) I don't really recall. It might have been from the battle captain, OPS NCO. I heard the term and I think what we thought was adolescents could be armed, they could be fighters.

COL (b)(3), (b)(6) Define adolescents to me from your perspective.

CPT (b)(3), (b)(6) Probably a young man that has reached puberty sir.

COL (b)(3), (b)(6) Give me an age.

CPT (b)(3), (b)(6) Say 12 to 14.

CO (b)(3), (b)(6) 12 to 14, would it be considered a combatant?

CPT (b)(3), (b)(6) If he had a weapon was shooting obviously he'd be a combatant.

CO (b)(3), (b)(6) Okay so 12-14 and adolescent with a weapon is considered a combatant. What about without a weapon?

CPT (b)(3), (b)(6) No he is not sir.

CO (b)(3), (b)(6) You talked about a series of phone calls. Do you know if the battalion commander had a phone prior to the engagement with CPT (b)(3), (b)(6)

CPT (b)(3), (b)(6) No I do not know, in fact I highly doubt it. Based on the fact that CPT (b)(3), (b)(6) does not have any kind of SPIR, 3VI, he does have an Iridium phone. But at no time did he call the battalion commander. If he called anybody it would be the OPSCEN sir.

CO (b)(3), (b)(6) And did he in fact call anybody there that was in the OPSCEN through the Iridium?

CPT (b)(3), (b)(6) I believe so, in the OPSCEN.

CO (b)(3), (b)(6) But you did not talk to him?

CPT (b)(3), (b)(6) I did not sir.

CO (b)(3), (b)(6) Did anybody on your shift talk to him via the Iridium?

CPT (b)(3), (b)(6) During my day long shift, yes sir.

CO (b)(3), (b)(6) Prior to the engagement.

CPT (b)(3), (b)(6) I did not personally talk to CPT (b)(3), (b)(6) prior to the engagement. I did talk to him for several hours after. It was typical for us to get a hold of him on SAT voice. The best way for us to get a hold of him was on the Iridium phone sir.

CO (b)(3), (b)(6) Was there a time prior to the engagement when someone there in the office informed CPT (b)(3), (b)(6) that you planned an AVI.

CPT (b)(3), (b)(6) Sir there was not time. Short answer is no sir, and no there was not time based on when the CJSOTF commander. So we are getting into a course of action one and AVI and quite literally we started seeing vehicles explode.

CO (b)(3), (b)(6) At what point were you aware that there were potential casualties in the incident?

CPT (b)(3), (b)(6) I believe it was the CCA or ISR that reported that brightly colored clothes people leaving from some of ht vehicles and at that point we felt it was probably accurately.

CO (b)(3), (b)(6) With CCA lets clarify, you are talking about the convoy orders. And the actions of the command post, at that time, once they were alerted potentially females wearing brightly colored clothing actions within the command post, at that point now we have potential CIVCAS. What actions were there taken based on that word?

CPT (b)(3), (b)(6) We notified our chain of command sir, but I believe that the report that we received, was that initial BDA was 15-18 EKIA and some women and children who were unhurt.

CO (b)(3), (b)(6) So because they were unhurt, it didn't go up as CIVCAS, did you guys not report that up?

CPT (b)(3), (b)(6) No we did report that up to CJSOTF.

CO (b)(3), (b)(6) About what time?

CPT (b)(3), (b)(6) I would say immediately following the strike, or soon after sir. Any time air to ground mission is used, we have a thirty minute window to inform CJSOTF of those munitions being used. The who, what, when, where why and any kind of media.

CO (b)(3), (b)(6) How did you submit that report?

CPT (b)(3), (b)(6) I believe I did that as a SOF report sir.

CO (b)(3), (b)(6) Via what means?

CPT (b)(3), (b)(6) Via Microsoft Outlook. You could probably call talk to my counterpart CJSOTF.

CO (b)(3), (b)(6) Who submitted the first impression report?

CPT (b)(3), (b)(6) I believe I helped generate it sir. And then pass it through my OPSCEN director and that got sent up after that sir. First impression report was not being requested by CJSOTF, but we went ahead and started generating it anyway.

CO (b)(3), (b)(6) Does it normally have to be requested by higher headquarters when you have a potential CIVCAS.

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

CO (b)(3), (b)(6) You were on station as the battle captain. Talk me through how we conduct a SSC or assign who's going to do it, when they were going to do it support?

CPT (b)(3), (b)(6) Up at fire base Tinsley, there is actually two ODA that is (b)(1)1.4a and there is (b)(1)1.4a which is actually from m battalion. At some point during all this, they called saying we can jump on an aircraft right now and do BDA however, I had already been informed by TF South that they wanted to do BDA through this course of action AVI. So I had told that detachment commander you guys can stand down, you guys have a mission you are planning on doing anyway which was combat reconnaissance just south of this area. You go ahead with your course of action here; another element is going to conduct and AVI and BDA. Once the other element said we are not going to do the AVI we are not going to do boots on the

STATEMENT OF CAPT (b)(3), (b)(6) DATED 28 FEBRUARY 2010

ground, I believe it was a few hours before elements from (b)(1)1.4a split were actually taken to the strike scene.

CO (b)(3), (b)(6) Why the delay between strike and exploitation?

CPT (b)(3), (b)(6) Quite honestly sir I had removed myself from the OPSCEN for 59 minutes. I had to go about 10 am, sir I was out for a weekly meeting. The meeting starts at 1015 I get back shortly after eleven sir. I think at that point or shortly after. Elements from (b)(1)1.4a were starting to move or elements were moving towards to pick up ground commander in order to take him to the strike sight.

CO (b)(3), (b)(6) And his report of the strike sight?

CPT (b)(3), (b)(6) Initially we had poor COMS with our communications from the SAT Voice. It was difficult to reach him; we tried calling him on the Iridium, to no avail. We tried calling him we tried calling the team sergeant. We tried both and wasn't able to get them. The only report and I believe it was they called in a boots on the ground at approximately 1230 hours, was MEDEVAC and seven Mams. We tried both, wasn't able to get them. We kept trying to get back to them, we kept trying to call them, it was impossible. They actually called MEDEVAC through the SOTF they called MEDEVAC up to the AOB. So we weren't aware anyone was getting MEDEVAC until that message essentially came to us. That birds were going to conduct MEDVACs.

CO (b)(3), (b)(6) When did your Command Post notice that women and children were being MEDEVAC?

CPT (b)(3), (b)(6) Officially it was later in the day sir, and that was based on reporting that TF (b)(1)1.4a, (b)(1)1 had transported women and kids off the MEDEVAC sight. And we had continually tried to get a hold of the ground force commander via the satellite voice and the Iridium to confirm that. We weren't able to get any confirmation of that. Notified the AOB [unintelligible] this is the situation, as we understand it please send someone over the Dutch FST. The information that we had was that there was six Mam at the American FST and the report was cloudy as far as who was at the Dutch FST. AOB sent their senior medic over there and got turned away. So the only way we found out that information was when our battalion surgeon started calling the Dutch FST and originally the first few times the phone system didn't work. Our phones were down for whatever reason; the first time he got through I think it was like 1600, 1630 I don't recall sir.

MG: Couple questions here, your shift change is as 0745 and you did a shift change with CPT (b)(3), (b)(6)

CPT (b)(3), (b)(6) That's correct.

MG: And you did a shift change with CPT (b)(3), (b)(6)

CPT (b)(3), (b)(6) That is correct

MG: Does the shift change start and 0745 or do you get there before and you do a shift change and then take over, how does that work?

STATEMENT OF CAPT (b)(3), (b)(6) DATED 28 FEBRUARY 2010

CPT (b)(3), (b)(6) try to arrive a little bit early at 0745, on our line we have a slide that's everyone's position in the OPSCEN, and then we start with our company LNOs. So he will get brief, this is what's happening today and this is what's important. And we will go through all the company ABO. And our electronics warfare officer, our ISR, the OPS Officer and then the battle caption.

MG: So on this day, you get there a little early to do battle handover.

CPT (b)(3), (b)(6) Yes sr.

MG: So what time did you get there that day?

CPT (b)(3), (b)(6) I think I got there about 0740.

MG: 0740, so about 5 minutes before shift change.

CPT (b)(3), (b)(6) Right sir, I was not aware that this situation was unfolding in this way.

MG: And so you are going on shift change with CPT (b)(3), (b)(6) how long did he do that with you, talk with you, and go through shift change with you and gave you all that information you just gave us.

CPT (b)(3), (b)(6) I believe it was about 15 to 20 minutes. Pardon me sir, our shift change it only takes about 15 minutes on a regular day. So he spent a little bit more time trying to explain everything to me and I told him, hey I understand.

MG: So it came around 0800, 0805 you did the shift change with CPT (b)(3), (b)(6) ?

CPT (b)(3), (b)(6) That is correct.

MG: When did the call come from CJSOTF COL (b)(3), (b)(6)

CPT (b)(3), (b)(6) I want to say it was about 0820 sir.

MG: So it was after you did the shift change?

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

MG: So the call came in about 0820. And then there was a lot flurry, you briefed us how you went to get the battalion commander, you briefed him on the walk, he came took the call, made some assessments, and then there was a decision for, to take course of action. One to get the AVI started, correct.

CPT (b)(3), (b)(6) Correct.

MG: Okay. Did battalion commander make a call then on the Iridium phone to call (b)(1), (b)(4a), (b)(1) to make a call to the ground commander?

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

MG: After all that flurry with the CJSOTF commander, COL (b)(3), (b)(6) all that was going on to make this change, and concerning that, why would we not make the next phone call to ground commander to find out what's going on tell him what we're doing working that. Can you explain that to me so I can understand?

CPT (b)(3), (b)(6) Alright sir, I think following the strike we tried to get a hold of the ground and weren't able to one CPT (b)(3), (b)(6) reason of the other?

MG: Not following the strike before the strike. Because the conversations on the phone ended before the strike. From your testimony a short time, was there ever a call from the battalion commander to the ground force commander because of the impending change of he was going to overrule what the course of action warranted.

CPT (b)(3), (b)(6) No sir there was not a call made to the ground forces.

MG: Why not?

CPT (b)(3), (b)(6) I would have been responsible for the, or myself or the OPS NCO for immediately passing that information. I was on the phone with another element, trying to explain to them about where they were at and what was happening.

MG: What other element?

CPT (b)(3), (b)(6) We had TF South and we also had that other ODB from FOB (b)(3), (b)(6) 1.4a, (b)(1) 1.4a. And quite honestly in the middle of, I mean it was moments after commander said this is going to be course of action one, we saw the first vehicle engaged.

MG: Now that would been about 0820?

CPT (b)(3), (b)(6) No I think that would have been more about 0830 sir. Because the commander had been talking with the CJSOTF commander for a couple minutes. He gets on the phone with the TF South, talks to them for a couple minutes. He calls back COL (b)(3), (b)(6) TF South calls me back. I did not make a call based on what the commander said to the ground force commander.

MG: Did LTC (b)(3), (b)(6) tell you to make a call to the ground force commander to get a hold of them? Did anyone express an interest to get a hold of the ground force commander?

CPT (b)(3), (b)(6) I don't recall it.

MG: You don't recall, or it didn't happen?

CPT (b)(3), (b)(6) I don't recall the commander asking me to do that sir. If he would have told me to do that I would have stopped and did that. But based on what we had been observing, at no time did we think the ground force was going to use the OH58 to engage the target at that time.

MG: Just so I understand, based on what you were observing based on what was going on in your TOC. The CJSOTF commander called down and was definitely concerned. What were the concerns expressed,

clearly after the battalion commander hung the phone there was some kind of dialog there. Can you share with us what that dialog was in order to make these course of actions decisions something was impending, I would guess. Am I wrong in that?

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

MG: So tell me what was going on.

CBT (b)(3), (b)(6) would say that the battalion commander got off the phone with TF South called back to the CJSTOF commander to say we are going to do course of action AVI. I have spoke with the other element 1232, because they were calling me, I had TF South calling me to explain that this is another guy, he the one that ready to do the AVI I honestly believe I was on the phone as I saw the vehicle explode sir.

CO (b)(3), (b)(6) All that makes since to me in terms of timing. A matter through all your activities you articulated really make good logical since. I would like to just you know, first find out, then ask your thoughts, guide me through, what caused you to say I need to seek a lawyer now?

CBT (b)(3), (b)(6) Honestly I wanted to hear someone who was extremely smart with the tactical directive and use of CAS in a situation I hadn't seen before.

CO (b)(3), (b)(6) Was there anything from when you took the duty before the battle captain proceeded handed the duty off to you changed the concept.

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

CO (b)(3), (b)(6) Is there anything that precluded the battle captain any activity or action that perceived you to have asked that same question an hour earlier, thirty minutes earlier.

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

LTC (b)(3), (b)(6) After the strike, walk me through the reporting. What was the very first report that you send about possible CIVCAS?

CBT (b)(3), (b)(6) I believe I sent up a SOF report with what was being reported up to us. Through the KAIA through the JAG elements which is the JTAC for the team.

LTC (b)(3), (b)(6) And the SOF report went to what headquarters?

CBT (b)(3), (b)(6) I went to the CJSTOF.

LTC (b)(3), (b)(6) What exactly did you send, I mean information did you send about CIVCAS?

CBT (b)(3), (b)(6) The initial BDA was 15-16 EKIA and then three women unharmed, something to that effect.

LTC (b)(3), (b)(6) When was that?

CBT (b)(3), (b)(6) I don't recall the times, it would have been soon after the strike happened.

LTC (b)(3), (b)(6) Did you get a report that KAIA was spotted with what they believed to be women on the objective?

CPT (b)(3), (b)(6) Yes.

LTC (b)(3), (b)(6) Did you report that information?

CPT (b)(3), (b)(6) I believe I conversation with my counterparts CJSOTF regarding it sir.

LTC (b)(3), (b)(6) Did you send the SALT report?

CPT (b)(3), (b)(6) I believe I did sir.

LTC (b)(3), (b)(6) Do you recall what information you passed at that time?

CPT (b)(3), (b)(6) I would have reported multiple EKIA vehicles destroyed, women kids uninjured.

LTC (b)(3), (b)(6) So at that time your assumption was the only women and children that were in the convoy were spotted by the helicopters.

CPT (b)(3), (b)(6) Based on the fact that they were fleeing from the vehicles which they were riding in, it didn't seem unlikely that they, or amazing that there were people who survived that. If you watch the tape you see the first vehicle then the third vehicles and then second vehicle.

LTC (b)(3), (b)(6) And the report that you sent up that said three women unharmed. Was that before or after the team arrived on the sight.

CPT (b)(3), (b)(6) Probably before sir.

LTC (b)(3), (b)(6) Where did the information that there was three women all unharmed come from?

CPT (b)(3), (b)(6) It would have to be from KAIA sir. And I also believed that the ISR was spotting people walking around, and said potential women there on the strike sight.

LTC (b)(3), (b)(6) After the Kiowas flew over, did you get a second report saying that there were women unharmed?

CPT (b)(3), (b)(6) Yes sir, I think that was the report that I got saying that it was the report that I got there was 15-18 EKIA three women three kids unharmed.

LTC (b)(3), (b)(6) Do you remember what the source of that report was?

CPT (b)(3), (b)(6) I believe that was KAIA.

LTC (b)(3), (b)(6) And you sent that information by SALT report?

CPT (b)(3), (b)(6) Correct sir.

LTC (b)(3), (b)(6) When is the next time you send a report?

CPT (b)(3), (b)(6) A few hours later I had to go to this meeting, and I know that's why there is a lapse in when I was sending reports and when I was not sending reports.

LTC (b)(3), (b)(6) Would you have sent another report prior to receiving some information from the ground force that moved in for SSC?

CPT (b)(3), (b)(6) Right, I think I had returned to the OPSCEN by the time the ground force had returned or actually got to the strike sight. And then once the ground force was conducting BDA I was sending information that I was getting. And it was minimal because we didn't have very good communications with them.

LTC (b)(3), (b)(6) Do you recall what the reports were that you got from the ground force?

CPT (b)(3), (b)(6) Sir the information that we could collectively here, that it was MEDEVAC, there were seven Mams being MEDEVAC. It didn't make since to us. Because we didn't understand where twelve WIA showed up where we understand seven. And we did not understand at that moment where women and children had been MEDEVAC.

LTC (b)(3), (b)(6) So in your estimation the confusion initially with whether or not women and children were injured would come from poor COMS?

CPT (b)(3), (b)(6) Well we had a report that there was three women and three children uninjured following the strike. There was a lapse in time between that report which I believe to be given by the KAIA warrior, when the ODA ground force and arrived on the strike sight. And once we had the ground force on the ground, communication was poor. It wasn't happening. The report that we had heard that there was a MEDEVAC, seven Mams. We tried repetitively to get a hold of them on the SAT voice, we tried repetitively to get a hold on them on the Iridium. The Iridium would cut off, we didn't have communications.

LTC (b)(3), (b)(6) When did you headquarters find out in fact that there was injured women and children?

CPT (b)(3), (b)(6) We didn't know that until later in the afternoon sir.

LTC (b)(3), (b)(6) Do you recall approximate what time?

CPT (b)(3), (b)(6) It was after 1500 sir. Because we had heard reports from TF Pegasus that they had essentially their commander notified my commander in the afternoon saying hey we have MEDEVAC some women and kids of the objective. So my commander asked me he said hey you need to run that through ground and try to find out. So we continued to try to get a hold of ground force and were unable to. So that information wounded women and children that were at the Dutch FST that was not known to us for several hours.

LTC (b)(3), (b)(6) Had any of you all found out because of the MEDEVAC report got back through their chain and then came over to you?

CPT (b)(3), (b)(6) That is correct sir. And we had been pushing to the company that Ripley, hey please find out about this we don't have a clear picture of it. We are only tracking the seven male WIA were MEDEVAC.

We don't understand where 12 WIA had come from, we don't understand where women or kids had been in the back.

LTC (b)(3), (b)(6) When you say company you said, ODB?

CPT (b)(3), (b)(6) That's the ODB or AOB, sir correct.

LTC (b)(3), (b)(6) When did you next report up, when did you first report up to CJSOTF, that there were in fact women and children injured?

CPT (b)(3), (b)(6) I don't have a time but I can recall sir I remember having a conversation with my counterpart CJSOTF, he requested a storyboard based on the strike. I said hey, the CJSOTF can generate it you guys can generate it. My conversation with him, I said you know we need to make sure that this is accurate and put that there were women and children potentially there if not there. The guidance that I was receiving was that you need to leave that off for right now.

LTC (b)(3), (b)(6) Guidance from whom?

CPT (b)(3), (b)(6) Other than the CJSOTF JOC Chief sir?

LTC (b)(3), (b)(6) Who's that?

CPT (b)(3), (b)(6) MAJ (b)(3), (b)(6).

LTC (b)(3), (b)(6) He told you to leave off, at this point, is this prior to you learning that there is in fact women and children in the hospital. So prior to that you wanted to put out some information about women and children being present at the strike sight?

CPT (b)(3), (b)(6) Right, correct sir.

LTC (b)(3), (b)(6) And you were instructed to leave that information off?

CPT (b)(3), (b)(6) That was the conversation I was directed, the conversation I had with my counterpart at CJSOTF, sir.

LTC (b)(3), (b)(6) And did you relay that direction to your battalion commander?

CPT (b)(3), (b)(6) No I did not sir.

LTC (b)(3), (b)(6) Did you relay that information to anyone?

CPT (b)(3), (b)(6) I notified my OPSCEN director that's it, my OP3, MAJ (b)(3), (b)(6)

MG: What did MAJ (b)(3), (b)(6) say?

CPT (b)(3), (b)(6) Honestly at the time that I told him, he went and told the battalion commander immediately, because CJSOTF produced a storyboard that had graphic depictions taken from the ISRD. At that moment in time we didn't have any photos, I have yet to see photos of the actual EDA from the ground

force. CJSOTF was calling us saying they need a storyboard. We'll produce one for you. They produced one sometime later, sent it down to me and said what you think of this. Review it real quick and get back with me quickly. I review it, made some corrections and read, sent it back. Explained to the JOC chief this thing really isn't that correct because its women and kids also. And I'm assuming that he's being directed to tell me the information, hey don't have women and kids on the storyboard at this time.

LTC (b)(3), (b)(6) Do you know what their reaction was?

CPT (b)(3), (b)(6) Once I gave that information to MAJ (b)(3), (b)(6), he was concerned and went and told the battalion commander.

LTC (b)(3), (b)(6) What happened to the storyboard, did they update it or did it go up as is?

CPT (b)(3), (b)(6) The version that I had made corrections to, I am not sure where that went to. It's probably at CFSOC. The version that was sent to me probably went to CFSOC, I don't think they ever got the one I corrected, I don't know.

LTC (b)(3), (b)(6) You don't think that they ever added the women and children?

CPT (b)(3), (b)(6) Correct, sir.

MG: We need to get a copy of those storyboards.

CPT (b)(3), (b)(6) Yes.

MG: Okay, did the one you made corrections on, you said, did you just fax it to them, or PDF it, or how does that what?

CPT (b)(3), (b)(6) All the information is an email message with attachments sir.

MG: So we can get a copy of that?

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

MG: When you sit down at your computer, okay.

LTC (b)(3), (b)(6) After the CJSOTF JOC director told you not to include the women, did you actually speak with COL (b)(3), (b)(6) not immediately following that sir.

CPT (b)(3), (b)(6) Yes sir I did.

LTC (b)(3), (b)(6) What was that conversation?

CPT (b)(3), (b)(6) said sir this is what happened, and he said okay I understand, and I believe he talked to COL (b)(3), (b)(6) about it.

LTC (b)(3), (b)(6) What times was that about?

STATEMENT OF CAPT (b)(3), (b)(6) DATED 28 FEBRUARY 2010

CPT (b)(3), (b)(6) That was a little after 1800 sir.

COL (b)(3), (b)(6) Did he explain why, he MAJ (b)(3), (b)(6) or is it simply a direct order.

CPT (b)(3), (b)(6) He said to me sir, at this point report with what you have. Leave the women and kids off of there at this time.

COL (b)(3), (b)(6) Did he explain why did he rationalize or was it simple and direct?

MAJ: And his name is MAJ?

CPT (b)(3), (b)(6) MAJ (b)(3), (b)(6) I sent the version that had corrections to it and I don't know what he did with that. And I don't know if somebody else changed it or what sir.

COL (b)(3), (b)(6) Can MG McHale get a copy of that email you sent up with the corrections?

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

LTJG (b)(3), (b)(6) Your corrections, what were they and how were they related to CIVCAS?

CPT (b)(3), (b)(6) Some of the timelines that were depicted on there, you know people running from the vehicles prior to the strike, and I change it. People were running from the vehicle following the second strike, the WIA and I am fairly certain I put women and kids on there.

MG: When you did the change. You get in there about 0740, 15-20 minutes of shift change, how much longer, did CPT (b)(3), (b)(6) stick around. Was he around when the discussion, with Iridium phone with CJSOTF commander and your battalion commander, was CPT (b)(3), (b)(6) around in that area when you guys were talking?

CPT (b)(3), (b)(6) No he was not sir.

MG: So then there was a battle handoff shortly after the call started on the Iridium phone. And that started when again about?

CPT (b)(3), (b)(6) That would have a call from about 0820 from the CJSOTF commander on our I think it was the 3DI, I'm not sure.

MG: That's when he told you to go get your battalion commander.

CPT (b)(3), (b)(6) Correct. He actually informed the OPS sergeant. COL (b)(3), (b)(6) go get COL (b)(3), (b)(6) and the OPS sergeant said to me to go the COL..

MG: And that was about 0820?

CPT (b)(3), (b)(6) Correct sir.

MG: Okay, so then would that be logged in any of the login anywhere call from the CJSOTF?

CPT (b)(3), (b)(6) believe it's in our OPS log, and I actually believe I logged in the battalion commanders now on the floor.

MG: And what times was that at then, the battalion commander is on the floor, you went and got him, he's on the floor?

CPT (b)(3), (b)(6) A couple minutes, 0823,4.

MG: Okay alright, what transpired, how long did it transpire, those couple of phones calls, you said it all ended around 0830, roughly?

0830, 0835 sir, I mean we had COL (b)(3), (b)(6) talk with LTC (b)(3), (b)(6) for a couple of minutes. We had TF South calling talking to COL (b)(3), (b)(6) COL (b)(3), (b)(6) calls the CJSTF commander. ODA (b)(1)1.4a calls me. TF South calls me and I believe I was on the phone with TF South as I remember other people, saying they just saw the same thing I did. So that would have been TF South.

MG: What I am trying to figure out here, I need your help. If that all ended about 0830 when the battalion commander got off the phone, and working through it all and made a decision on the course of action one, do you see AVI engagements was about 18 minutes later.

CPT (b)(3), (b)(6) Okay. This is the exact time the battalion commander was in the TOC at 0829 in the morning, he's delayed about ten minutes so that reduces the time.

MG: Okay got it.

COL (b)(3), (b)(6) So in fact when the battalion commander came in to the TOC according to this, the strike was about 15, 16, 17, minutes of all the activities that it might just have communicated.

CPT (b)(3), (b)(6) Apologize, my timeline to memory.

MG: Just want to make sure what we got, is what's happening. Okay, let me ask you this, once the splash went down, the engagement, what did you think? As an operator you saw it happening you are on the phone you are coordinating, what were your thoughts?

CPT (b)(3), (b)(6) I was thinking we just interdicted enemy fighters who were moving towards ground forces in my unit who was planning to attack us. That was my honest feeling sir.

MG: You were working on the phone to do the operation a different way, that we weren't in immediately or imminent threat. If I heard right before, so I'm trying to square that?

CPT (b)(3), (b)(6) Right sir, honestly the first explosion that went off we thought it was a mine we thought it was and IED. We didn't understand that the (b)(1)1.4a, (b)(1)1.4c element had engaged. After we started watching the additional vehicles and what not. My feelings was that those guys were on their way to do harm to people in my unit. And after the report, it might not have shown that. After boots on the ground, it didn't show that.

CPT (b)(3), (b)(6) You explained to us earlier that you no longer felt this was an immediate threat, or imminent threat. You told us that you concurred with the alternate approach.

CPT (b)(3), (b)(6) That's correct.

CPT (b)(3), (b)(6) So what changed from when the strike happens that you now go from that line of thought to 'good hit right time right place,' what happened?

CPT (b)(3), (b)(6) I don't necessarily say right time, right place, sir. I guess the excitement of seeing vehicles explode and thinking that they are enemy. Obviously an AVI would have been the better course of action to run with, but. I don't know it's one of those army things to see your enemy get destroyed on TV.

LTC (b)(3), (b)(6) Did you consider calling for MEDEVAC once you knew that there were potentially women on site?

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

LTC (b)(3), (b)(6) Any reason why not?

CPT (b)(3), (b)(6) No sir not that I can think of.

MG: CPT (b)(3), (b)(6) have you read the commander ISAF tactical directive?

CPT (b)(3), (b)(6) Yes I have sir, several times sir.

MG: Let me draw your attention to commander's intent in Gen McChrystal's directive. Paragraph F, paragraph f, foxtrot, I expect leaders at all levels to scrutinize and limit the use of force like close air support against residential compounds and other locations likely to produce civilian casualties in accordance with guidance that follows. It's my sense that tactical commanders rely heavily on CAS during engagements when small unit fire and maneuver or withdrawal will better accomplish the strategic and operational goals of this coalition, while achieving the tactical goal of engaging the enemy and protecting the force. Commanders must weigh the gain of using CAS against costs of civilian casualties, which in the long run makes mission success more difficult and turn the Afghan people against us. How do you understand that?

CPT (b)(3), (b)(6) I understand that based on the fact that we are in a counterinsurgency sir, and we are protect the population. And by over using CAS and by over using rotary wing it is basically going to turn the population away from us. And we have to ensure at every level as it says right there, use restraint. And follow the are you fixed, can you maneuver, can you conduct BDA, and what's the potential of CIVCAS. That's my understanding sir.

MG: Okay we are moving on a course of action to probably follow within compliance of this directive with the AVI correct?

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

MG: But that didn't happen.

CPT [REDACTED] Not.

MG: Why?

CPT [REDACTED] The amount of time from when that course of action approved by the SOTF commander to when we actually saw the strike occur there was no time, there was not adequate time to inform the ground commander that the was the course of action decided by the CJSOTF commander. And I understand sir, I have phones ringing left and right, talking to people, trying to explain things, you know we look up on the screen and it happened. I guess in the six hours or so precluding to this I didn't think everything would come to headway in those few minutes.

MG: Is there a requirement when the battle captain takes over, when you are shift changing, you give us a listing of all that you do, is there a requirement to contact any of the ground commanders on the ground, the TIC, or any others that you know to get an update from them to see you can help them, where they are going with the fight, anything like that?

CPT [REDACTED] Not at shift change sir.

MG: Okay alright, so then, we are trying to learn from this. I have some other guidance from Gen McChrystal, what would we do to improve on this situation so we don't have CIVCAS that would impact on our strategically operational mission?

CPT [REDACTED] What recommendations do I have sir?

MG: Yes.

CPT [REDACTED] Well, I understand that our forces are essentially doing very dangerous things. I have worked with foreign forces before and in situations like this. I think removing the ground force commander's ability to utilize fixed wing and close air support would be incorrect. I know the few times I was able to rely on that, in the situation I was in and, if I wasn't able to do that the outcome of that situation I was in might have been different potentially. I think that probably we just need to really understand the kind of environment we are in is obviously not to kill off insurgents. We are here to ultimately give these people a chance they haven't had before; at least they haven't had in 30 years. That is to kind of do that special forces things to based on the population working with them, by, through, and with them to stand up for themselves so ultimately we can all leave and go do something else. I really don't have any other recommendations.

MG. Okay. What I have to tell you now is that you cannot discuss this testimony with anyone else. You are subject to recall if we have to do some re-attacks or questions as go through this. Is there anything else you'd like to tell this board.

CPT [REDACTED] Nothing sir.

MG: Okay that will be all.

CPT (b)(3), (b)(6) Thank you sir.

LTC (b)(3), (b)(6) CPT (b)(3), (b)(6) hang tight at the bottom of the stairs.

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

CPT (b)(3), (b)(6) questioned again on 16 March 2010

LTC (b)(3), (b)(6) CPT (b)(3), (b)(6) the last time we spoke we informed you that MG McHale suspected you of making either making a false official statement or false swearing in violation of the Uniform Code of Military Justice do you recall that?

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

LTC (b)(3), (b)(6) At that time you indicated that you did not want to answer questions and that you wished for a lawyer do you recall that?

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

LTC (b)(3), (b)(6) understand that you have had a chance to speak with a lawyer is that correct?

CPT (b)(3), (b)(6) That is correct.

LTC (b)(3), (b)(6) Who is the Lawyer?

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

LTC (b)(3), (b)(6) CPT (b)(3), (b)(6) would you identify yourself for the record please?

CPT (b)(3), (b)(6) My name is CPT (b)(3), (b)(6), Trial Defense Attorney, Bagram Airfield.

LTC (b)(3), (b)(6) understand that you are willing to answer questions with your attorney present?

CPT (b)(3), (b)(6) That is correct.

LTC (b)(3), (b)(6) I am going to hand you a rights warning certificate. CPT (b)(3), (b)(6) if you would help him fill that out the appropriate spaces. He does want a lawyer. (Rights Waiver is signed) Would you please rise. Raise your right hand. Do you swear or affirm that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth so help you God?

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

LTC (b)(3), (b)(6) Have a seat. Sir, do you want to say anything before I get started?

MG: Yes. CPT (b)(3), (b)(6) just to go over what we talked before with the CIVCAS incident that happened on the 21st of February. You gave testimony before, and we have a lot of different testimonies from other interested parties and there was some conflict so we want to get down to the bottom of it and understand where the disconnect is. The guidance from General McChrystal is that we are trying to

seek the truth, trying to find out what happened, and we are trying to develop recommendations to be able to train on and understand to try and prevent something like this from happening again. That is where we are in the process right now. Because your testimony and the testimony of others did not match up, we are trying to find out what the truth is and what happened and try to understand. With that, we have a series of questions here to try to help clarify the incongruencies between multiple testimonies. With that I will turn it over to LTC (b)(3), (b)(6)

LTC (b)(3), (b)(6) CPT (b)(3), (b)(6) I want to start you on when you first came on that morning. When you arrived at the TOC was the TIC light on?

CPT (b)(3), (b)(6) No it was not.

LTC (b)(3), (b)(6) If someone declares an AIRTIC should the TIC light have been on?

CPT (b)(3), (b)(6) Yes it should have.

LTC (b)(3), (b)(6) Can you walk me through how the shift change occurs? Is this a single briefing for the entire crew or do you talk individually with your replacement and the FIRESO talks to his, how does that work?

CPT (b)(3), (b)(6) It works both ways. We start out with... essentially everyone on the floor has time allotted to them starting with the Company LNOS, the CPOF manager, the FIRES, the Electronic Warfare, the ISR manager, and the Weather NCO. Each one will have an opportunity to say "hey this is what happened over the last 12 hours, this is what is going to happen the next 24 hours, these are the items of significance today". For example; if they had a MEDIVAC; if there was a troops in contact incident; personnel being moved about the battle space; any kind of cargo or CDS drop; or anything pertinent to that company, we start off with those four individuals. Then we move to the CPOF Manager. Essentially the CPOF Manager runs the map where information that comes in from the ground will be populated and updated so we know where the teams are at, we know if they are giving a report of enemy locations we will populate the map with that as well. Furthermore, the FIRES will come on saying that these are the assets that are on station now, these are the assets that will be on later today, and for an operation later on tonight we have this asset locked in. For the Electronic Warfare Officer the same thing if we have an asset that is on station or an asset will be on station he will give those timelines. Same thing with the ISR, if we ISR on station, where it is currently, how long it is going to remain on station. Weather talks about any kinds of impact to operations over the next 24, 48, or 72 hours. MEDIVAC status is that going to change from green to amber to red at any time. Once we finish that the operations NCO, daytime is an E8 and night time is an E7 currently, they will highlight basically the last 12 hours and the next 24 hours; give out any kind of information that is pertinent to the group. Then it will be followed by the BTL CPT. Again any information that was pertinent for the group. Then the Operations SGM will... might be administrative information for the group. Following all of that, that takes about 15 minutes depending on the scopes of the operations that are going on. Following that, one on one conversation to ensure that we don't leave any kind of stone unturned. If night shift is working on a project, if night shift is due a report, they will inform myself, the Operations NCO, or the SGM, hey these are the reports that are due and these are the due times so that we have a good feeling

and understand looking at the board that in the next three hours I should get this report, in the next four hours I should get this storyboard.

LTC (b)(3), (b)(6) You mentioned a CPOF manager. What is that?

CPT (b)(3), (b)(6) It is the Command Post of the Future. Essentially it is a computer station that is full of maps and icons that we can populate with current friendly and enemy locations.

LTC (b)(3), (b)(6) Ok, let's go to the morning of the 21st. When you came on shift can you recall what the briefing that you received concerning these vehicles was?

CPT (b)(3), (b)(6) I will do my best. I came on shift at approximately 0740. We went through the shift change procedure.

MG: Both from a group sense which you just explained, talking so that everyone is hearing what is going on, and then in an individual sense?

CPT (b)(3), (b)(6) Yes. Obviously the focus for the past four, five, or six hours for the night shift was the element with (b)(1)1.4a on the ground and as best as possible everything had been observed and witnessed over that nighttime shift.

MG: What were some of the key things that were observed in that nighttime shift that were brought out on the shift change?

CPT (b)(3), (b)(6) Obviously the multiple SALT reports given by the team that indicated that they had (b)(1)1.4c indicated enemy forces were aware of the friendly location, indicating that they were trying to gather forces together in order to attack friendly forces. Then obviously the vehicles, I believe it started out with just a group of people that slowly formed bigger and bigger and it was reported 30 to 40 individuals in three vehicles. I believe the ISR said that they had positively identified weapons within this group of people. This seemed to go hand in hand with the reporting that the team was sending up to the SOTF and then we were passing up to the CJSOTF. I believe that, that was the focus of what the night shift was telling the day shift.

LTC (b)(3), (b)(6) Do you recall if there was a FIRES Officer or NCO on that night?

CPT (b)(3), (b)(6) That particular night it was a FIRES Officer.

LTC (b)(3), (b)(6) Who was that?

CPT (b)(3), (b)(6) Captain (b)(3), (b)(6) he is a 13A I believe which is a Field Artillery Officer.

LTC (b)(3), (b)(6) Do you recall if he specifically told you anything about the vehicles?

CPT (b)(3), (b)(6) I do. He was talking to everybody during the shift change and then he talked to me as well. Basically he said that we had been tracking this for hours and his recommendation was to continue to observe where these vehicles are going.

LTC (b)(3), (b)(6) Did he give you any indication as to whether or not how you would strike the vehicles if you decided to?

CPT (b)(3), (b)(6) I do not recall. I do not believe so. My understanding at the time was that the team had an AC-130 on station, they had... this is previous to me arriving for shift. They had AC-130 on station early, period of darkness. They had KIOWA Warriors earlier, and the GFC had pushed those assets away to draw the enemy forces in.

LTC (b)(3), (b)(6) Where were the KIOWA Warriors at the time of the shift change?

CPT (b)(3), (b)(6) I believe that they were off station and refueling.

LTC (b)(3), (b)(6) Do you recall the ISR manager or if anyone else from the J2X briefed about the vehicles?

CPT (b)(3), (b)(6) The ISR Manager would have, I don't believe we had... We do have a SFC, who is an MI NCO, but I do not recall the words that he had that morning that would have been different than we are monitoring these vehicles, these are the things that we have seen. The ISR manager, an Air Force Senior Airman, would have given the information that we have been tracking these vehicles, the operator has PID weapons, potential adolescent, potential women somewhere in that mix.

LTC (b)(3), (b)(6) That came from the ISR Manager?

CPT (b)(3), (b)(6) I believe so.

LTC (b)(3), (b)(6) Do you recall what was said specifically about children or adolescents?

CPT (b)(3), (b)(6) Just that there were possibly one or two adolescents somewhere around the convoy early on when they started tracking the convoy.

LTC (b)(3), (b)(6) To you how old is an adolescent?

CPT (b)(3), (b)(6) 12, 13, or 14. I guess someone who hasn't reached puberty.

LTC (b)(3), (b)(6) When you heard adolescents did you think that it meant they were noncombatants or that they were all combatants?

CPT (b)(3), (b)(6) I really couldn't give you a straight answer on that because the current Taliban TTP is to use local nationals you know use civilians as shields, and if there was a large group of people it wouldn't be a stretch of the imagination to think that there might have been one or two adolescents with them.

LTC (b)(3), (b)(6) Would have thought the adolescents were part of the group of combatants or that they may have been civilians as there human shields or for whatever reason in the vehicles, or did you even think about them?

CPT (b)(3), (b)(6) I don't think I thought through that.

LTC (b)(3), (b)(6) Was any mention of the use of human shields.

CPT (b)(3), (b)(6) No that I can recall specifically to this situation.

LTC (b)(3), (b)(6) As you take over, what is your assessment as to what you think the vehicles are doing and what actions you are planning to take regarding those vehicles?

CPT (b)(3), (b)(6) My assessment was that these vehicles were likely enemy combatants that were answering the call of an AAF or Taliban Commander, basically trying to generate forces in order to attack friendly forces that were on the ground. My actions and what... Obviously the FIRESO has got some experience so I listen to him and I listen to the guys on the ground on night shift. At that point we were observing and we saw the vehicles move south. We saw the vehicles moving towards friendly forces. Then we saw the vehicles and we saw them stop several times. People had gotten out and prayed, possibly indicating these are MUJAHADIN taking their last prayer prior to engaging forces. Once those vehicles really turned around... we are observing all of this and the situation I would say was complex and you know I wanted to go seek the SOTF JAG just for additional insight on following the tactical directive and making sure that we knew everything that we could.

LTC (b)(3), (b)(6) Do you recall... it is a complex situation... you said that you have a SFC that is an intelligence person?

CPT (b)(3), (b)(6) Correct.

LTC (b)(3), (b)(6) Did the intelligence section provide any sort of analysis as to what actions they believed the enemy to be taking in this situation?

CPT (b)(3), (b)(6) I do not recall if he mentioned anything like that.

LTC (b)(3), (b)(6) So you asked for the JAG to come in but not the Commander, can you explain why you did that?

CPT (b)(3), (b)(6) There is kind of a wake up criteria. I was going to get the JAG and I was going to wait until approximately 0830 to ensure that the SGM and the OPCENT Director were informed of the situation.

MG: Who is the OPCENT Director?

CPT (b)(3), (b)(6) MAJ (b)(3), (b)(6).

MG: Why did you get the JAG? Why were you setting this all up? You just talked about the wake up criteria. Can you pull that all together why those events kind of went about like that?

CPT (b)(3), (b)(6) I felt that going to get the JAG would help us.

MG: Help us with what?

CPT (b)(3), (b)(6) Just kind of clarifying the situation from a legal stand point. To try and clarify what these vehicles potentially were or were not doing so that we could better advise the GFC the next time we were in contact with the best possible information from a legal point. I hate to say it but I didn't get the SGM because it was a Sunday morning and our SGM, OPCENT Director, XO, and BC usually stay up very late and I guess it was poor judgment on my part to have waited to get the SGM and OPCENT DIR.

LTC (b)(3), (b)(6) You mentioned wake up criteria. Do you think the wake up criteria had been triggered at some point previous to you coming on shift?

CPT (b)(3), (b)(6) I believe that the nighttime BTL CPT should have informed at a minimum the SGM who would have then informed the OPCENT Director. That is based on hindsight is 20/20 being able to review this for the last three weeks so that we don't have something like this happen again. Looking at all the information it seemed that there was a potential for a looming attack looming enemy forces combining and focusing on friendly forces. I feel that he probably should have gotten the SGM and the S3 involved so we could have came up with courses of actions if necessary or given some more operational advice to the GFC.

MG: What is the Battalion Commanders CCIR?

CPT (b)(3), (b)(6) Those are when AAF forces attack friendly forces, immediate threat, and I cannot recall them all right now.

MG: What is the wake up criteria for LTC Pettit?

CPT (b)(3), (b)(6) Obviously a TIC.

MG: Which we had a TIC here correct?

CPT (b)(3), (b)(6) Yes we did.

MG: That is what was declared.

CPT (b)(3), (b)(6) I do not recall if TIC was ever declared. I believe an AIRTIC had been declared so that assets could be pushed to that team and that is why... Obviously if a team says TIC it is no fail we open up the battle drill book and we go from there.

MG: Is an AIRTIC criterion for waking up the Battalion Commander?

CPT (b)(3), (b)(6) It is now.

LTC (b)(3), (b)(6) But at the time?

CPT (b)(3), (b)(6) At the time it was not.

MG: Why is it now?

CAPT (b)(3), (b)(6) Because we have basically changed or adapted and updated our SOP and there is a TIC, there is not an AIRTIC, there is not a SIGINT TIC, there is not a... It is a TIC. So if a team comes up using TIC in any way, shape, or form we execute a TIC battle drill. I guess I am a little more fuzzy on SOTF Commanders CCIR and I primarily focus on the CCIR for reporting; that is what I am vested in everyday TIC, CIVCAS, MEDIVAC, down aircraft.

LTC (b)(3), (b)(6) Those are the reports to CJSOTF?

CPT (b)(3), (b)(6) That is correct. There is a number of events obviously that require immediate reporting in addition to those I just listed cache, down UAV, narcotics discovery events like that warrant an immediate notification to CJSOTF, and obviously when we have those events as the BLT CPT I immediately notify the SGM and S3.

MG: Is this recent too of the CJSOTF? Has something been coming down since the investigation? You said there has been some training and different changes.

The reporting has not changed since I got here. As far as the SOTF level we have conducted training everyday to ensure that the staff... We have people unfortunately changing in and out right now so we have training twice a day one in the day and one at night. The training covers battle drills, COIN, night time tactical directive and items like that.

MG: Has the daytime or nighttime shifts changed the people or the BTL CPTs or...

We have added a SGM to the night shift and a few that I know we are rotating out the Navy Surface Warfare Company that is in Zabul. They are RIPing in and a new element is coming in. We have had some personnel changes with those guys. When we have a new person on the floor we have implemented a test that covers battle drills and cover not only that guy's job as an LNO but also when a particular situation happens this is what you need to be able to do.

LTC (b)(3), (b)(6) As the situation was on the 21st and AIRTIC was not necessarily wake up criteria correct?

CPT (b)(3), (b)(6) That is correct

LTC (b)(3), (b)(6) Would the identification of noncombatants on a potential target was that a wake up criteria?

CPT (b)(3), (b)(6) That probably would have been.

LTC (b)(3), (b)(6) So that night as soon as they heard children or adolescents in the vehicles; in your estimation should that have resulted in a wake up of either the OPCENT Director or the Battalion Commander?

CPT (b)(3), (b)(6) At a minimum the SGM and then the OPCENT Director.

LTC (b)(3), (b)(6) That would not have been a judgment call on the part of the BTL CPT that should have been simply I hear "X" and I do "Y".

CPT (b)(3), (b)(6) Correct.

LTC (b)(3), (b)(6) Was there anything else that was reported to you that morning that you thought should have triggered wake up criteria?

CPT (b)(3), (b)(6) I think with the situation developing then that should have... I believe the night shift should have contacted the SGM and the OPCENT Director to let them in on the situation so they could see how everything was coming together. When this came together it was incredibly fast when everything occurred.

LTC (b)(3), (b)(6) When you took over did you think there was an action pending to take out the vehicles?

CPT (b)(3), (b)(6) No I did not. We were observing the vehicles as they were moving away from the ground forces. To my knowledge the OH-58s were not on station they were refueling. For the life of me I couldn't have imagined the event occurring the way that it did, we just did not see that occurring, and we were just observing.

LTC (b)(3), (b)(6) What communications between the ISR platforms and the GFC are you able to monitor?

CPT (b)(3), (b)(6) My understanding is that the ISR platform has satellite voice communications so essentially the team on the ground has a JTAC, each one has a call sign, each one has radios and they are monitoring different frequencies. So if the SOTF cannot contact executing its base plan going through SAT (b)(1), 1.4 or SAT (b)(1), 1.4a then calling the iridium and cannot get a hold of him, then we will start trying to contact the JTACs, if we cannot get them that way then we will use the ISR or any other means to get a hold of them.

LTC (b)(3), (b)(6) If the ISR is speaking to the JTAC can you here the communications between them?

CPT (b)(3), (b)(6) No. That information would come through the mIRC chat that the ISR manager would receive at his station.

LTC (b)(3), (b)(6) What mIRC chat is he monitoring?

CPT (b)(3), (b)(6) To my knowledge it should be the pilot of the predator and my understanding is that those guys are in Nevada.

LTC (b)(3), (b)(6) Who is the pilot speaking to that the ISR Manager is watching?

CPT (b)(3), (b)(6) My understanding it is the JTAC.

LTC (b)(3), (b)(6) Does anyone else monitor mIRC chat?

CPT (b)(3), (b)(6) The FIRESO would.

LTC (b)(3), (b)(6) Do you know mIRC between whom he is monitoring?

CPT (b)(3), (b)(6) My understanding is that he is monitoring five or six different chat windows, but I am not sure if he monitors the ISR as well though.

LTC (b)(3), (b)(6) Would he be monitoring communications to and from the OH-58Ds?

CPT (b)(3), (b)(6) I believe he would.

LTC (b)(3), (b)(6) Do you know how he would have missed that there were called from their refueling station to target?

CPT (b)(3), (b)(6) He shouldn't have missed that. That is obviously important when those guys return because that allows us to know that the team on the ground has support if they need support.

LTC (b)(3), (b)(6) That morning at some point the OH-58s were called forward correct?

CBT (b)(3), (b)(6) Correct.

LTC (b)(3), (b)(6) Were you told that?

CBT (b)(3), (b)(6) I don't recall.

LTC (b)(3), (b)(6) At some point the OH-58s did a battle handover between them and the predator correct?

CBT (b)(3), (b)(6) I think the predator was on station...

LTC (b)(3), (b)(6) But the target was handed over?

CBT (b)(3), (b)(6) Right

LTC (b)(3), (b)(6) Were you told that there was a target handover between the predator and the OH-58s?

CBT (b)(3), (b)(6) Not that I can recall.

MG: Who would tell you that?

CBT (b)(3), (b)(6) The FIRES. If the ISR was going off station the ISR Manager would say that we were losing the ISR at this time and the FIRESO would say I understand that we lost it but this asset is in the air at this time.

MG: If we didn't lose it and the predator was still in the air and they were doing a battle handover to attack a target how would that be transpired in your operations center?

CBT (b)(3), (b)(6) I believe the FIRESO would report that.

MG: Would they announce it out loud?

CBT (b)(3), (b)(6) Yes. This particular platform is lining up for this particular action. Everyone would kind of stop and say wait what is happening?

MG: But that didn't happen out?

CBT (b)(3), (b)(6) No it didn't. I really feel that in any situation that the GFC prior to firing any air to ground munitions should be notifying the SOTF prior to any kind of dynamic kinetic strike. That is so that there is a final check prior to him releasing ordinance, and that did not happen in this particular situation. If he would have came up and said that the OH-58s are on station and this is there tasking and purpose I am going to give authorization to engage this convoy, we would have stopped that.

MG: During the line of questioning of many people there was a lot of talk about we don't second guess the GFC. We heard that various times. What would that mean?

CBT (b)(3), (b)(6) Basically that the GFC is ultimately responsible for the situation on the ground and he has a much different picture of what is happening on the ground.

MG: What you just said a minute ago was a little bit different from that. I am just verifying, but could you clarify the two with me: not second guessing but have another check and balance. I would be interested in your thoughts on that.

CBT (b)(3), (b)(6) That comes from my experience in Iraq as a team leader having close air support. My AOB and SOTF Commander prior to using those systems made me check in with them and give them a task and purpose and go through a quick check before I had Hell Fires or 30MM being fired. It is kind of like a double edged sword. We are at the operational level, we are not at the tactical level, and we have a different idea of what that GFC is going through. We cannot put ourselves on the ground but the GFC is using CAS or CCA it should be for a reason. We have to back those decisions to use those assets.

MG: We have to back his decisions?

CBT (b)(3), (b)(6) That is the understanding that I have.

MG: Being an ODA Commander in Iraq were there times when you had a lot of platforms in the air while things were going on in some of the fights you were in?

CBT (b)(3), (b)(6) Yes.

MG: Would you rather be operating that all yourself or was it at times handling a lot at once kind of a challenging situation trying to coordinate all of that?

CBT (b)(3), (b)(6) Yes it was.

MG: As a matter of assistance did your SOTF commander in Iraq reach in, or help, or try to de-conflict, or give reports, or intelligence reports to try to help paint the picture?

CBT (b)(3), (b)(6) I had a JTAC who was on my vehicle and he was communicating with all of the air. The SOTF and AOB were listening to the satellite communications between them to my understanding. I would call up my AOB Commander and say that this is the situation on the ground right now, I have this particular asset and the task is to do this for this purpose and he would come back and say "YAY" or "NAY" and say that you are not being decisively engaged at this time, you can withdraw basically turn right and drive away from where you are getting small arms and PKN fire so you are not authorized to use that asset for that task and purpose. I would be frustrated because I wanted to use those assets, which is why they were given to me. Someone said I couldn't use it so I have to go off of what my higher says.

MG: Would you turn that second guessing you or inserting leadership to make sure that it was the right target. How would you characterize that?

CBT (b)(3), (b)(6) I would say a little bit of both. I had my own particular situation probably a little different than this one, but I was doing direct action in three different languages and then I had CAS, CCA, predator, AC-130 on station, and I had multiple things happening all at once and yes it is a little overwhelming. To have someone step in who was removed from that say that I wasn't going to use that for that and to turn right and drive down the street and get out of that area.

MG: So that happened to you a few times while you were in Iraq?

CPT [REDACTED] I think I can recall two times.

MG: Where the SOTF got involved... or the AOB?

CPT [REDACTED] The AOB did. Then we had another instance that our number one HVI that no one could get was reported by multiple HUMINT resources that he was now in a white vehicle at this location and moving to the east. So we pushed for fast CAS, an F16, to do a kinetic strike and we had to try and clear that through our SOTF Commander. We tried to paint the picture the best that we could. We got all of our guys ready and geared up to be ready to do [REDACTED] and the SOTF Commander denied it. He said that we were not going to do it. I was frustrated and angry because we were trying to chase this guy for long before I had gotten there and when I came into country the SOTF Commander said that he was my number one priority and here I had an opportunity based on multiple HUMINT sources that it was our guy and we got shot down. So inserting leadership someone with operational experience is beneficial to someone on the ground. I do not know what the repercussions had I gave the go for the F16s to drop GBU on that target, I don't know if that would have been the end of my career as an Army officer or a special forces officer but the SOTF Commander came in and said that it wasn't going to happen. I accepted that call and went back to work.

LTC [REDACTED] You said when you were in Iraq that you called your AOB Commander before deploying CCA correct?

CPT [REDACTED] That is correct.

LTC [REDACTED] So is it safe to say that your AOB Commander had a different role operationally when you were in Iraq than your AOB Commanders do here in Afghanistan?

CPT [REDACTED] I do not think I was reporting directly to the SOTF I was reporting to the AOB.

LTC [REDACTED] You said that in Iraq you were required to report up prior to engaging the targets correct?

CPT [REDACTED] Yes and no. My AOB Commander stepped in and told me that following the use of CCA on a target... When I came into country I was told Thermo-Baric Hell Fire Missile is a great thing use it, if you have it use it. So my first operation I used it. Following that we would have 64Ds doing IED clearance with 30MM 3-5 round bursts on know intersections where we had been IEDd numerous times or know IED locations so I would give clearance to fire that. Using that asset inspired my Local National Force because they knew that someone was overhead and it was a big morale booster to those guys because they were pretty terrified of some of the locations that we were driving into. Following that Hell Fire strike my AOB Commander said that before I used another Hell Fire that I was going to come up and give him the task and purpose so that he could understand a better idea of what I was trying to do.

LTC [REDACTED] Is it required by the SOTF for the ODAs to call to anyone before employing aerial ammunitions?

CPT [REDACTED] They should be.

LTC (b)(3), (b)(6) But is it required, is it written anywhere??

CPT (b)(3), (b)(6) My understanding is that it is required for the ODA to notify the SOTF before firing air to ground munitions.

LTC (b)(3), (b)(6) On 21 February were they required to?

CPT S: I do not believe so. I am going to have to think on that one because it was several weeks ago. We had circumstances prior to that where teams were looking to use Hell Fires from the predator and they came up on station and said that they were getting effective fire from this particular compound, I am pinned down, and I cannot move request use of the CCA platform or the predator and the SOTF Commander gave clearance of fires. In other situations he did not.

MG: This is before the 21st of February?

CPT S: Correct.

LTC R: To your knowledge there was no requirement for them to come up on the net and say I am going to use now?

CPT (b)(3), (b)(6) Correct, to the best of my knowledge. I don't think I saw that anywhere in writing that the GFC will notify the SOTF, I think it was more of a... I have assets I want to use them these are my criterion based on the tactical directive. Fixed cannot maneuver, I can conduct BDA, no chance for CIVCAS, clearance to fire and the SOTF Commander would grant.

LTC (b)(3), (b)(6) I want to take you to immediately following the strike. What was the first information you received regarding the possibility that women or children were on the strike site?

CPT (b)(3), (b)(6) I believe we had a report, and I do not know if it was BOG or from the KIOWA Warriors, that said there were three women and three children on the strike site. I think that may have been the BOG though.

MG: You can look at your notes if you want. We just want to make sure that we got this straight.

LTC (b)(3), (b)(6) Now I am not asking about the possibility of injured women and children just the possibility of women and children on the site at all.

CPT (b)(3), (b)(6) At 0848Z we got a report from (b)(1)1.4a saying that there were three women and three children uninjured. That should have been at BOG with the GFC.

LTC (b)(3), (b)(6) What I want to talk about is the strike actually occurs at 0447Z. Are you watching the predator feed at that time?

CPT (b)(3), (b)(6) Yes.

LTC (b)(3), (b)(6) Did you see anything that looked like a women or anyone dressed in a burkah or anything like that from the predator feed?

CPT [REDACTED] really couldn't tell you if they were man or women. The reports that you had were multiple men and I cannot recall the images that we were seeing and sometimes they are grainy.

LTC [REDACTED] Do you remember any reports coming in from the [REDACTED] element concerning women or children on the strike site?

CPT [REDACTED] Immediately following the strike, not to the best of my knowledge. The report that we sent up after the strike was 15 AAF EKIA and three vehicles destroyed. It was sometime after the strike that the GFC was able to do BOG BDA. Also the ISR was called off station due to weather. SO we have four hours from the strike to BOG BDA and during that period the ISR was off station for an hour and a half due to weather.

LTC [REDACTED] What makes you think the ISR was off station?

CPT [REDACTED] I believe the ISR Manager said that the weather was calling for the ISR to go away.

LTC [REDACTED] How long after the strike did you remain in the TOC?

CPT [REDACTED] I had a number of meetings to attend that morning so I want to say at 0900 or 0915 I had a meeting with a full bird Colonel and then 15 or 20 minutes after that we have a joint SOF meeting, and then after that there is a RC-S Commanders Update 20 minutes after that. So there is a period of time where I exited the OPCENT. I couldn't tell you an exact time 20 or 30 minutes.

LTC [REDACTED] So you were in the TOC for 20 or 30 minutes after the strike occurred?

CPT [REDACTED] It might have been a little bit longer. The strike was at what 0846L? I had a meeting with the SOCCORD at about 0910 three weeks ago it is 0900 now, those times always change on Sunday for some reason. So no more than 45 minutes.

LTC [REDACTED] 0840 to 0910 would be 30 minutes.

CPT [REDACTED] That is right I am saying no more than 45 minutes.

MG: In your previous testimony right after the engagement we asked you at what point were you aware that there were potential civilian casualties at the incident and you said that you believe it was the CCA or ISR that reported that brightly colored clothed people were leaving from some of the vehicles and at that point we thought that it was probably accurate. The questioner goes on to state lets clarify you are talking about the convoy and the actions of the command post at that time, once they were alerted to potentially females wearing brightly colored clothes, at that point now we have potential CIVCAS. What actions were taken based on that word? So when we asked you shortly thereafter you said that you thought it was from CCA or ISR that had identified brightly colored clothing and at that point we felt that is was probably accurate. We then asked what actions were taken on that word about the brightly colored clothing we know that it is accurate. You stated that we notified our chain of command but I believe that the report that we received was the initial BDA of 15 to 18 KIA and some women and children were unhurt. Could you explain that to us?

CBT (b)(3), (b)(6) I will do my best. I am going off of my notes based on what was reported. That testimony was taken a few weeks ago...

MG: Shortly after the incident.

CBT (b)(3), (b)(6) Right. To the best of my knowledge I really don't recall when that happened, if that was the CCA or ISR I really do not remember.

MG: Was it in the TOC were people talking about it? There are a whole lot of people that are seeing the predator feed, reading the mIRC chat, and we got testimony from other people that it was brought up. Tell me as the BTL CPT what was going on around your OPCENT shortly after the strike. Just lay it out.

CBT (b)(3), (b)(6) We were trying to receive the information from the ISR or CCA. We felt that it was still a valid military target and we needed to do the BOG BDA to determine that. I do not recall exactly what was mentioned immediately following the strike.

LTC (b)(3), (b)(6) Do you recall a report of brightly colored clothes on the strike site?

CBT (b)(3), (b)(6) It does sound familiar but I do not recall at what point that was brought up or by whom.

LTC (b)(3), (b)(6) Was that information passed to CJSOTF?

CBT (b)(3), (b)(6) I do not recall I would have to check my notes. I do not remember if it was passed on the mIRC, passed on a SALT report, or just verbal on the phone.

LTC (b)(3), (b)(6) Do you have notes that would indicate that?

CBT (b)(3), (b)(6) Let me see..... It looks like the ISR reported that at least three females and one child near the second vehicle, one adult female observed holding a child.

MG: about what time local was that after the strike?

CBT (b)(3), (b)(6) It was after 0900 it looks to be 0909.

LTC (b)(3), (b)(6) Were you still in the TOC?

CBT (b)(3), (b)(6) I cannot recall.

LTC (b)(3), (b)(6) Without looking at the notes, just try to remember, by the time you left the OPCENT was there discussion of brightly colored clothing or was there discussion of women and children in that OPCENT?

CBT (b)(3), (b)(6) I believe so.

MG: Why do you believe so? That is a broad statement "I believe". You are the BTL CPT that is in charge, there are a lot of people talking about... we have some other testimony... I want to understand what was going on around the TOC. Okay?

STATEMENT OF CAPT (b)(3), (b)(6) DATED 28 FEBRUARY 2010

CPT (b)(3), (b)(6) Yes. I do not recall when I left the OPCENT, but I do recall hearing brightly colored clothes at some point that morning. More than likely it was prior to me leaving for those meetings.

MG: What actions were taken? What did the signal of brightly colored clothes mean to you?

CPT (b)(3), (b)(6) Potential females in the convoy.

MG: we have a strike, pretty catastrophic; you know it is hell fire from your experience in Iraq. The challenges in what happened, the convoy and females potentially on the scene. Right?

CPT (b)(3), (b)(6) Correct.

MG: Did you ever think that they came from the town just minutes after, a town 700 to 1000 meters away, or did you assume that they were on the objective?

CPT (b)(3), (b)(6) I probably thought those females were on the objective.

MG: With potential females on the scene, what would that lead you to believe?

CPT (b)(3), (b)(6) Potential CIVCAS situation.

MG: We have devastating strikes to vehicles, we have potential women waving their burkhas around, and we have the TOC talking about it so what are the next steps in the TOC?

CPT (b)(3), (b)(6) We would have needed to confirm with BOG and do a proper SSE of the strike site. We would have sent that information to higher of a potential CIVCAS situation.

LTC (b)(3), (b)(6) Did you personally talk to anyone at the CJSOTF TOC from the time of the strike until you left the TOC?

CPT (b)(3), (b)(6) I cannot recall at this point. My counterpart at CJSOTF is the CJSOTF JOC Chief and any conversations I have with CJSOTF I have with him. I do not recall if I called him following the strike before I left the OPCENT.

LTC (b)(3), (b)(6) Do you recall speaking to him that morning prior to BOG at the site?

CPT (b)(3), (b)(6) I would say that I probably did talk to him regarding the strike.

LTC (b)(3), (b)(6) By him, are you referring to MAJ (b)(3), (b)(6)?

CPT (b)(3), (b)(6) That is correct.

LTC (b)(3), (b)(6) When you and MAJ (b)(3), (b)(6) were speaking that morning did you discuss the individuals in brightly colored clothing and/or the potential for women on the strike site?

CPT (b)(3), (b)(6) I cannot recall if it was in that particular conversation immediately following the strike or when I came back to the OPCENT. I know at some point the CJSOTF generated a 5Ws of the situation which was sent to me for review. We didn't have BOG when that was sent down so I don't think that we could

have confirmed that there were women or children. After BOG we were able to confirm that there were at least three women and three children on the objective.

LTC (b)(3), (b)(6) When you say they sent you the SWs, are you referring to the storyboard?

CPT (b)(3), (b)(6) No I am not.

LTC (b)(3), (b)(6) So besides the storyboard they sent you some other kind of report?

CPT (b)(3), (b)(6) That is correct.

LTC (b)(3), (b)(6) How did they send that to you?

CPT (b)(3), (b)(6) Electronically on Microsoft Outlook.

LTC (b)(3), (b)(6) When you return can you send us a copy of that email or do you have a copy of it with you?

CPT (b)(3), (b)(6) It is in the log.

LTC (b)(3), (b)(6) This is at 0918Z correct?

CPT (b)(3), (b)(6) Correct.

LTC (b)(3), (b)(6) So this after BOG correct?

CPT (b)(3), (b)(6) Correct.

LTC (b)(3), (b)(6) Can you recall having conversation with MAJ (b)(3), (b)(6) after the strike and prior to BOG?

CPT (b)(3), (b)(6) cannot recall but I would assume that I did. We are trying to get the ground forces to conduct BDA and I would have notified the CJSOTF of the current situation on the ground and this is what we are trying to do. We are getting these elements moved up to conduct SSE. I do not recall if during that conversation if the women or children were mentioned.

LTC (b)(3), (b)(6) Were you aware of a conversation between CPT (b)(3), (b)(6) and LTC (b)(3), (b)(6) shortly after the strike?

CPT (b)(3), (b)(6) cannot say that I recall that, and that doesn't necessarily mean that it didn't happen.

LTC (b)(3), (b)(6) Was LTC (b)(3), (b)(6) aware of potential women, children, or brightly colored clothing on the objective site?

CPT (b)(3), (b)(6) really can't recall that. If that came out prior to him departing the OPCENT, I cannot remember.

LTC (b)(3), (b)(6) When the strike occurred who was in the OPCENT?

CPT (b)(3), (b)(6) LTC (b)(3), (b)(6) myself, the operations NCO, the JAG, and I do not recall which LNOs.

LTC (b)(3), (b)(6) Was MAJ (b)(3), (b)(6)?

CPT (b)(3), (b)(6) He was not.

LTC (b)(3), (b)(6) When you left for your meeting was LTC (b)(3), (b)(6) still in the OPCENT?

CPT (b)(3), (b)(6) HE might have been talking to the CJSOTF Commander at that time.

LTC (b)(3), (b)(6) If the Commander is in the OPCENT who is in charge of the OPCENT?

CPT (b)(3), (b)(6) If the BC is in the OPCENT the S3 should be in there unless it is just for a quick update. With something like this the Operations Director should have been in there immediately following COL (b)(3), (b)(6) calling for LTC (b)(3), (b)(6) we should have gotten the S3. I do not recall if LTC (b)(3), (b)(6) had departed the OPCENT before or after me departing for those meetings. If I am not there the Operations NCO is running the floor or the SGM is.

LTC (b)(3), (b)(6) But when the BC is in there he is in charge correct?

CPT (b)(3), (b)(6) Yes.

LTC (b)(3), (b)(6) When the S3 is in there he is in charge correct?

CPT (b)(3), (b)(6) Yes.

LTC (b)(3), (b)(6) If neither of those people are in there then you are in charge correct?

CPT (b)(3), (b)(6) Correct.

LTC (b)(3), (b)(6) So that morning, before you left for your meeting, were you back in charge of the OPCENT?

CPT (b)(3), (b)(6) I do not recall if LTC (b)(3), (b)(6) had departed or not at that time, but if he had then I would have been on charge again. Then I would have told the Operations NCO that I have these meetings to attend and that I would be returning at about this time.

TDS: If I remember correctly you told me the first day that we met that the reason you felt that you could go to your meetings that day was because LTC (b)(3), (b)(6) was there. That is what you told me.

LTC (b)(3), (b)(6) Do you recall when MAJ (b)(3), (b)(6) came on to the OPCENT floor?

CPT (b)(3), (b)(6) No I do not. He arrived at some point during one of the meetings that I was at, and when I returned from that meeting he was on the floor.

LTC (b)(3), (b)(6) So you do remember that he was not there when you left for the meeting?

CPT (b)(3), (b)(6) That is correct.

MG: You left for the meeting about what time?

CPT (b)(3), (b)(6) Between 0910 and 0920.

MG: MAJ (b)(3), (b)(6) hadn't arrived there yet?

CPT (b)(3), (b)(6) That is correct.

MG: When you left to go to your meeting what was the mood in the OPCENT after discussion of brightly colored clothes, women, children were being reported from (b)(1)1.4a and the predator. An operation had just gone down and by your testimony and others as well is that you were surprised by the strike. You had thought it was an IED and then the second and third strike occurred. All of that was buzzing and surely there must have been something going on in the area. Would it be fair to say that there was a lot of energy on this situation right now?

CPT (b)(3), (b)(6) That would be fair to say.

MG: A lot of people are talking and trying to figure out what is going on? Trying to discern why the strike happened? Correct?

CPT (b)(3), (b)(6) Correct.

MG: Trying to watch the predator feed and listen to the radio to figure out what was going on correct?

CPT (b)(3), (b)(6) Correct.

MG: Trying to discern what brightly colored... potential women on the strike site. Would that be fair?

CPT (b)(3), (b)(6) Yes.

MG: So it wasn't like this was a quite dark secret, this was all out in the open in the OPCENT right?

CPT (b)(3), (b)(6) Correct. I believe the mood would have been that this is a valid military target until we determined BOG that it was not.

MG: With all of what was laid out by the predator as to women and children could you characterize that for us? What did it seem like in the TOC that was going on that someone had to say that it was a valid military target? What was conflicting with that?

CPT (b)(3), (b)(6) The brightly colored clothes. At that point we would have to confirm the potential for CIVCAS.

MG: Was there a disconnect going on? Were people saying this is a valid military target even though there were brightly colored clothes and women being reported? Were you trying to square this up and verify it?

CPT (b)(3), (b)(6) I believe so. Trying to think back and characterize the mood. The vehicles had been struck, we thought it was a valid military target, we thought that these were enemy forces moving to friendly forces. If there were women and children or brightly colored clothes, now we need to determine by BOG that potential for CIVCAS.

MG: So there was concern that there could be women and children on the objective that was struck out of those vehicles correct?

CPT (b)(3), (b)(6) Yes.

MG: So we wanted to confirm it correct?

CPT (b)(3), (b)(6) Yes.

MG: What does the guidance say in the tactical directive about CIVCAS?

CPT (b)(3), (b)(6) About confirmed CIVCAS?

MG: Any guidance, what does COM-ISAFs guidance say about CIVCAS?

CPT (b)(3), (b)(6) To follow with immediate reporting procedures with CIVCAS.

MG: Does it say anything else?

CPT (b)(3), (b)(6) For know CIVCAS we have 30 minutes to inform higher. I believe we have four hours for an FIR. Then we have four to 24 hours for an SIR.

LTC (b)(3), (b)(6) What does it say in regards to suspected CIVCAS?

CPT (b)(3), (b)(6) I do not know.

LTC (b)(3), (b)(6) Did you have a conversation with LTC (b)(3), (b)(6) about what reporting you needed to do that morning?

CPT (b)(3), (b)(6) At that point I believe we had submitted a SWs to CJSOTF...

LTC (b)(3), (b)(6) When did you submit the SWs to CJSOTF?

CPT (b)(3), (b)(6) I think it was immediately following the strike and pertained to the strike only. That was sent up at 0447Z...

MG: So local that would be?

CPT (b)(3), (b)(6) 0907L

MG: And you were there at that time when they sent that up?

CPT (b)(3), (b)(6) I would say so because the Operations NCO entered it into the chat.

MG: What don't you read through that and tell us what the intent of the SWs was.

CPT (b)(3), (b)(6) Following any air to ground munitions we have 30 minutes to notify CJSOTF. If the strike occurred at 0846 we would have 30 minutes to give the SWs. This one was (b)(1)1.4a SIZE: Size 18 AAF members in three vehicles, ACTIVITY: AAF attempting to maneuver on ANA and (b)(1)1.4a were engaged by OH-58, LOCATION: 41SQS21706325, TIME: 210429ZFebruary10, REMARKS: 30-40 AAF were attempting to maneuver on ODA (b)(1)1.4a PID confirmed the AAF members with weapons, (b)(1)1.4a OH-58 engaged and destroyed three vehicles, BDA 18 EKIA three vehicles destroyed.

STATEMENT OF CAPT (b)(3), (b)(6) DATED 28 FEBRUARY 2010

LTC (b)(3), (b)(6) Where did you get the 18 KIA?

CPT (b)(3), (b)(6) I believe from either the predator or (b)(1)1.4a element.

LTC (b)(3), (b)(6) When you sent that report had you already seen reports of brightly colored clothing?

CPT (b)(3), (b)(6) I do not believe so. Right here the ISR says at least 3 females and 1 possible child near the second vehicle. That's at 0309 and that report was sent out 8 minutes following that sir.

LTC (b)(3), (b)(6) Just prior to you sending up the 5Ws you had seen the report about the colored clothing?

CPT (b)(3), (b)(6) I don't see brightly colored clothing here.

LTC (b)(3), (b)(6) Or 3 women and children?

CPT (b)(3), (b)(6) That was at 0909. Near the 2nd vehicles.

LTC (b)(3), (b)(6) Does that report come in before or after the 5Ws report.

CPT (b)(3), (b)(6) Looks like it comes in before sir... Roger sir looks like it comes in about 8min before that.

LTC (b)(3), (b)(6) Okay, any reason why that information was not passed up to CJ-SOTF at that time?

CPT (b)(3), (b)(6) No sir. I don't think there's a reason why.

LTC (b)(3), (b)(6) Did COL (b)(3), (b)(6) review the 5W reports?

CPT (b)(3), (b)(6) No he did not sir.

LTC (b)(3), (b)(6) Did you review it?

CPT (b)(3), (b)(6) I believe so.

LTC (b)(3), (b)(6) What's COL (b)(3), (b)(6) doing at this time?

CPT (b)(3), (b)(6) COL (b)(3), (b)(6) was either on the phone or continuing to look at the ISR feed.

LTC (b)(3), (b)(6) But you're sending up reports to the higher and he doesn't, check on me doesn't quality control at all, he doesn't know what's going up?

CPT (b)(3), (b)(6) Not necessarily sir. Did you have any conversations with COL (b)(3), (b)(6) about what you should report regarding those potential females on the site?

LTC (b)(3), (b)(6) I did at some point during that day sir.

CPT (b)(3), (b)(6) When we received a storyboard from CJ-SOTF and I remember having a conversation with the CJ-SOTF JOC chief listing women and children on the strike site.

LTC (b)(3), (b)(6) Is that after the...

CPT (b)(3), (b)(6) Yes that's after the Boots on the ground. Correct.

LTC (b)(3), (b)(6) Before you left that morning for your meeting did you have any conversation with COL (b)(3), (b)(6)

CPT (b)(3), (b)(6) Regarding putting women and children on the...

LTC (b)(3), (b)(6) between the strike and the time you left, did you have any conversation with COL (b)(3), (b)(6)

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

LTC (b)(3), (b)(6) Can you remember, can you tell us what you talked to him about?

CPT (b)(3), (b)(6) It would have been obviously concerning the strike making sure CJ-SOTF was aware of what we were reporting.

MG: What were you reporting?

CPT (b)(3), (b)(6) We were reporting the BDA as reported by either the (b)(1)1.4a element or by the ISR sir.

MG: Part of the BDA from the ISR Predator and part of the BDA from the (b)(1)1.4a element, was what?

CPT (b)(3), (b)(6) 18 KIA, 3 vehicles destroyed sir.

MG: That's part of it, what else?

CPT (b)(3), (b)(6) The ISR is reporting that 3 women... I can't recall if the ISR specifically spoke up and said that immediately following the strike there were women because that is KIRK. At least 3 of the females send a possible child in the 2nd vehicle, 1 adult female...

MG: How long after the strike is that said?

CPT (b)(3), (b)(6) That's at 0439z sir.

MG: So what time is that local?

CPT (b)(3), (b)(6) 0909 sir.

MG: So at 0909 before you left Predator is reporting what?

CPT (b)(3), (b)(6) 3 Females one possible child by the 2nd vehicle sir. But I can't recall if the ISR manager announced that or specifically told me that. I'm not monitoring...

MG: Would they be responsible for saying something as important as women and children on the objective?

CPT (b)(3), (b)(6) Yes it would sir.

MG: Would that be a thing that they should call out in the operation center?

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

MG: Would that be a thing we should bring up to our BN Commander who was in the OPCENT at that time?

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

MG: Would that be something we bring up to our higher HHC that possible women and children are on the objective that we just struck?

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

MG: That would indicate possible CIVCAS?

CPT (b)(3), (b)(6) CIVCAS sir, yes sir. I understand that this is what the ISR is reporting. I also understand that this is the initial 5W that we submitted, looks about 7-8 minutes following this report. What I can't recall is whether or not this report was announced in the OPCENT.

MG: But we have that data in or OPCENT 7-8 minutes before we sent the 5Ws.

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

MG: It came into the OPCENT, so you're telling us it came into the OPCENT... this information but the way it was disseminated did not link up with that report you sent 7-8min later to inform your HHC, is that correct?

CPT (b)(3), (b)(6) That is correct sir.

MG: So this is still going around and we send a report out and what time do we correct that report or update the 5Ws or tell someone shortly after that you were getting all these reports about women and children or brightly colored clothing. At what point does someone say as the Battle CPT before you leave or who tells your next higher up command there is suspected women and children or a suspected CIVCAS? When does that happen?

CPT (b)(3), (b)(6) That happens approximately 4 hours later sir when we had Boots on the ground report that 3 women and 3 children were uninjured on the objective.

LTC (b)(3), (b)(6) I'm having a little trouble with this because obviously you got that information early on that there are women and children.

CPT (b)(3), (b)(6) The OPCENT had that information I don't recall if I had the ISR knowledge and obviously the bright colored cloths, I probably over heard that prior to...

LTC (b)(3), (b)(6) But your OPCENT has the information that there's women and children on this strike site, someone's responsible for keeping your next higher HHC informed.

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

LTC (b)(3), (b)(6) Is that you?

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

LTC (b)(3), (b)(6) IN these 4 hours you don't know whether or not this information was passed to CJ-SOTF?

CPT (b)(3), (b)(6) Correct sir. I was gone for 2hrs of that period and at the same time the ISR... this log is being monitored by CJ-SOTF as well.

LTC (b)(3), (b)(6) What we're trying to get at is whether or not you had any conversations with CJ-SOTF that would have included...

CPT (b)(3), (b)(6) I don't recall of the top of my head at what point I talked with the JOC Chief concerning the BDA or concerning women on the objective. I know those conversations occurred following my return to the OPCENT.

MG: Which would have been around what time?

CPT (b)(3), (b)(6) About 1115 sir. As we were still at least another hour out before the GFC was able to do BDA.

LTC (b)(3), (b)(6) When you come back into the OPCENT, how did you get up to speed on what's going on?

CPT (b)(3), (b)(6) The OPCENT director called me into his office and basically wanted to talk to me about how the situation unfolded that morning.

LTC (b)(3), (b)(6) That's MAJ (b)(3), (b)(6)?

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

LTC (b)(3), (b)(6) So what does he tell you?

CPT (b)(3), (b)(6) Basically he's upset with me that I didn't notify him prior to the commander being notified by the CJ-SOTF commander and to make that immediate correction to insure that will not occur again. So after that I went back on the OPCENT floor and started trying to reabsorb everything that was happening.

LTC (b)(3), (b)(6) How did you get up to speed, who did you... did you review the logs or did you talk to someone, how did you get caught up to speed about what happened in a 2hr since you've been gone?

CPT (b)(3), (b)(6) I would have talked with the OPS NCO. I would have talked with the OPCENT SGM. I would have gone over all the reports that were sent to me leaving...umm

LTC (b)(3), (b)(6) Okay stop there, did they tell you what reports had been sent UP?

CPT (b)(3), (b)(6) The OPS NCO would have said I added these to the MIRC chat and then I would have gone through and looked at them.

LTC (b)(3), (b)(6) Was there mention of women, was there mention of children, and was there mention of brightly colored clothing?

CPT (b)(3), (b)(6) No not in the reports that got sent up sir.

LTC (b)(3), (b)(6) Can you help us understand why? Because CIVCAS is obviously a big deal...

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

LTC (b)(3), (b)(6) So the potential of women and children on the strike site would be a big deal correct?

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

LTC (b)(3), (b)(6) Why is that fact seemed to be remitted from every report? That goes from your HHC to the next HHC?

CPT (b)(3), (b)(6) I think that we were waiting for boots on the ground to confirm what potential was being observed by the ISR or CCA element sir.

LTC (b)(3), (b)(6) Whose decision was it to wait for the boots on the ground?

CPT (b)(3), (b)(6) I think the boots on the ground occurred when it was tactically feasible to get aircraft to move over to pick them up and move them over. I don't recall at what point, who necessarily got the helicopters or what...

LTC (b)(3), (b)(6) You said you were waiting for boots on the ground in order to send that information that there were women and children on the site to CJ-SOTF correct?

CPT (b)(3), (b)(6) Correct sir because we wanted to obviously confirm what was being reported.

LTC (b)(3), (b)(6) Who made the decision to wait for boots on the ground to make those reports?

CPT (b)(3), (b)(6) I would have to say I think it was the BN Commander or the SOTF Commander sir.

LTC (b)(3), (b)(6) Could you recall him making that decision?

CPT (b)(3), (b)(6) In a passing conversation with him I can't recall anything specific. What I do recall is the conversation I had with the JOC Chief was that the CJ-SOTF was not considering this a CIVCAS incident. It was a valid military target until essentially proven otherwise.

LTC (b)(3), (b)(6) When was this conversation?

CPT (b)(3), (b)(6) That would have been at some point after returning to the OPCENT about 1115 or so and then when the...

LTC (b)(3), (b)(6) Before boots on the ground?

CPT (b)(3), (b)(6) Yes sir. I believe so.

STATEMENT OF CAPT (b)(3), (b)(6) DATED 28 FEBRUARY 2010

LTC (b)(3), (b)(6) When the JOC Chief who is MAJ (b)(3), (b)(6) tells you that CJ-SOTF is not considered in the CIVCAS, did you say what about the women and children on the strike site or was that discussed?

CPT (b)(3), (b)(6) I know at some point it was sir. I know it was during the storyboards got sent down for me to look at. I recall that was actually discussed between me and the JOC Chief and I was directed by him to omit the women and children from the storyboard at that time. I can't necessarily recall if that was immediately from when I came back into the OPCENT or boots on the ground, when boots on the ground confirmed that there were 3 uninjured women and 3 uninjured children. I know at some point that conversation was had.

LTC (b)(3), (b)(6) Is this the storyboard that he sent to you? (Handing over the storyboard)

CPT (b)(3), (b)(6) Yes it was sir.

LTC (b)(3), (b)(6) Then you made some corrections to the storyboard correct?

CPT (b)(3), (b)(6) That is correct sir.

LTC (b)(3), (b)(6) Can you just mark for me... MAJ (b)(3), (b)(6) is the one who drafted the one that I just handed to you correct?

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

LTC (b)(3), (b)(6) Can you just mark MAJ (b)(3), (b)(6) on that one somewhere?

CPT (b)(3), (b)(6) Okay

LTC (b)(3), (b)(6) Then if you could put your initials and the date.

CPT (b)(3), (b)(6) Okay sir.

LTC (b)(3), (b)(6) Given your initials you might want to print your name there. So that's the version he sent you, is this the version that you sent back to him?

CPT (b)(3), (b)(6) The one I sent actually had this part highlighted in red because I made those corrections in red.

LTC (b)(3), (b)(6) You said this, I'm not sure what this is...
(Shuffling through papers)

CPT (b)(3), (b)(6) I don't know if it's just a minor technical point but the corrections I made were in red and that's what I sent up. This one does not have it in red and I don't understand why.

LTC (b)(3), (b)(6) Well make a copy of this for you; this one is the more accurate one.

CPT (b)(3), (b)(6) Now in reviewing this I do recall having a conversation with the JOC chief specifically saying shouldn't we put the women and children on this. He directed me not to.

LTC (b)(3), (b)(6) If this is the one you actually sent can you put the same information but just put your name instead so we know that this is yours. Now there's no mention of women and children on the one you sent correct? So when did you have the conversation with him where he tells you not to include women and children.

CPT (b)(3), (b)(6) If there was anything prior to this I do not recall the exact time, but I do recall after looking at this storyboard that was submitted to CJ-SOTF or populated and produced by the CJ-SOTF, me calling him saying sir we do have some updates and I'll put them in red, don't we need to put the women and children on the storyboard. Don't we need to mention that there were 3 women and 3 children uninjured and he was directing me not to based on the CJ-SOTF not considering this a CIVCAS incident at that time.

MG: So did you relate to MAJ (b)(3), (b)(6) that COL (b)(3), (b)(6) said this is not a CIVCAS incident? How they understood it.

CPT (b)(3), (b)(6) That was my understanding of it sir. Whether or not he used by name...

LTC (b)(3), (b)(6) The conversation is, you get this first, and you talk to him conversation. Then you send him the corrections not to include the women and children.

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

LTC (b)(3), (b)(6) Do you recall approximately what time that all of this occurred?

CPT (b)(3), (b)(6) I can... (Shifting through papers)... this was at... 1120z I submitted to the CJ-SOTF JOC chief to update to the CJ-SOTF-A storyboard the...

LTC (b)(3), (b)(6) What are you reading from?

CPT (b)(3), (b)(6) The OPCENT Log sir.

LTC (b)(3), (b)(6) Does it mention a conversation about women and children?

CPT (b)(3), (b)(6) I have on their included was an update to the number of WIA, I don't have the specific mention of the conversation of the OPCENT log that I had with the JOC Chief.

LTC (b)(3), (b)(6) Okay, I'm going to show you what... MAJ (b)(3), (b)(6) gave us a copy of an e-mail from you to him can you read what it says?

CPT (b)(3), (b)(6) Sir, I made some changes in red. Thanks for putting this together.

LTC (b)(3), (b)(6) In that you don't mention this previous conversation that you had, do you?

CPT (b)(3), (b)(6) No I do not sir.

LTC (b)(3), (b)(6) NO mention of the women and children.

CPT (b)(3), (b)(6) No there is not sir.

LTC (b)(3), (b)(6) I'm just trying to piece together the time line as this occurred after your conversation about the women and children?

CPT (b)(3), (b)(6) Yes it does sir. Because I sent this up with the version 2, which is what I just initialed right there that has the changes in red. So he sent this down to me, I made the corrections had a conversation with him and then resubmitted that. The reason why I said thanks for putting this together was because we did not have any photos, and we did not have... CJ-SOTF said we will put it together for you guys.

LTC (b)(3), (b)(6) So the changes that you did in fact make, what were they?

CPT (b)(3), (b)(6) I moved the timeline right here, the CJ-SOTF had... minutes before the engagement at 0421z 6 squitters bailed from the vehicle and then 0429z (b)(1)1.4a engages. That's what CJ-SOTF sent to me; I knew that was incorrect based on watching the engagement. I knew the 1st and 3rd vehicle was engaged and myself and the other people watching witnessed people fleeing from the next vehicle prior to that hell fire. So I changed that to say (b)(1)1.4a engages 0429z and then at 0430z moments before the 2nd engagement 6 squitters bailed from their vehicle. Furthermore verified what (b)(1)1.4a was saying that (b)(1)1.4a was a MQ1 Predator. Updating the GFC confirms 15 EKIA and updated the SOTF with 7 EWIA, I wrote this was later updated to 12 EWIA and at the bottom resulting EWIA, I have listed 12 EWIA.

LTC (b)(3), (b)(6) Where does the information that takes it from 7-12 come from?

CPT (b)(3), (b)(6) That information comes from the GFC sending up a MEDVAC and then the report is the MEDVAC had 2 birds each with 6 patients. Unfortunately some of this is very unclear is we do not have good COMS with the GFC via SAT or with a radium so the MEDVAC was not called through the SOTF which is the SOP, the SOP is that MEDVACs come from us and we initiate the MEDVAC battle drill for whatever reason due to lack of COMS or panic on the strike site by the GFC the MEDVAC got pushed through the AOB. So we received the information about the MEDVAC entirely 2nd hand if not 3rd hand.

LTC (b)(3), (b)(6) The initial report that you get is 7 wounded?

CPT (b)(3), (b)(6) Right based on a quick communication that is cut out saying 7 MAMS MEDEVAC.

LTC (b)(3), (b)(6) When do you learn that as 12?

CPT (b)(3), (b)(6) I believe that's after the MEDVAC that we hear that it's reported that it's 6 and 6, 6 at the Dutch FST and 6 at the American FST at FOB TK.

LTC (b)(3), (b)(6) Do you remember how you heard the first report that it was 6 and 6?

CPT (b)(3), (b)(6) I believe it was from the TF Pegasus conversation through the SOTF and TF (b)(1)1.4a Commanders. I can't exactly recall where that information came from sir.

LTC (b)(3), (b)(6) Is that verbal or is that where you get the FIR from TF (b)(1)1.4a?

CPT (b)(3), (b)(6) It might have been both verbal in the FIR from TF (b)(1)1.4a so what I recall is at some point this came down from CJ-SOTF with the GFC. During that time at some point the BN Commander walks up to me saying we got this information from the FIR from (b)(1)1.4a 6 and 6 with 12 EKIA, we need to run this

down and we need to confirm this. At that point we started calling everyone we could down at the AOB. We had our SOTF Surgeon call to the FSTs, I think it was Mission Secret or a CENTRX phone that we have in the OPCEN that we were trying to communicate with the Dutch FST, there was a lack of COMS there and we couldn't make COMS with them. We called the AOB and told them to bring a runner and they told me they had already sent their senior 18D MEDIC over and the Dutch were basically pushing them away. So the information that we had I believe was from (b)(1)1.4a saying that there were 12 EWIA, 6 of them were at the American FST and 6 of them were at the Dutch one. To the best of my knowledge and what we later determined was that 1 woman and 1 child were at the Dutch FST. But that was not confirmed until later on.

LTC (b)(3), (b)(6) TF (b)(1)1.4a and there FIR reports a woman and child injured correct?

CPT (b)(3), (b)(6) would have to double check on that sir. It's probable without me double checking it.

LTC (b)(3), (b)(6) Do you have a copy?

CPT (b)(3), (b)(6) do not; I don't think I have a copy of that. I mean at that point we immediately did everything we could to confirm that.

LTC (b)(3), (b)(6) What I confused is that when you go from 7-12 it's based on TF (b)(1)1.4a at that point you should have at least some report that there is an injured woman and child, correct?

CPT (b)(3), (b)(6) believe so sir, and I was being directed not to mention that on the storyboard.

LTC (b)(3), (b)(6) So it's not simply uninjured women and children that you're directed not to report...

CPT (b)(3), (b)(6) believe so, I don't recall if the conversation said... My understanding was don't put any women and children listed on the storyboard. Whether or not that was the 3 wounded... correct, that was the 3 uninjured women and 3 uninjured children that we had gotten a previous report at 0848z. Or if that was what we had received through the TF (b)(1)1.4a FIR .

LTC (b)(3), (b)(6) Is there any doubt in your mind that the conversation that you were describing was with MJA (b)(3), (b)(6)

CPT (b)(3), (b)(6) No sir. That was with MAJ (b)(3), (b)(6) he... 99% of the conversation I had with CJ-SOTF is with MAJ (b)(3), (b)(6) and the chance the JOC SGM picks up the phone or if I contact the night shift will be the night shift JOC Chief sir.

LTC (b)(3), (b)(6) But that day the conversation you had, the one who told you to not include women and children on this.

CPT (b)(3), (b)(6) That is correct...

LTC (b)(3), (b)(6) with MAJ (b)(3), (b)(6) ... So if he said he never told you that. Then your estimation would be that he was miss remembering or not being truthful?

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

MG: Yes sir to what?

CPT (b)(3), (b)(6) he'd either be miss remembering or untruthful sir.

MG: Develop that discussion a little for me, what went on in that discussion about women and children and not reporting?

CPT (b)(3), (b)(6) Well sir I feel that to the best of my recollection I received the CJ-SOTF generated storyboard from the JOC Chief asking for a review of it prior to going to higher. Assuming that that's going to CIFSOC and I'm assuming it's probably going higher than that. At some point I had a conversation with the JOC Chief CPT (b)(3), (b)(6) MAJ (b)(3), (b)(6) saying there are corrections to this, shouldn't we put the women and children that were on the strike site... shouldn't we annotate this? He told me know we don't need to do that right now CJ-SOTF is not looking at this like a CIVCAS incident. I said roger sir, understood. Obviously if I could sir... have listed that and had them do with it whatever they wanted to do with it, then I really wish I had sir.

MG: Did you read that intention as, how, not, why not put women and children on there on the objective, what was your read on that?

CPT (b)(3), (b)(6) My understanding based on the conversation with MAJ (b)(3), (b)(6) like I said before, CJSOTF is not calling this a CIVCAS incident, and FIR had been submitted by TF Pegasus.

MG: When did that happen that FIR from TF (b)(1)1.4a ?

CPT (b)(3), (b)(6) I don't have a copy of it in front of me sir, I cannot exactly recall what that said, whether that did say that the FIR had one woman and one child.

MG: And who said that FIR had been submitted by TF (b)(1)1.4a

CPT (b)(3), (b)(6) My understanding is that came from the SOTF commander, or the SOTF commander brought it to my attention. CJSOTF is aware of it, then I don't know is TF (b)(1)1.4a passed it to SOTF commander, and SOTF commander pushed it to CJSOTF commander.

LTC (b)(3), (b)(6) After MAJ (b)(3), (b)(6) tells you not to include women and children on the storyboard, what actions did you take did you notify anyone?

CPT (b)(3), (b)(6) Yes sir I notified the OPSCEN director and explained to him, CJSOTF is calling it this way, this is what they are telling me to do. And the OPSCEN director said okay, release it, send it back up the way you have it. Later on, at some point that evening, I did notify the SOTF commander. I received an email from him asking, CJSOTF commander asked me where did this storyboard come from? I responded CJSOTF produced this, I reviewed it and this is what they asked me to do with it. I have a copy of it sir.

LTC (b)(3), (b)(6) An email from whom to whom?

CPT (b)(3), (b)(6) Roger sir. Would you like me to read it out loud?

MG: Sure, what is the date and time, who is it from?

CPT (b)(3), (b)(6) This is from SOTF South battle captain to SOTF commander.

STATEMENT OF CAPT (b)(3), (b)(6) DATED 28 FEBRUARY 2010

MG: And who is the SOTF South battle captain?

CPT (b)(3), (b)(6) I am the SOTF South daytime battle captain, the SOTF South commander would be LTC (b)(3), (b)(6) SOTF South OPSCEN director, MAJ (b)(3), (b)(6).

MG: And what time was this written?

CPT (b)(3), (b)(6) This was on Monday, the following day. Saying sir, because he had sent to me, where did this storyboard come from? I responded, sir I made some corrections in red, due to the time constraints placed on me by the CJSOTF I did not have MAJ (b)(3), (b)(6) review it. I updated on what I knew at the time and was cautioned by the CJSOTF JOC Chief not to make mention of women and children. On my part this was not done to be misleading or hide information. To which LTC (b)(3), (b)(6) responded okay. Unfortunately this goes against our cautious reporting procedures, and fed us into CJSOTF's refusal to mention women and children. We went too far into confirming no CIVCAS we did not know that at the time.

MG: What I would like to do is take a ten minute break at this time.

LTC (b)(3), (b)(6) Do you recognize that? (Handing CPT (b)(3), (b)(6) the FIR from TF (b)(1)1.4a)

CPT (b)(3), (b)(6) Yes I do sir. This is the FIR that was submitted by TF (b)(1)1.4a which falls under TF (b)(1)1.4a

MG: Would you read thru the first page, not out loud but I want to make sure you read it.

(Reading)

MG: Read the 2nd page please. He's reading the 2nd page of TF (b)(1)1.4a FIR. Day time group 21 14:25D Feb 10

(Reading)

CPT (b)(3), (b)(6) Okay sir.

MG: Were you familiar with seeing this report?

CPT (b)(3), (b)(6) I believe yes sir.

MG: You believe or...

CPT (b)(3), (b)(6) I mean yes sir.

MG: On that 2nd page about half way down in that paragraph if you would read out loud engagement, from there on down to the end of that paragraph.

CPT (b)(3), (b)(6) Yes sir. Engagement began at 0900L and concluded at 0902L. At this time SWT personally observed about 7-8 personal moving around the last two vehicles. Three who were 20meters west of the middle vehicle appeared to be women, while those behind the trail vehicle/ or trail appeared to be

STATEMENT OF CAPT (b)(3), (b)(6) DATED 28 FEBRUARY 2010

male and were possibly armed. SWT confirmed BDA with (b)(1)1.4a and relayed to (b)(1)1.4a JTAC. AT 0910L SWT returned to FOB TK for refuel.

What we have done: TF (b)(1)1.4a responded and EXFILLED 12 patients from the site... and further down sir... any additional information casualty estimate unconfirmed they have 4 WI... 4 Civilian WI listed and unconfirmed insurgent 8 KIA and 8 WIA sir.

MG: So when you saw this report and the report came out at 1425D, so that's 245 in the afternoon,, when did you probably see this?

CPT (b)(3), (b)(6) I believe I saw this... umm... I really don't have a definite timeline sir obviously I would have seen it after it had been passed to my BN Commander and then sent over to me. Maybe 1500 or 1530 or something along those lines.

MG: But you recall this that afternoon?

CPT (b)(3), (b)(6) What I recall is the BN Commander walking over saying; hey we got this from (b)(1)1.4a (b)(1)1.4a we need to confirm the information in here.

MG: So you're comfortable with that testimony that you got it at around 1500 from your BN Commander?

CPT (b)(3), (b)(6) Yes sir. I really wish that I would have a better exact time for you!

MG: What does this mean to you when we read through it here and we got the unconfirmed and the report with what appeared to be women, what does this mean to you when you look at this?

CPT (b)(3), (b)(6) Obviously if it's a FIR that's an alleged potential CIVCAS situation, the element would not have submitted that unless they did not feel that potential CIVCAS was there. What else it told me is that we have appeared to be women identified by the (b)(1)1.4a or OH58 element. (b)(1)1.4a responded and EXFILT patients from the engagement site. Furthermore the unconfirmed says 4 WIA Civilian as well as 8 KIA and 8 WIA. What I recall is the BN Commander received this and said we need to run these numbers down and we need to confirm this. Obviously the SOTF Surgeon is one of the better people to call down to FSTs or call down to the ROLE3 Hospital. He attempted to contact the Dutch FST and he was able to make contact with the American FST located at FOB TK, which confirmed yes there were 6 at both locations. However it was unconfirmed at that time whether or not the one woman and one child were there. So approximately looking on my notes I sent an email to the BN Surgeon Dr. (b)(3), (b)(6), that would have been at 1650L... 1220z basically saying DOC TF (b)(1)1.4a are saying that they transported women and kids but we're only tracking on men can you please retry the Dutch FST I'm getting hit up by the Commander right now. I obviously would have sent that out after being instructed by and directed by the BN Commander to track down the patient status.

(Going through papers)

LTC (b)(3), (b)(6) Does that also go up to CJ-SOTF, that information?

CPT (b)(3), (b)(6) This right here that was an email between me and the SOTF Surgeon.

LTC (b)(3), (b)(6) The information contained in the (b)(1)1.4a FIR, did you send it to anyone in CJ-SOTF.

CPT (b)(3), (b)(6) did not receive this electronically sir. So I did not submit this to CJ-SOTF, CJ-SOTF informed me thru JOC chief that Task Force (b)(1)1.4a had already submitted an FIR.

LTC (b)(3), (b)(6) They told you about this FIR?

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

LTC (b)(3), (b)(6) Who did?

CPT (b)(3), (b)(6) CJ-SOTF JOC chief.

MG: MAJ (b)(3), (b)(6) was he on duty at the time?

CPT (b)(3), (b)(6) Yes he was sir.

MG: What...He hadn't received this?

CPT (b)(3), (b)(6) It's unclear to me rather he received this, but he did mention to me when he was directing me to omit women and children off the storyboard. As he was directing me I was like sir shouldn't we mention women and children that were located at the strike site in the storyboard? His response to me was CJ-SOTF is not looking at this CIVCAS incident and if TF (b)(1)1.4a has already submitted an FIR and something to the effect of once to shot themselves in the foot then let them go ahead and do that.

MG: So did you interpret that discussion with... On your other email you talked about... (Pulling up email) Did you interpret talking to MAJ (b)(3), (b)(6) Is what he was trying to do is misleading or hiding information or did you interpret it another way?

CPT (b)(3), (b)(6) I honestly interpreted it as he was being directed presumably from the CJ-SOTF Commander that were going to essentially suppress a potential CIVCAS incident until further information comes to light.

LTC (b)(3), (b)(6) Does that surprise you?

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

LTC (b)(3), (b)(6) Has it happened before?

CPT (b)(3), (b)(6) No sir and as a matter of fact we had gone through a CIVCAS incident coincidentally with the same AOB a different team where the team on the ground engaged 4 armed MAMS in a compound and a local national woman was holding a child in her arms. Through the engagement the MAM was PID'd with a weapon, he was shot and the round goes through the MAM holding the gun, hits the woman's arm, hits the infant who was 1mth old and tragically the infant was killed. That information came up from the team, and then we immediately go up through a CIVCAS reporting CIVCAS battle drills and went through all the reports. We went through all the 5W, the SIR, the FIR. At my level at the SOTF level we have no intention of trying to cover things up or mislead. When things happen it's the responsibility of us to pass it down to the formation as accurately and timely as possible. When the CJ-SOTF JOC chief is directing me to omit from the SOTF board the women and children, the hair on the back of my neck rises because that's kind of unusual. I notified the OPSCENT director and said hey sir doesn't that sound kind of weird

that they would be doing that? At that time he walked in and told the BN Commander COL (b)(3), (b)(6) that CJ-SOTF was directing us not to do this.

LT (b)(3), (b)(6) Did you hear that conversation?

CPT (b)(3), (b)(6) I believe I was standing right outside of the BN Commanders office. When MAJ (b)(3), (b)(6) went in there and told him that.

MG: But did you hear the discussion?

CPT (b)(3), (b)(6) I don't recall if I heard the entire conversation but I probably relayed the information between the OPSENT Director and let the OPSENT Director have a conversation with the BN Commander so I could move back to whatever I was engaged with.

MG: You started talking about a story were you had something similar to the AOB; you didn't quite finish what happened with the reporting for that.

CPT (b)(3), (b)(6) Correct sir

MG: Can you finish that part, when did this happen about?

CPT (b)(3), (b)(6) I would...

MG: Roughly

CPT (b)(3), (b)(6) Late January or early February of this year sir.

MG: And there was a there, can you just walk us... because it seems like you're going to tell us it was very similar to this incident in a way of reporting. If you could walk us through the best of your recollection?

CPT (b)(3), (b)(6) Okay. Trying to start at the beginning obviously I believe the team was (b)(1)1.4a in the vicinity of either FB (b)(1)1.4a. Obviously all these notes are back at my OPSENT. I believe it was (b)(1)1.4a...

MG: Do you have notes on all of this?

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

MG: We'd like to get those from you for the record.

CPT (b)(3), (b)(6) Yes sir. The element is with their power force, I believe it was ANP but it might have been ANA. There out on a nighttime combat recon patrol, they come under fire by their estimated 4-5 MAMS with small arms fire distance 50-100 meters. The element does a reactive contact battle drill as the MAMS after the initial engagement engaged enemy forces made contact and immediately ran into a combat that they were next to. The element entered the compound PID 4 men with weapons pointing at them engaged all 4 MAMS with their AK47 and killed 4 of them. Unfortunately a local national woman, probably related to one of the MAMS was behind him holding a one month old infant in her arms. The

STATEMENT OF CAPT (b)(3), (b)(6) DATED 28 FEBRUARY 2010

round went through the MAM then went through the woman's hand/arm or something to that affect and struck the child, killing him. The team immediately notified the SOTF, immediately ...

MG: This would be LTC (b)(3), (b)(6)

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

MG: Were you on duty at this time? Or was the night Battle CPT?

CPT (b)(3), (b)(6) I want to say that I was on shift for that one as well. Obviously the moment that we heard that we went through are SOTF CIVCAS Battle Drill, immediately notify the CJ-SOTF, immediately generated the FIR which we sent down to the AOBs and AOB (b)(1)1.4a. Essentially what that means is that's a 3rd SF group team from 1st BN, B CO. Sent down the FIR to the AOB for review to add some of the information, once we received that information we sent that up to higher which is CJ-SOTF. We started working on a SIR with a little bit more information and a little bit more detail regarding local government, local's reaction to the incident, ways we could IO teams messages PAO, and do possible Humanitarian assistance on a following incident like that. We went through that entire SIVCAS battle drill and all the other reporting. We reported it just the way it happened accurately and timely. When this particular incident happened on February 21st we had another ODA from the...

MG: Hold it and when you reported that accurate and timely what came of those reports, did they accept them as they were?

CPT (b)(3), (b)(6) According to my recollection they did sir, we also got post mission products from the team itself in a form of the 5W form of storyboard forma of operation summary I believe. I have all those down at my work computer. To tie all these back ends you have a team from the same AOB, from the same group that goes through essentially another CIVCAS incident. There would've been no reason for the SOTF at our level to suppress or hide or mislead anybody with any of the reporting. We honestly went through a situation and reported everything up the way everything was reported to us and obviously it we would have done the same for this situation sir.

LTC (b)(3), (b)(6) When you had the conversation with MAJ (b)(3), (b)(6) about women and children from the storyboard did you already have a copy of the (b)(1)1.4a Impressions report?

CPT (b)(3), (b)(6) I believe I did sir. I'd have to check the times if we look at the OPCENT log it will have when the storyboard was sent to me and when I resubmitted it. Obviously the 1st impression report was from TF (b)(1)1.4a says 1425L that doesn't necessarily mean I had it at that time but... somewhere approximately after 1040z is when the CJ-SOTF sent down the storyboard is the best I can make from that. That would be about 1510L.

CPT (b)(3), (b)(6) 1500L... you said you didn't receive this was put out but we don't know what time you received this but this was approximately 1425.

CPT (b)(3), (b)(6) Yes I believe so; basically CJ-SOTF sent that storyboard to me. At some point I had this before I made the update to 12 EWIA based on the report I'm getting from the FIR TF (b)(1)1.4a. I resubmitted...

STATEMENT OF CAPT (b)(3), (b)(6) DATED 28 FEBRUARY 2010

MG: So you had it before that storyboard when you were talking to the storyboard with MAJ (b)(3), (b)(6) you mentioned that MAJ (b)(3), (b)(6) already had talked about the FIR from TF (b)(1)1.4a correct?

CPT (b)(3), (b)(6) Correct

MG: So he was in knowledge of it?

CPT (b)(3), (b)(6) Yes sir. Based on my understanding of what the conversation was.

LTC (b)(3), (b)(6) Did MAJ (b)(3), (b)(6) tell you any information about why they didn't want to include the women and the children on the storyboard?

CPT (b)(3), (b)(6) To the best of my knowledge the conversation was that TF (b)(1)1.4a had submitted a FIR, CJ-SOTF was not looking at it like it was a CIVCAS incident and there for to omit the women and children on the storyboard.

MG: Help me out with the CJ-SOTF is that the Organization itself or is that the CJ-SOTF Commander or was it relayed?

CPT (b)(3), (b)(6) Yes sir. My direct liaison at CJ-SOTF to start CJ-SOTF is basically the Brigade level, I work at the SOTF which is the BN level so my Brigade counterpart is the JOC chief and he's the rank of MAJ for daytime and nighttime. The daytime is MAJ (b)(3), (b)(6) and the nighttime is MAJ (b)(3), (b)(6). Whether or not he was getting that information to the J3, which is a LTC from the CJ-SOTF Commander COL (b)(3), (b)(6) I'm not sure where that information was being pushed to him. The information was just reported to me from the JOC Chief.

LTC (b)(3), (b)(6) Are you familiar with that 2nd FIR?

CPT (b)(3), (b)(6) Yes I am sir

LTC (b)(3), (b)(6) Who is that from?

CPT (b)(3), (b)(6) This is from the SOTF to the CJ-SOTF?

LTC (b)(3), (b)(6) So that's from your Unit?

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

LTC (b)(3), (b)(6) Did you put those together?

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

LTC (b)(3), (b)(6) What time did you put that together?

CPT (b)(3), (b)(6) This was, it should be Zulu right here... 1200z so approx. 1630L but I would like to put on the record that I started compiling that information prior to CJ-SOTF requesting it. I talked with the 3 saying hey sir we might want to...if (b)(1)1.4a has FIR at some point I know we're going to be asked for one and I'm going to start generating this.

LTC (b)(3), (b)(6) Okay.

MG: SO you were collecting that for a while?

CBT (b)(3), (b)(6) Yes sir. Prior to me submitting it to the 3 for review.

MG: The time of that is local time is what?

CBT (b)(3), (b)(6) 1630L sir.

MG: 1630L, and was it sent out to higher HHC at about that time 1630 you launch it basically within a few minutes of that or so?

CBT (b)(3), (b)(6) Correct sir. Basically I would put the date and time group on when I had started it. Upon completion I submit this as well as everything else. I submit that to the S3 which is MAJ (b)(3), (b)(6) he reviews it, gives me corrections, either written or verbally corrections, which I make corrections and then submit it to the CJ-SOTF.

LTC (b)(3), (b)(6) Did he make any connections?

CBT (b)(3), (b)(6) Yes I believe he did.

LTC (b)(3), (b)(6) Do you know what he corrected? We're there subjects of correction or did he just check your spelling?

CBT (b)(3), (b)(6) No he corrects more substance and wants to ensure that facts... if we are painting the correct... if we are creating the proper picture and reporting things accurately sir.

LTC (b)(3), (b)(6) Well on the second page, How many civilian wounded in action did you report?

CBT (b)(3), (b)(6) 2 sir.

LTC (b)(3), (b)(6) How many did (b)(1)1.4a report?

CBT (b)(3), (b)(6) 4 sir.

LTC (b)(3), (b)(6) So where is the difference? Or, why the difference?

CBT (b)(3), (b)(6) I believe 2 WAI listed on the SOTF-S FIR are the 1 woman and 1 child that we had confirmed after the SOTF-S Surgeon contacted me and the Dutch FST.

LTC (b)(3), (b)(6) Where are the 4 from TF (b)(1)1.4a?

CBT (b)(3), (b)(6) I cannot tell you sir.

LTC (b)(3), (b)(6) On the email that you gave us earlier he's got listed 2 teenish males with injures. Do you know if those were the civilians that (b)(1)1.4a ... was there a conscious decision to not include those as civilians?

CPT (b)(3), (b)(6) Not to my knowledge sir. That could be where TF (b)(1)1.4a ... Somebody on the ground said these guys looked young, there must be civilians.

CPT (b)(3), (b)(6) The 6 that they treated at Dutch TSP and these were the 2 that they were referring to, I wonder if they were...

CPT (b)(3), (b)(6) (Agreeing) Right sir... (Shuffling through papers)

LTC (b)(3), (b)(6) Did you have a discussion with anyone of going to 4 civilians to 2?

CPT (b)(3), (b)(6) The discussion would have been looking for what TF (b)(1)1.4a had reported and then the teenish male it appears as that could be where they listed 4 DWI as civilians. We were listing the 1 woman and the 1 child as the civilians wounded.

LTC (b)(3), (b)(6) To the best of your knowledge do you know who made the decision that those 2 were to not be included?

CPT (b)(3), (b)(6) It would have been the OPCENT director or MAJ (b)(3), (b)(6) because when something like this is generated at my level the Battle CPT I don't release this...my instructions are to generate this send it to the OPSENT director for review, the OPSENT director either gives direction written or orally and would have approved this going up the way it appears right here sir.

MG: In the FIR that was sent out at about 1630L at the very end at what happened can you read that out loud? Starting with GFC...

CPT (b)(3), (b)(6) GFC requested air assets from FB (b)(1)1.4a to take a split element of ODA and ANA members to conduct boots on the ground, BDA of the site. GFC confirms 15 EKIA and updated the SOTF with 12 EWIA. GFC requested MEDAVAC through AOB channel for the wounded, 1 woman and 1 child were amongst the wounded sir.

MG: That would be pretty significant that GFC confirms 15 EKIA and updated the SOTF with 12 EWIA as what you thought instead of 7, correct?

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

MG: There's a correction that is tied to this storyboard correct?

CPT (b)(3), (b)(6) Correct sir.

MG: Then clarified that 1 woman and 1 child were amongst the wounded. That was probably pretty significant reporting right now after all that we thought was it clear at your time at about 0430 in the afternoon that we had now with all the confirmation, with all the talk we had a good strike and all those things. At this point is it absolutely crystal clear now that we have a CIVCAS?

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

MG: With one woman and 1 child at 1630?

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

MG: What kind of reporting bells and whistles went on, did we start now wanting to make sure we got this report and understood it?

CPT (b)(3), (b)(6) First of all with the (b)(1)1.4a FIR I notified the RC-S CJOC battle CPT asking him if we wanted to make sure we weren't doing parallel reporting what information he required at my element at this time. He said to me well we have this right here can you clarify the vehicles, just give us some general clarifications. I said Roger. I clarified with the information I had at the time and I don't recall what time I had the conversation with him but I asked him what more does he need from me? He told me I don't need anything else from you, if we do will give you a call. I said I understood and as far as this FIR that we would send this to CJ-SOTF sir and like I said I would generate this, have the OPSENT director review it, correct it or they would basically give me corrections to make. Then I would send that to the CJ-SOTF JOC Chief, CJ-SOTF Elemental for SOTF-S and I probably sent it off to the SOTF battle CPT. If not then I need to double check MAJ (b)(3), (b)(6) would have sent this through the CJ-SOTF J3.

LTC (b)(3), (b)(6) When you say the Battle CPT is that MAJ (b)(3), (b)(6) or is this someone else you're referring to?

CPT (b)(3), (b)(6) At RC-S sir?

LTC (b)(3), (b)(6) You said to the CJ-SOTF Battle CPT?

CPT (b)(3), (b)(6) Excuse me it would have been the CJ-SOTF JOC chief and the RC-S Battle-CPT. But the...

MG: And that JOC Chief would be?

CPT (b)(3), (b)(6) MAJ (b)(3), (b)(6) sir. But I need to double check if I particularly sent this or if MAJ (b)(3), (b)(6) sent this to the J3. I sent this FIR to MAJ (b)(3), (b)(6) for review.

MG: Can we see that?

CPT (b)(3), (b)(6) Yes sir (Handing what he sent over to MG) But I don't recall if I necessarily sent that to CJ-SOTF or if MAJ (b)(3), (b)(6) sent that to CJ-SOTF.

CPT (b)(3), (b)(6) I think MJA (b)(3), (b)(6) sent it to CJ-SOTF because you....

LTC (b)(3), (b)(6) The way you word this on your FIR is the GFC Commander confirms 15EKIA and updated the SOTF with 12 enemy wounded in action. When did the GFC update the SOTF?

CPT (b)(3), (b)(6) Let me double check that sir... Because obviously this information was updated the 12th was from TF (b)(1)1.4a... Honestly sir I don't have a time on when that was submitted by the GFC... I think the... at some point that clarification was made, I think we might have been going through the AOB and going through the Dutch FST and they said 6 at both locations. Based on the TF (b)(1)1.4a that 12 were MEDVAC.

LTC (b)(3), (b)(6) How did the 7 enemy wounded originally get reported.

CPT (b)(3), (b)(6) Sir that got reported at approx. 0837z so that's I believe after 1300... because we did not have clear COMS with the GFC for (b)(1)1.4a that actually came through message traffic from the JTAC to the ISR platform (b)(1)1.4a. That got reported and MEDVAC is reporting 7 MAMS at that point we did not realize that there was a MEDVAC recurring because the GFC either didn't have COMS with us or for whatever circumstance he pushed MEDVAC 3120 that is very unusual and different from our SOP because the SOTF runs all MEDVACs. We are the ones that basically take this information and 9line MEDVAC from the GF, pass it to CJ-SOTF and make sure we run it and track it from the RC-S Task Force (b)(1)1.4a or the CJOC so that we get that information and we get the wheels up and your call signs that this element is coming from this location to this location. So when we got this information that definitely surprised us because we were not tracking that there was a MEDVAC occurring.

MG: Who would be calling the MEDVAC for this operation?

CPT (b)(3), (b)(6) It would either be the GFC a JTAC or perhaps a communications SGT, somebody from the GF called this up. But they didn't notify the SOTF they notified the AOB.

LTC (b)(3), (b)(6) Did the GFC get in touch with the SOTF? You're OPCENT?

CPT (b)(3), (b)(6) Regarding the MEDVAC?

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

CPT (b)(3), (b)(6) No he did not

LTC (b)(3), (b)(6) At no time did he provide a battle damage assessment?

CPT (b)(3), (b)(6) No he would've... following that update at 0848 Zulu he reported 15 KIA male, 3 women uninjured and 3 children uninjured and that the local ANP were in route to the location, the strike site.

LTC (b)(3), (b)(6) How'd that come in?

CPT (b)(3), (b)(6) That either came on SAT voice or the Radium sir. I have never seen a 9line for the AOB.

LTC (b)(3), (b)(6) The BDA that came in, who was on the radio or the phone at the OPCENT?

CPT (b)(3), (b)(6) That would have been myself or the OPS NCO sir

LTC (b)(3), (b)(6) So you spoke with CPT (b)(3), (b)(6)?

CPT (b)(3), (b)(6) If not directly it was the OPS SGT.

LTC (b)(3), (b)(6) I'm asking you to remember if you can, did you speak directly to him?

CPT (b)(3), (b)(6) At this particular time I do not recall if I did speak with him when he was at the strike site conducting BDA. I was giving him instructions based on what the COL and the OPS Director were giving

STATEMENT OF CAPT (b)(3), (b)(6) DATED 28 FEBRUARY 2010

me to tell him. This particular SOTF report was entered by the SOTF-S OPS NCO so that's the operations SGT so I don't recall if I talked to him or if this but based on the fact that he inserted it I'm going to assume that he was on the phone or the radio copying down this information.

MG: What was the guidance that the OPCENT Chief, MAJ (b)(3), (b)(6) or LTC (b)(3), (b)(6) what guidance were they given you while it was being translated?

CPT (b)(3), (b)(6) Continue searching for weapons...

MG: Why, what did they find on the objective?

CPT (b)(3), (b)(6) They found 15 EKIA, they found 3 women and children uninjured and we were concerned that this was not the military target that we had originally believed it to be sir. The instructions that I was giving to CPT (b)(3), (b)(6) were continue to go through the wreckage, continue to search around the strike sight if any weapons or weapon parts can be salvaged conduct thorough BDA, take pictures of everything. I have never seen any of those by the way.

MG: What was the state, frame of mind when you were talking? Were you on the Iridium phone with him?

CPT (b)(3), (b)(6) Yes sir. In and out, they would try to make communications through the SAT channel, but if we couldn't get them he would come up on the Iridium. He would cut in and cut out.

MG: But you did talk to him on the Iridium.

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

MG: What was the sense of his voice, you're a leader, you are talking to him, you are an ODA commander, what was your sense of what was going on?

CPT (b)(3), (b)(6) would say panic, based on the fact that he authorized or released (b)(1)1.4a to engage the convoy. And when he arrived on the scene to conduct BDA, he came across a scene he was prepared to see. I don't think he was expecting to see women and children, but amongst several numerous dead men. I think it overwhelmed him. What I recall in his voice is concerned obviously because; a strike that he authorized was not what he thought it to be. He was concerned because he wasn't finding any weapons, AK47's, RPGs, he wasn't finding anything. The information I was getting was have him keep looking, have him keep searching, he needs to find these things. Have him fan out and obviously secure the sight.

MG: So we are trying to find something, maybe to validate what the decision of the strike was. But all the clear evidence, prime of fascia, was what?

CPT (b)(3), (b)(6) That it was possibly not a military target and most likely a CIVCAS incident sir.

LTC (b)(3), (b)(6) When CPT (b)(3), (b)(6) updated the number from 7 wounded to 12 wounded did you take that call?

CPT (b)(3), (b)(6) Sir I don't believe so, I cannot recall exactly at what point or if CPT (b)(3), (b)(6) ever said that there were 12 WIA. That number came from (b)(1)1.4a, that there were 12 WIA when originally we thought it was 7 that were MEDEVAC. And that once we started confirming through the Dutch FST and American FST that now they MEDEVAC 6 each, total of 12. I don't remember when CPT (b)(3), (b)(6) ever said to me that we need to update 12.

LTC (b)(3), (b)(6) But in your FIR you put that the GFC updated to 12 WIA. Is that correct?

CPT (b)(3), (b)(6) That is correct sir that is what is written here. Really what I can attest to is that he confirmed 15 WKIA, he confirmed that there were 3 women and 3 children uninjured on the objective. I believe the number 12 EWIA with one woman and one child comes from the TF (b)(1)1.4a FIR. Which we then confirmed later on. I honestly don't recall where 7 became 12 from this information sir.

LTC (b)(3), (b)(6) Was there any discussion at any time that you recall of individuals injured individuals that would not be MEDEVAC, injuries were slightly and therefore they did not need MEDEVAC?

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

LTC (b)(3), (b)(6) Was there any discussion of the additional 5 that were wounded; the break down if they were males, female, children?

CPT (b)(3), (b)(6) No sir. The information, I don't recall that CPT (b)(3), (b)(6) the GFC, updated that. Obviously we did not update that through the mIRC chat log. My understanding that we got that information and we started getting the role up of the casualties was the SOTF version contacting through the AOB or more likely FSTs of Taran Khod.

MG: When you were talking to CPT (b)(3), (b)(6) which we talked about a few minutes ago, approximately what time was that local?

CPT (b)(3), (b)(6) would say that he was on the ground about 1230 local, and at that point I returned from my meeting, reassumed my duties as the battle captain, and began trying to call him on the SAT and the Iridium, 1230, 1300. I reported that I had negative COMs with CPT (b)(3), (b)(6) and were attempting to go through a pace plan trying to get the ISR to contact either the JTAC to relay information.

MG: What is a PACE plan?

CPT (b)(3), (b)(6) Primary, alternate, contingent and emergency. For communications our PACE plan would be obviously the satellite, voice, SAT (b)(1), 1.4 (if that doesn't work we push to satellite (b)(1), 1.4 (if that doesn't work we go to the Iridium phone. The GFC had an Iridium phone. My understanding is that the team sergeant had an Iridium phone. We can't get a hold of them that way, we go through, trying to pass information either through to the Predator or to relay the information through any kind of asset overhead. So if that is fixed wing, rotary wing, ISR. If we can pass messages through them that would be our PACE plan sir.

MG: So, 1230, 1300 local you're somewhere around there talking to CPT (b)(3), (b)(6) on the sensitively sight exploitation of where the event happened correct?

CPT (b)(3), (b)(6) Correct sir.

MG: Having problems with the Iridium, but giving information, find out that there are 3 women and 3 children on the objective, unharmed which was said.

CPT (b)(3), (b)(6) believe that report came at 0848z. Shortly after there, our COMS were spotty at best.

MG: So, and then you had discussions with MAJ (b)(3), (b)(6) and LTC (b)(3), (b)(6) when the initial was there were no weapons on the sight, correct?

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

MG: Clearly there is some dialog at that time. We got a couple FGOs, a battle captain, we had already heard earlier that morning, bright colored clothing indicating women, now we talk about it was a good strike, don't second guess yourself from LTC (b)(3), (b)(6) are you familiar with that?

CPT (b)(3), (b)(6) Not exactly those words sir.

MG: What were you familiar with?

CPT (b)(3), (b)(6) Essentially, immediately following the strike, I would say that yes the SOTF still felt that it was a good military tactical strike. As these events unfold sir, it starts to lean the other way. The search for weapons that had been PID by ISR, potentially PID by (b)(1)1.4a element that search became paramount for discovering any kind weapons, materials, anything that would justify that this was a legitimate military target. Unfortunately during this time, the COMs with the GFC were spotty so we executed to our PACE plan getting any information we could.

MG: But when CPT (b)(3), (b)(6) reported 3 women and children uninjured on the sight what was the dialog at that point, you start now shifting and swaying what was the dialog with the battalion commander LTC (b)(3), (b)(6) the 3 MAJ (b)(3), (b)(6). You got to talk about this, the phone goes dead or problem, you already got this information what is the dialog that incuses.

CPT (b)(3), (b)(6) The dialog about the 3 uninjured women and children was of relief. Thank goodness, hard to believe that following a strike of that magnitude with 3 hellfires of 3 individual vehicles that there were no, or excuse me that there were no injured women and children. So when we got that report I guess the dialog between the commander, the 3, myself, other people on the floor would have been of relief, you know, thank goodness, there were no women and children hurt, following this strike, as a result of this strike.

LTC (b)(3), (b)(6) CPT (b)(3), (b)(6) says that when he reported it up there were 3 women and 3 children uninjured, but 1 women and 1 child injured but not requiring MEDEVAC. At anytime were you aware of that?

I don't recall that sir.

Go ahead.

If I had heard that, if we already know that there are women and children on the strike sight, I would have put that in, because we had got the report that they were MEDEVACing 7 MAMs, about ten minutes later we got a report saying that there were 3 women and 3 children uninjured. Thank goodness none of them were harmed. If there had been a clear message reported from the GFC that there was one woman and child injured obviously that would have turned this sooner.

Injured but not requiring MEDEVAC.

Right sir.

And you don't recall that at all.

CPT (b)(3), (b)(6) No I do not

LTC (b)(3), (b)(6) LTC (b)(3), (b)(6) says that he was familiar with that report. You don't know how he would have gotten that report?

CPT (b)(3), (b)(6) don't recall that one woman, one child injured not requiring MEDEVAC.

MG: I just want to try, who is CJSOTF-A source, who is that?

CPT (b)(3), (b)(6) believe this is the way we are instructed to fill this out, because CJSOTF-A would pass this to higher.

MG: And who is CJSOTF-A?

Combined Joint Special Operations Task Force Afghanistan which is headed by COL (b)(3), (b)(6)

MG: Let me just try to understand the mechanics of this, when we had the (b)(1)1.4a FIR, they say the source is where it comes, the source is TF (b)(1)1.4a They don't say the next higher up, TF (b)(1)1.4a I just want to understand this. Is this report that I understood you guys made on at the SOTF level are you doing it kind of on behalf, similar to this storyboard. They made it up for you but you verified it because, how does this work here, I just want to understand it. The source doesn't say SOTF (b)(1)1.4a it says CJSOTF-A which is commanded by COL (b)(3), (b)(6) correct?

CPT (b)(3), (b)(6) That is correct sir.

MG: But you guys wrote this correct?

CPT (b)(3), (b)(6) That is correct sir.

MG: explain to me how that FIR works?

CPT (b)(3), (b)(6) yes sir. my understanding is that the SOTF generates reports of this we send them to CJSOTF. CJSOTF then submits it to CFSOC, CSOC submits it to IIC, ISAF. The SOP that we fell in on, was to fill it out in this manner, we did the same thing will OPREP 3. Despite the fact the top of an OPREP3 it has a

lot of biographical information it says CJSOTF on the top of this despite the fact that SOTF South is reporting it and based on, say a soldier who is in one of the companies. At the top of the paperwork it says CJSOTF-A sir.

MG: Okay but who probably wrote up this report, a SOTF element?

CPT (b)(6), (b)(7)(D) That is correct sir.

MG: One of the NCOs, and then you review it? What is the origin of this, who played with it, who approved it and we know when it was sent. Can you walk me through that?

CPT (b)(6), (b)(7)(D) FIR would have been generated by the battle captain. This particular incident, this was generated by myself and passed to the OPCEN director, MAJ (b)(3), (b)(6) for review. And then if there are any corrections or comments, written or verbal, he will hand it back to me, and say this is what you need to fix, then I would go through, read it, make those corrections and resubmit it to him.

MG: Is this after he fixed, or changed it. Or is this pretty much how you wrote it?

CPT (b)(6), (b)(7)(D) Unfortunately sir, this would have been the, appears to be the copy that was corrected and pushed out by MAJ (b)(3), (b)(6). The corrections that he would have had prior to this particular draft, I honestly cannot recall sir. We do submit the first thing that comes to paper so to speak. Obviously he is the QC for these and I believe with these FIRRs I believe he sent them to the CJSOTF-A J3.

LTC (b)(6), (b)(7)(D) If you were to pull up the email that you sent to him, would it have the original version that you sent?

CPT (b)(6), (b)(7)(D) Possibly sir.

LTC (b)(6), (b)(7)(D) Can we get a copy of that?

CPT (b)(6), (b)(7)(D) Yes. The only caveat to that is that I resaved current drafts over the drafts submitted prior.

LTC (b)(6), (b)(7)(D) Okay just take a look to see if you had it.

CPT (b)(6), (b)(7)(D)

LTC (b)(6), (b)(7)(D) These are the emails that you have given us. If you could just look through them and initial that they are the correct copies.

CPT (b)(6), (b)(7)(D) Just to highlight when you see noble justice, V2. V2 is what I generated. Noble justice PPXT, or TX would be what CJSOTF had generated.

LTC (b)(6), (b)(7)(D) In black versus red?

CPT (b)(6), (b)(7)(D) The updates on version 2 are in red sir.

LTC (b)(6), (b)(7)(D) Okay.

CPT (b)(3), (b)(6) The only discrepancy on this is somehow the date time group on this is skewed.

LTC (b)(3), (b)(6) Is it Zulu versus local.

CPT (b)(3), (b)(6) Well sir if I sent something at approximately 3 PM and got a response at 11:21 AM on the same day.

LTC (b)(3), (b)(6) Because, some of your, I only offer to you some of you guys use Zulu time and some of you use local time.

CPT (b)(3), (b)(6) that would be my.

LTC (b)(3), (b)(6) All the emails that I asked you to send to me, we were checking which ones were Zulu and which ones were local.

CPT (b)(3), (b)(6) I'm just clarifying that in case it seems peculiar.

LTC (b)(3), (b)(6) Well yes it did seem peculiar that people were responding before they got things.

CPT (b)(3), (b)(6) See that's. [thinking to himself]. I don't tend to save things by draft sir, you know draft 1, draft 2, draft 3. I tend to save things as document and make revisions, and save it.

LTC (b)(3), (b)(6) Unless you clicked yes whether or not you wanted to save changes it should have your original one in emails.

CPT (b)(3), (b)(6) possibly sir. That is something I will have to run down.

LTC (b)(3), (b)(6) We would just like to see what changes you made. You obviously have a lot of documents in there. Are there any other emails or anything that you may think?

CPT (b)(3), (b)(6) Well sir I basically printed all the emails that pertained to this case on that date.

MG: I think we let you see sir, I think they are all [papers shuffling]. Alright these are the last four. We need to somehow staple these together.

LTC (b)(3), (b)(6) What does that refer to, it says, how accurate is that?

CPT (b)(3), (b)(6) It's within the 5 W's?

LTC (b)(3), (b)(6) the initial report within 30 minutes?

CPT (b)(3), (b)(6) Negative sir this was in the afternoon, 1345, 1350, submitted by JOC Chief MAJ (b)(3), (b)(6) saying that if I am way off on what he had let him know.

LTC (b)(3), (b)(6) you said it looked accurate.

STATEMENT OF CAPT [REDACTED] DATED 28 FEBRUARY 2010

CPT [REDACTED] Sir it looks accurate based on the fact that they are doing boots on the ground at the time and they are still trying to determine whether or not it was legitimate military target, still searching for weapons.

LTC [REDACTED] You also say you couldn't reach them at that time.

CPT [REDACTED] Right exactly.

LTC [REDACTED] Initial on each one of these.

MG: ATT stands for what?

CPT [REDACTED] At this time.

LTC [REDACTED] The top email is your response to MAJ [REDACTED].

CPT [REDACTED] Yes sir.

LTC [REDACTED] Can you go down to what MAJ [REDACTED] writes.

CPT [REDACTED] Yes sir.

LTC [REDACTED] Starting with, "I know he does man," what is he referring to.

CPT [REDACTED] Right here, that, saying that GFC last said that he needs more time to conduct thorough SSC.

LTC [REDACTED] Oh so, "I know he does man," is I know he needs more time.

CPT [REDACTED] Yes sir. I am not sure if he referring to that or he said he wouldn't take photos of the KIA. I think with that "I know he does," is referring to the needs more time to conduct thorough SSC. I'm trying to think if there are any other specific acronyms. When I am referring to thanks for putting this together, would have been the storyboard sir.

MG: Are these all together

CPT [REDACTED] These all relate to each other sir. Starting with TF [REDACTED] right here, passed up to commander, TF [REDACTED] What this right here looks like, was sent from 24 Jan 10. What I believe is that LTC [REDACTED] got an email from TF [REDACTED] commander, had that as a reference and then used that to reply to his email. So this information right here at the bottom does pertain the 21 Feb incident, he is just emailing him back here, saying that he took over the email account. So page 4, and page 3; right here we see the conversation between LTC [REDACTED] and COL [REDACTED]. And then LTC [REDACTED] getting COL [REDACTED] an update, based on all the reporting, based on all the information available at the time on the report. And then basically submitting that to, I was cc'd on this sir. Right here I forwarded this to the aviation officer most likely to get a digital copy of the TF [REDACTED] FIR.

MG: Staple those, and make a notation of that January note, and initial off please.

STATEMENT OF CAPT (b)(3), (b)(6) DATED 28 FEBRUARY 2010

LTC (b)(3), (b)(6) Do you have a copy of the second SW report. The one where MAJ (b)(3), (b)(6) asks you if I'm worried at all.

CPT (b)(3), (b)(6) Yes sir that would be in the OPSCEN Log.

LTC (b)(3), (b)(6) Do you have a copy of that?

CPT (b)(3), (b)(6) Is 0918, battle captain received an email from CJSOTF regarding CJSOTF generated the SW concerning Bam Bam engagement in order to review.

LTC (b)(3), (b)(6) But you don't actually have a copy of the 5W report?

CPT (b)(3), (b)(6) This is it sir.

LTC (b)(3), (b)(6) Oh okay, then it's written out.

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

LTC (b)(3), (b)(6) Let me make a copy of that, does it go on onto the next page.

CPT (b)(3), (b)(6) Yes sir, here's the continuation. Initial all of these.

LTC (b)(3), (b)(6) Correct sir.

CPT (b)(3), (b)(6) The situation with this right here. COL (b)(3), (b)(6) called the OPSCEN looking for LTC (b)(3), (b)(6) saying I need to talk to him immediately. LTC (b)(3), (b)(6) I believe was at a meeting with RC South or he was not available. So COL (b)(3), (b)(6) sent me these questions right here, to answer as quickly as possible so he could send it up to BG Reeder.

LTC (b)(3), (b)(6) What time was this?

CPT (b)(3), (b)(6) 7:10 PM, sir.

LTC (b)(3), (b)(6) Okay.

CPT (b)(3), (b)(6) I believe on one of these I specifically say what time he called, he called at 1835 local, that's when COL (b)(3), (b)(6) called. These are the RFIs' basically I submitted these to the SOTF South commander, saying this is the information we have on file right now. LTC (b)(3), (b)(6) took that information; I believe and submitted it up further. You want me to initial all of these?

MG: If you could just try to help me here, this data, how would you explain it? On here this was some original at 24th, where COL (b)(3), (b)(6) wants to have the new SOTF KAF command, SOTF (b)(1), (b)(6) send me note so I can add him to my address list so he is connected. And then he is connected with LTC (b)(3), (b)(6) here that day on the 24th, so now he is in the system. So now COL (b)(3), (b)(6) is attached to him, and then at 2:57 PM in the afternoon after the MEDEVAC went down COL (b)(3), (b)(6) writes to the SOTF South commander and he say, (b)(3), (b)(6) we will work closely with you on the way ahead on today's strike in TK. I have my SJA speaking to yours. Many will grade our paper on this if all is not done carefully and intentionally. Can

STATEMENT OF CAPT (b)(3), (b)(6) DATED 28 FEBRUARY 2010

you advice on the status of the women and children that we MEDEVAC in the last vehicle. Please have your JOC work with ours on the FIRR, to make sure we are consistent. Thanks all the way (b)(3), (b)(6) " That was sent at 2:57 PM in the afternoon. How does this next one here, sent by the SOTF commander at 1:07 AM does not answer the women and children? Can you walk me through that how the disconnect in the times. And I will first ask by is that 11:07 AM, are your computers set to Zulu time?

CBT (b)(3), (b)(6) Yes sir. The majority of the computers are set to Zulu.

MG: Okay that time would be then?

CBT (b)(3), (b)(6) I believe its 3:37, 1537.

MG: Okay, so the answer was about 1537, it was about 40 minutes after, getting an answer. But it does not address anything about women and children. Nothing about the MEDEVAC, it's kind of a cut and paste to COL (b)(3), (b)(6). Can you explain that to me?

CBT (b)(3), (b)(6) Sir this is the first time I am reading. What we could possibly ascertain at this point was that the TF Pegasus commander was aware of the MEDEVAC at approximately 1500 local. Sent that message to LTC (b)(3), (b)(6) who responded approximately 30 to 40 minutes later.

MG: Is that when you sent that.

CBT (b)(3), (b)(6) See sir right here it says SITREP at 1000z, so that SITREP would have been at 1430 local, so this information right here about 30 minutes later saying that they MEDEVAC a woman and child, this might have been written prior to this; then got attached and submitted to higher. That is how I see that sir.

MG: were you cc'd on that one?

CBT (b)(3), (b)(6) yes I was sir.

MG: So LTC (b)(3), (b)(6) as submitted to the best we can tell doing the forensics right here about 40 minutes after he got an update from COL (b)(3), (b)(6) that he gave data before COL (b)(3), (b)(6) update?

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

MG: COL (b)(3), (b)(6) was introducing what he was trying to verify about MEDEVAC. Is there anything else you can piece together that would be helpful?

CBT (b)(3), (b)(6) This looks like it came out about 30 minutes after the TF (b)(1)1.4a FIR was generated not necessarily completed, obviously I don't have the communication between the SOTF commander and TF (b)(1)1.4a commander. What it looks like here he was giving updates and the SOTF commander possibly took information that he had prior to TF commander contacting him and then sent that information to higher. I got cc'd on that and sent that to the aviation officer, after I got it. Because the aviation officer deals with the TF (b)(1)1.4a guys.

LTC (b)(3), (b)(6) Is this what prompted you to send an email to the surgeon?

CPT (b)(3), (b)(6) that is very likely. After COL (b)(3), (b)(6) probably received this information the TF (b)(1)1.4a FIR, came in and said we need to dig down and get the specifics on this.

TDS: Cause in that email don't you say the commander's hitting me up?

CPT (b)(3), (b)(6) Yes I do, that would have prompted me to contact the SOTF surgeon.

CPT (b)(3), (b)(6) Sir, Can we please take a bathroom break?

MG: Yes, take a quick bathroom break and reconvene back in here in 15 minutes

LTC (b)(3), (b)(6) CPT (b)(3), (b)(6) let me remind you that you are still under oath.

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

LTC (b)(3), (b)(6) Walk me through something here. Your FIR was done at 1630local is that right?

CPT (b)(3), (b)(6) I believe so sir, based on the information right there that is probably the time I started it.

LTC (b)(3), (b)(6) That's when you actually started?

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

MG: Wait a minute, we had some testimony in the notes that and one of the emails you showed us, I believe CPT (b)(3), (b)(6), you had sent to MAJ (b)(3), (b)(6) before that. So it was all finished 15 to 20 minutes before that, is that correct?

That is correct sir.

I just want to be straight here, okay.

LTC (b)(3), (b)(6) Do you recall about when you started that report?

CPT (b)(3), (b)(6) I believe that I started soon after being informed that TF (b)(1)1.4a had submitted a FIR.

LTC (b)(3), (b)(6) Early in the morning when you first got reports of brightly colored clothing on the objective, was there any discussion as to whether or not you should do an FIR at that time.

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

LTC (b)(3), (b)(6) Throughout the day you keep getting more and more suspicions as to whether or not there are CIVCAS is that correct?

CPT (b)(3), (b)(6) I believe so yes.

LTC (b)(3), (b)(6) at what point was the first idea that perhaps you needed to do a FIR?

CPT (b)(3), (b)(6) Well we had been in contact with the CJSOTF, regards to storyboards. We had known that women and children were uninjured on the objective.

STATEMENT OF CAPT (b)(3), (b)(6) DATED 28 FEBRUARY 2010

MG: And what time is this?

CPT (b)(3), (b)(6) This is at 0848z.

MG: So local that would be? For the record.

1308 sir.

1308 we knew that there is women and children on the objective.

Correct sir, confirmed by boots on the ground. So as I am discussing on the Iridium phone with CPT (b)(3), (b)(6) We understand yes there are 3 women and children uninjured and they are continuing to search for the weapons PID. Throughout the course of his reporting or lack of communication, it starts to appear that this has gone from a legitimate target to a potential CIVCAS scenario. I believe this was highlighted when TF (b)(1)1.4a had sent out the FIR that said that there was 12 EWIA, and 1 woman 1 child injured and MEDEVAC.

LTC (b)(3), (b)(6) so if I understand correctly, while you were aware, you as in your entire command was aware that there were women and children on the strike sight, there was no discussion of submitting the FIR required for suspected CIVCAS prior to boots on the ground.

CPT (b)(3), (b)(6) That is correct sir.

LTC (b)(3), (b)(6) When boots on the ground get there, the initial report is women and children uninjured and dead and wounded MAMs with no weapons nothing indicating of an enemy force, no one considered submitting an FIR at that point?

CPT (b)(3), (b)(6) guess in response to that contact through the CJSOTF JOC chief do we need to process paperwork, and this kind of ties into the storyboard of not including the woman and child on the storyboard. They did not consider, they being CJSOTF, this CIVCAS incident at the time. TF (b)(1)1.4a had already submitted an FIR. CJSOTF was not requiring one, and RC South was not requiring one from us either because they had already had one from TF (b)(1)1.4a. There's obviously a shift at that point that this more than likely a CIVCAS situation sir.

LTC (b)(3), (b)(6) So really the thing that generates the interest of it being a CIVCAS, for your HQ was receipt of the TF Pegasus report.

CPT (b)(3), (b)(6) I think I confirmed the suspicion sir. A lot of that was based on the GFC and his element going through the strike sight and not finding weapons and myself continuing to get a hold of the GFC hey you need, you know, do your best to find whatever you can, because right now it not looking like it was a legitimate military target and him responding to me, hey I am doing the best I can, I need more time. Things of that nature sir. obviously I am giving that information to the S3 and the COL, but I think that once TF (b)(1)1.4a had release their FIR the situation was not, we better find some weapons because this is not turning out good to okay, let's just put it to bed this is a CIVCAS situation we need to start generating products and reports.

LTC (b)(3), (b)(6) But even when you do report the FIR, you list the 15 dead as insurgents and at least 10 of the wounded as insurgents.

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

LTC (b)(3), (b)(6) Whose decision was that?

CPT (b)(3), (b)(6) Sir I believe that decision was made by the OPSCEN director to leave the information as you said listed on the confirmed 15 insurgents KIA, 15 WIA, and 2 civilians WIA.

LTC (b)(3), (b)(6) But it sounds like at this point your suspicion is that there is really 15 civilians killed and 12 civilians injured?

CPT (b)(3), (b)(6) Well I guess in response to that sir looking at the Taliban's TTPs they try to blend in with the population, they try to use human shields and what not. There was still suspicion that some of these men, they were identified with weapons; their weapons have to be somewhere. We would have listed obviously everyone as civilians if we didn't think that there was a shred of evidence supporting that there was insurgents with that group. And actually one of the emails that I got from the AOB (b)(1)1.4a was some pocket litter that they got off one of the wounded at the FST, I believe it was the American FST, I think it was Iranian writing or something to that affect. That kind of confirmed the suspicion that these aren't all innocent civilians, some of them are more than likely Taliban, or insurgents.

MG: Did you know that some of the males and a female that was in the hospital reported that the males were going to Iran to get a job.

CPT (b)(3), (b)(6) was aware of that when the reports came out from the FST. That would probably had information on them that was Iranian.

MG: So clearly the tide was shifting if I understand this right, early afternoon, after TF (b)(1)1.4a, TF (b)(1)1.4a started their reports, it was coming. After the reports of on the ground by CPT (b)(3), (b)(6) that this was now shifting in your mind to be a CIVCAS incident?

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

MG: Still couldn't verify it, but clearly with women and children on the objective all the reporting that was building. FIRs starting to generate. Your FIR on behalf of CJSOTF, what was the mood in your operations center with MAJ (b)(3), (b)(6) and LTC (b)(3), (b)(6) Clearly this had to be consuming your TOC. That what everyone else has testified. Since it was consuming the time what was now being talked about, around 1230 when some of these reports went on for 2, 3, 4 hours until your FIR to CJSOTF came up at around 4:30 in the afternoon 1630. Tell me what was going on just so I understand.

CPT (b)(3), (b)(6) I believe the mood shifted from you know obviously in the morning there was a feeling, okay this was a legitimate military target, legitimate strike. By noon time boots on the ground, not confirming any weapons we are confirming that there are WIA and KIA, the mood definitely shifted to concern that the