

Report for the Investigation Officer

United States v. LCpl Justin Sharratt

11 June 2007

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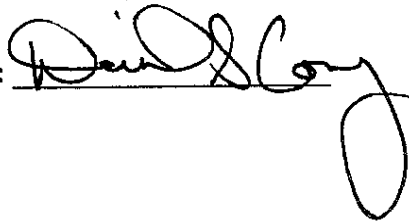
and

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Counsel for Lance Corporal Justin L. Sharratt

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For the Firm:

A handwritten signature in black ink, appearing to read "Daniel S. Conway", written over a horizontal line. The signature is stylized and includes a large loop at the end.

Executive Summary

On 19 November 2005, Lance Corporal Justin Sharratt, was a member of 1st Squad, 3rd Platoon, Kilo Company, 3rd Battalion, 1st Marines. Early that morning, his squad was given the task of transporting replacements from the Iraqi Army to a traffic control checkpoint in the city of Haditha, Iraq. On the return trip to the Kilo Company Firm Base Sparta, the four-vehicle convoy was subjected to a complex attack, which was initiated through the detonation of a road-side improvised explosive device (IED) and small-arms fire in the vicinity of Route Chestnut, Haditha, Iraq.

At approximately 0716, the IED destroyed the fourth vehicle in the convoy, killing LCpl Miguel Terrazas and severely wounding LCpl Trent Crossan and PFC Salvador Guzman. LCpl Sharratt was the gunner on the first vehicle and was not harmed.

Sgt Frank Wuterich led the nine remaining uninjured Marines of 1st Squad. Immediately after the detonation of the IED, Sgt Wuterich and Cpl Dela Cruz engaged and killed five Iraqi males that had occupied a white sedan that had been waived off of Route Chestnut just prior to the attack. LCpl Sharratt did not witness this engagement and is not charged with this incident.

Within minutes of the explosion the first of two Quick Reaction Forces (QRF) arrived from the Firm Base to aid the wounded and transport them for medical care. This QRF included 2ndLt Kallop, the platoon leader of 3rd Platoon. Upon receiving reports that the squad had taken fire from the South in the vicinity of two Iraqi houses, 2ndLt Kallop ordered Sgt Wuterich, the squad leader, to assemble a fire team that a fire team and "clear south." When Cpl Salinas reported that a possible insurgent was peeking at the Marines from a house south of Route Chestnut, 2ndLt Kallop ordered him to fire a 40mm grenade from his M203 grenade launcher. The round impacted well-short of what NCIS and this brief will refer to as house one.

A fire team of Sgt Wuterich, Cpl Salinas, LCpl Tatum and PFC Mendoza approached House #1 and entered by fire utilizing grenades and M-16s. LCpl Sharratt had followed the fire team after taking the M240G from the first vehicle. He did not enter House #1. Six individuals were killed inside this residence. LCpl Sharratt did not fire his weapon, was not part of that fire team and is not charged with those deaths.

The fire team subsequently entered what has been labeled house two - believing that they had taken additional fire. Eight individuals were killed inside that residence, including women and children. LCpl Sharratt did not enter that residence and did not fire his weapon. LCpl Sharratt provided only rear security having been delayed in the effort to retrieve the M240G. LCpl Sharratt is not charged with the deaths from house two.

Throughout the rest of the morning of 19 November, several squads were attacked by insurgents at various locations throughout the city. After several hours of combat, the intensity and complexity of the attack required the use of 500lb bombs and Hellfire missiles at one

insurgent stronghold. For most of the morning, after the events described above, LCpl Sharratt was posted on an Over watch Position (OP) north of Route Chestnut.

At approximately 1040, while smoking cigarettes on the OP and watching Cobras attack an insurgent safe house with Hellfire missiles, Sgt Wuterich, Cpl Salinas, and LCpl Sharratt noticed a suspicious male behind an exterior wall of two residences north of Route Chestnut, since labeled house three and house four. After verbal warnings, Cpl Salinas fired a M203 round at the wall to scare the male and others that had later appeared.

The team then decided to investigate further and proceeded to the walled compound. The three Marines first went to house three and were met by mainly women and children. The women directed the Marines to house four after being questioned on the location of the males. On order from Sgt Wuterich, Cpl Salinas remained with the women and children. Sgt Wuterich and LCpl Sharratt entered house four. Inside that residence, LCpl Sharratt was confronted by a male in the rear bedroom with an AK-47 raised and pointed in his direction. In accordance with the Rules of Engagement (ROE), LCpl Sharratt engaged and killed that individual with his 9mm pistol - after his SAW had jammed. LCpl Sharratt proceeded to enter the bedroom where he killed two additional males, one holding another AK-47. A fourth male was shot by Sgt Wuterich with his M-16. Sgt Wuterich and LCpl Sharratt seized the two AK-47s and a suitcase with passports. They placed them inside the first vehicle of the convoy.

For his actions, LCpl Sharratt has been charged with three counts of unpremeditated murder. Specifically, LCpl Sharratt is charged with the deaths of Jasib Aiad Ahmed, Kahtan Aiad Ahmed, and Jamal Aiad Ahmed in house four. The fourth individual, Marwan Aiad Ahmed is charged to Sgt Wuterich. Cpl Salinas has not been charged. Nevertheless, the Government has involuntarily held Cpl Salinas beyond the expiration of his enlistment contract for nearly one year without granting him testimonial immunity or charging him with any crime. The granting of testimonial immunity, of course, would allow Cpl Salinas to provide exculpatory testimony at LCpl Sharratt's Article 32 Investigation.

The government's case is based on three basic categories of evidence. Firstly, video statements taken from five Iraqis allegedly inside of house three during the close quarters combat engagement inside of house four. Those individuals allege that the four deceased males were marched into house four by Sgt Wuterich and LCpl Sharratt and were executed. Secondly, the government seeks to undermine the statements given by Sgt Wuterich, Cpl Salinas, and LCpl Sharratt by suggesting that those statements are uncorroborated by any administrative record of the seized weapons or suitcase. Thirdly, several Marines have provided statements that members of 1st Squad have made incriminating statements, including LCpl Sharratt who is alleged to have admitted that he shot a male "who was just standing there" and that he had fabricated a story to tell to NCIS.

The defense refutes the basis of the government's case for the following reasons, detailed in the brief that follows:

1. The forensic evidence, as provided in separate reports by NCIS investigators, supports the events as detailed by LCpl Sharratt and Sgt Wuterich and disproves the version provided by the Iraqi witnesses. In short, the forensic reconstruction states that the Marines were not tactically in control of house four and were surprised and engaged by the four males in the rear bedroom. There is no forensic evidence to support that the males were marched into house four and systematically executed.
2. The statements provided by the surviving Iraqi family members are suspect due to the inherent motive to lie and the time lag in the accounts, some four months after the incident. In the interim period, the families of houses one and two were paid \$38,000 by the Marine Corps. The family of houses three and four were denied payment after a determination was made that the engagement was justified. Yet, in October 2006 due to pressure from the local government, the Marine Corps relented and paid the family \$10,000.
3. Several AK-47s were seized on 19 November and returned to the Firm Base for processing. LCpl Rodriguez provided a statement confirming that two or more AK-47s were placed inside his vehicle. Cpl Stafford recalls taking possession of two AK-47s near Route Chestnut. Several Marines reported that 8 total AK-47s were stored in the seized weapon room at the Firm Base. On 1 December 2005, 9 AK-47s were transported to the battalion at the Haditha Dam and were logged in under Kilo 3/2 (2nd Platoon). The lax accountability as detailed by 2ndLt Kallop has led to the confusion cited in the Government's case.
4. The interviewed Iraqi witnesses that were allegedly inside of house three have admitted that a Marine seized a suitcase from house four, giving an explanation that Khatan Aiad Ahmed worked near the Jordanian border. Both Khatan and Jasib Aiad Ahmed allegedly possessed AK-47s as part of their employment. Further, a third AK-47 was turned over to investigators from house four by the alleged father of the four deceased, stating that he had hidden the weapon inside a closet of house four. Lastly, it is claimed that Marwan Aiad Ahmed possessed a Haditha Key Persons identification card – ostensibly validating his peaceful status. The log kept by Maj Hyatt, Civil Affairs Group officer for the company shows that Marwan was never issued such a card. Sgt Laughner, the Human Intelligence Exploitation Team (HET) member who seized identification cards from the bodies that day, did not collect any such card from any individual on 19 November 2005.
5. The statements attributed to LCpl Sharratt and others as inconsistent and incriminating are nothing more than sea stories told among friends and minor details associated with the fog of war. The government utilized these tidbits from various sources in an attempt to bolster the Iraqi witness statements, despite the forensic evidence to the contrary.

The government claim of an execution inside house four is contrary to the character and conduct of LCpl Sharratt. He is a combat tested Marine and veteran of the second battle of

Fallujah. He is largely described as the best SAW Gunner in the company and is credited with saving the life of his squad leader Sgt Wolf during a firefight on his first deployment.

LCpl Sharratt provided three statements to government investigators detailing the events above. He was administered and passed a polygraph test by NCIS in Iraq during the month of March 2006. No other percipient witnesses exist apart from the dubious claims of the Iraqi family members described above, other than Sgt Wuterich – who is charged with one specification of unpremeditated murder stemming from house four - and Cpl Salinas. The government has not charged Cpl Salinas as a co-conspirator, released him from his enlistment, nor granted Cpl Salinas testimonial immunity. The government claims that they cannot take any action regarding Cpl Salinas because the investigation is still pending. This is a tragically weak justification given the length and volume of the investigation and the fact that Cpl Salinas would likely provide exculpatory testimony for both Sgt Wuterich and LCpl Sharratt.

Taken in its totality, the evidence shows that, (1) this was a combat operation and (2) LCpl Sharratt fired his weapon under the reasonable belief that he was targeting enemy insurgents.

LCpl Sharratt properly utilized deadly force in accordance with the ROE, his training, and the applicable Laws of Armed Conflict. For the reasons stated, the Defense requests that the Investigating Officer recommend dismissal of the listed Charge and the three specifications thereunder.

| Charge: Violation of the UCMJ, Article 118 | |
|---|--|
| Specification 1: | In that Lance Corporal Justin L. Sharratt, U.S. Marine Corps, on active duty did, at or near Haditha, Iraq, on or about 19 November 2005, with the intent to kill or inflict great bodily harm, murder a person identified as Number 21 and believed to be Jasib Aiad Ahmed, by means of shooting that person with an M9 service pistol. |
| Specification 2: | In that Lance Corporal Justin L. Sharratt, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, with the intent to kill or inflict great bodily harm, murder a person identified as Number 22 and believed to be Kahtan Aiad Ahmed, by means of shooting that person with an M9 service pistol. |
| Specification 3: | In that Lance Corporal Justin L. Sharratt, U.S. Marine Corps, on active duty, did, at or near Haditha, Iraq, on or about 19 November 2005, with the intent to kill or inflict great bodily harm, murder a person identified as Number 23 and believed to be Jamal Aiad Ahmed, by means of shooting that person with an M9 service pistol. |

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Section 1: List of Exhibits and Documents

- Enclosure 1: Charge Sheet.
- Enclosure 2: LCpl Sharratt's Statements:
2A 19 February 2006 Sworn Statement.
2B 19 March 2006 Sworn Statement.
2C 24 March 2006 Sworn Statement.
- Enclosure 3: Sgt Wuterich's Statements:
3A 21 February 2006 Sworn Statement.
3B 18 March 2006 Sworn Statement.
- Enclosure 4: Cpl Salinas's Statements.
4A 19 February 2006 Sworn Statement.
4B 18 March 2006 Sworn Statement.
4C 24 March 2006 Sworn Statement.
- Enclosure 5: NCIS Violent Crimes Division, Forensic Consultant Unit, Report of Forensic Reconstruction.
- Enclosure 6: Results of the Death Scene Examination for House 4.
- Enclosure 7: Polygraph Examinations:
7A Results of LCpl Sharratt's polygraph examination.
7B Results of LCpl Mendoza's polygraph examination.
7C Results of Cpl Dela Cruz's polygraph examination.
- Enclosure 8: Video-taped Interview Transcripts of alleged Iraqi Witnesses:
8A 24 January 2007 Transcript of Videotaped Interview of Khalid Jamal Aiad Ahmed. (See page 9 for critical testimony relating to the number of gunshots fired.)
8B 23 January 2007 Transcript of Videotaped Interview with Nagham Fawwaz Suliman Rejab. (See page 10 for her recollection of the number of gunshots fired.)
- Enclosure 9: Maj Hyatt Statements:
9A 16 March 2006 Results of Interview with NCIS.
9B 19 November 2005 Statement.
9C 25 May 2006 Sworn Statement.
- Enclosure 10: 23 January 2007 Transcripts of Videotaped Interview of Nagla Abd Al-Razak Hamed.

- Enclosure 11: NCIS Results of Interviews with Alleged Iraqi Witnesses:
 11A 29 March 2006 SA Agent Mannle Rerpot.
 11B 6 April 2006 SA Platt Report.
- Enclosure 12: 24 January 2007 Transcripts of Videotaped Interview of Ehab Ayad Turki Wagga'a. (See page 5 for testimony regarding the suitcase.)
- Enclosure 13: 2d Marine Division CERP Purchasing Officer Training Slides. (See slide 7 for instructions prohibiting payments for insurgent activities).
- Enclosure 14: SSgt Robinson's 17 May 2006 Sworn Statement.
- Enclosure 15: Cpl Stafford's Statements and Interviews:
 15A 19 January 2007 Government Interview. (See page 65 for SSgt Logan's line of questioning clarifying that Cpl Stafford did not know anything about a story being made up by LCpl Sharratt).
 15B 15 May 2006 Sworn Statement.
- Enclosure 16: Sgt Wolf's 27 July 2006 Results of Interview.
- Enclosure 17: Cobra II Excerpts.
- Enclosure 18: 31 March 2006 Transcript of Col Davis's Interview with Col Ewers. (See pages 16-20 for pertinent portions cited in this brief).
- Enclosure 19: 19 June 2003: Strategic Forecasting article. "Iraq Downed Pumping Station Should have Limited Impact on Exports."
- Enclosure 20: Col Devlin's Intelligence Assessment: Published by the Washington Post on 2 February 2007.
- Enclosure 21: 30 May 2006, CNN interview transcripts with Safa Younis.
- Enclosure 22: Defense & Foreign Affairs Daily: "Timeline of Principal Combat Operations of the US-led Coalition Attack on Iraq, March 19-April 9, 2003."
- Enclosure 23: NY Times and Washington Post Articles:
 23A Opiel, Richard Jr. "After the War; G.I. Killed and 6 are Wounded in Stepped-Up Attacks." NY Times, 17 July 2003, Section A, Column 1, pg 10.
 23B Chandrasekaran, Rajiv. "Iraqi Mayor's Killing Reinforces Fear; Many Say Working With U.S. Will Lead to Retribution from Resistance Groups" Washington Post, 18 July 2003, Section A, pg. A08.

- Enclosure 24: 6 October 2005, United States Marine Corps Press Release, Operation River Gate Continues.
- Enclosure 25: 10 October 2005, United States Marine Corps Press Release, Operation checkpoint disrupts insurgent suicide bomb mission.
- Enclosure 26: 3 March 2006, Col Watt AR 15-6 Memorandum.
- Enclosure 27: LCpl Prentice's Statements:
 27A 18 October 2006 Sworn Statement.
 27B 27 March 2007 Transcript of Government Interview.
 27C 2 March 2007 Transcript of Defense Interview.
 27D 21 March 2006 Results of NCIS Interview.
- Enclosure 28: 3/1 Weapons Captured Weapons Log.
- Enclosure 29: No True Glory Excerpt, (ROI 12 Sep 06, 00272).
- Enclosure 30: 12 October 2005, United States Marine Corps Press Release, "Iraqi Commander visits Marines and Iraqi Soldiers in Haditha."
- Enclosure 31: LCpl Rodriguez Statements:
 31A 20 March 2006 Sworn Statement.
 31B 2 March 2007 Transcript of Defense Interview.
- Enclosure 32: 2ndLt Kallop's Statements:
 32A 24 March 2006 NCIS Results of Interview.
 32B 21 February 2006 Prepared Statement.
 32C 7 May 2007 Deposition Transcript
- Enclosure 33: Declassified Event Rollup Slides.
- Enclosure 34: Capt Dinsmore's 2 June 2006 Sworn Statement.
- Enclosure 35: LCpl Mendoza's 18 March 2006 Sworn Statement.
- Enclosure 36: Maj Gonzalez's Statements:
 36A 24 May 2006 Sworn Statement.
 36B 13 July 2006 NCIS Results of Interview.
- Enclosure 37: 2ndLt Mathes's 2 May 2006 Sworn Statement.
- Enclosure 38: Sgt Laughner's 2 June 2006 Sworn Statement.
- Enclosure 39: LCpl Casiday's Statements:
 39A 12 May 2006 Sworn Statement.

- 39B 18 October 2006 Results of NCIS Re-Interview.
- Enclosure 40: HM3 Lopez's 17 May 2006 Sworn Statement.
- Enclosure 41: Haditha Key Persons Identification Log
- Enclosure 42: HN Whitt's Statements:
42A 9 June 2006 Sworn Statement.
42B 20 March 2006 Sworn Statement.
- Enclosure 43: LCpl Graviss's 31 May 2006 Sworn Statement.
- Enclosure 44: 10 October 2006 Payments Vouchers for *Solatia* payments relating to the insurgents in house four.
- Enclosure 45: Armed Forces Institute of Pathology Notes.
- Enclosure 46: 19 November 2005 Maj Carrasco Email.
- Enclosure 47: LTC Bolgiano Curriculum Vitae.
- Enclosure 48: Dr. Salmoni Curriculum Vitae.
- Enclosure 49: LCpl Wright's 22 March 2006 Statement.
- Enclosure 50: 4 April 2006 NCIS Report of Investigation, Executive Summary

Section 2: Factual and Procedural Timeline

19 November 2005 LCpl Sharratt is engaged by insurgents in house four.

20 November 2005 2D Marine Division issues a press release.

2 February 2006 LtCol Chessani authorizes *solatia* payments.

10 February 2006 Time Magazine reporter contacts MNF.

14 February 2006 Col Watt initiates an AR 15-6 Investigation.

19 February 2006 LCpl Sharratt gives his first statement to Col Watt. Cpl Salinas also provides a statement.

21 February 2006 SSgt Wuterich provides a statement to Col Watt.

21 February 2006 2ndLt Kallop prepares a statement.

3 March 2006 Col Watt completes the AR 15-6 Investigation.

12 March 2006 NCIS is directed to initiate an investigation.

13 March 2006 Team of NCIS Special Agents travels to Haditha Dam.

18 March 2006 Cpl Salinas provides a statement to NCIS.

19 March 2006 Time Magazine publishes story.

19 March 2006 MGen Bargwell is appointed to conduct more investigations into the training and reporting of the combat engagement.

19 March 2006 LCpl Sharratt gives his second statement to NCIS.

21 March 2006 LCpl Prentice is interviewed by NCIS. He does not mention any conversations with LCpl Sharratt.

24 March 2006 LCpl Sharratt provides his third statement to NCIS.

24 March 2006 2ndLt Kallop speaks with NCIS.

29 March 2006 NCIS conducts a death scene examination of house four to collect forensic evidence.

30 March 2006 NCIS obtains the Haditha Key Persons Identification Card logbook and discovers that insurgent Marwan had not been issued a card.

2 April 2006 LCpl Sharratt passes a polygraph examination. Cpl Dela Cruz and LCpl Mendoza fail the polygraph examination.

12 April 2006 NCIS Special Agent Mannle interviews alleged Iraqi witnesses.

18 May 2006 USACIL DNA Branch completes its Final Report on house four.

18 May 2006 NCIS completes its Results of NCIS Death Scene Examination.

19 May 2006 Rep. Murtha begins publicly commenting on the investigation.

20 May 2006 USACIL Firearms Branch completes its Final Report.

30 May 2006 CNN interviews a child that was in one of the houses on Chestnut. The child says, "I was planning to go to school. I was about to get out of bed. I knew the bomb would explode, so I covered my ears." Enclosure 21.

31 May 2006 NCIS conducts an oral wire intercept of LCpl Sharratt's telephone. No information is gained.

15 June 2006 MGen Bargwell submits his final report.

24 August 2006 AFIP completes a Pathology Consultation Report.

1 September 2006 NCIS completes its Forensic Reconstruction.

18 October 2006 LCpl Prentice is re-interviewed by NCIS. He now claims that he had a conversation with LCpl Sharratt on 19 November 2005.

1 November 2006 Sgt Laughner is granted testimonial immunity.

9 November 2006 The revised Forensic Reconstruction is completed.

21 November 2006 Maj Schubert is granted testimonial immunity. Cpl Richard and 2ndLt Frank are also granted immunity.

6 December 2006 NCIS executes a search warrant at Maj Hyatt's house.

18 December 2006 LCpl Mendoza is granted testimonial immunity.

21 December 2006 LCpl Sharratt is charged. The Defense receives 10 NCIS reports in the initial discovery. The Forensic Reconstruction is not disclosed at this time.

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| 23-24 January 2007 | The video-taped interviews of the Iraqi alleged witnesses are conducted. The Defense is not invited. |
| 23 January 2007 | Sgt Wolf is granted testimonial immunity. |
| 19 February 2007 | Defense requests a delay in the Article 32 Investigation to review the discovery that continuously trickled in. A delay is granted until 17 April 2007. |
| 1 March 2007 | The date that the Article 32 Investigation was originally scheduled to begin. |
| 15 March 2007 | The Defense receives the Bargwell Report. The report includes a previously undisclosed statement made by LCpl Sharratt. |
| 22 March 2007 | Cpl Dela Cruz is granted testimonial immunity. |
| 3 April 2007 | Defense requests testimonial immunity for 2ndLt Kallop and Sgt Salinas. Only 2ndLt Kallop is granted testimonial immunity. |
| 5 April 2007 | Government obtains delay for the scheduled 14 May 2007 Article 32 Investigation. The delay is approved by the Convening Authority the same day. The Defense is not given any input into the delay. |
| 6 April 2007 | Defense formally objects to the Government request for a delay. The CA reviews the defense objection and overrules the delay. The Government then approves all of the defense's requested experts. The defense agrees to a delay to prepare the experts for the Article 32 Investigation. |
| 20 April 2007 | Second defense request for immunity for Sgt Salinas. |
| 23 April 2007 | Government finally endorses defense second request for immunity for Sgt Salinas. |
| 30 April 2007 | Maj Hyatt is granted testimonial immunity. |
| 1 May 2007 | CA delays decision on defense request for immunity ICO of Sgt Salinas. |
| 14 May 2007 | The original date that the Article 32 Investigation was scheduled to begin. |
| 11 June 2007 | Article 32 Investigation begins. |

Section 3: Background and Facts

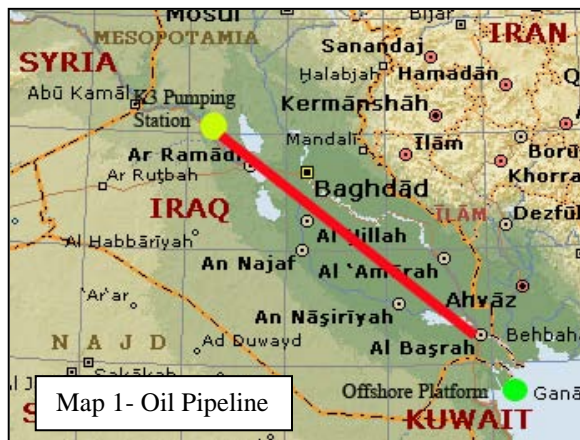
I. Haditha is at the center of the hornet's nest in the Haditha Triad.

The attack on the members of first squad was a continuation of a two-year struggle between insurgents and the United States military to control Haditha, Iraq.¹ On 1 April 2003, U.S. Special Operations forces seized Haditha Dam. This began the U.S. occupation of the city of Haditha – a city of 75,000 mostly Sunni Iraqis that lies in the Euphrates Valley 140 miles northwest of Baghdad and 80 miles from the Syrian border.²

With nearly 4,000 years of violent history, dating to Mesopotamia, the people of Haditha are survivors.³ Haditha is a city that is caught in the cross-fire between U.S. forces and insurgents determined to control the city because of its strategic importance. As Col Davis, the Regimental Combat Team Two (RCT-2) commander said, “They survived thirty-five years of Saddam. They don’t love us. We know that. They don’t like us. We know that. They don’t want us there. We know that too. And that’s all fine...this is not, you know, a great hidden secret among anybody over there.”⁴

In terms of strategic importance, not only is Haditha host to a massive dam critical to the country’s water-supply, but it also hosts the K3 crude oil pumping station. In 1975 Saddam Hussein built the 1.4 million barrel per day pipeline to export oil.⁵

When the pipeline was disabled in June 2003, Iraq’s North Oil Company (NOC) estimated that it would take months to repair the K3 pumping station and resume operations on the strategic pipeline.⁶ Throughout 2003 there was competition for bids to reconstruct the pipeline, but they were eventually abandoned as instability in the region made it clear that the exploitation of natural gas and oil reserves in the Euphrates river valley was untenable.⁷ Many Sunni’s believe that the only way to regain control of the oil is through violence.⁸ This sentiment directly feeds the insurgency.



Geographically, Haditha is an ideal crossroads for insurgent operations from Syria. From Haditha, insurgents can go north to Mosul or continue to Ramadi, Fallujah, or Baghdad. Some

¹ 1st Squad, 3rd Platoon, Kilo Company, 3rd Battalion, 1st Marine Division, I Marine Expeditionary Force.

² Gordon R. Michael and General Bernard E. Trainor “Cobra II: The Inside Story of the Invasion and Occupation of Iraq” pg 381, Random House, 2007. See also, Global Security.org. “Haditha”

<http://www.globalsecurity.org/military/world/iraq/haditha.htm>. Last accessed, 1 June 2007.

³ Enclosure 18: Colonel Davis Interview. See also, Col Davis Testimony to Col Ewers, R.O.I. 12 Oct 06 00858.

⁴ *Id.*

⁵ Global Security.org. “Haditha” <http://www.globalsecurity.org/military/world/iraq/haditha.htm>. Last accessed, 1 June 2007.

⁶ Enclosure 19: Iraq Downed Pumping Station Should have Limited Impact on Exports. Stratfor.com, 19 June 2003.

⁷ Enclosure 20: Col Devlin Assessment Published by the Washington Post on 2 February 2007.

⁸ *Id.*

journalists have speculated that the Battle of Fallujah in 2004 forced terrorists to flee to Haditha. Once in Haditha, they murdered the local police and seized control of the valley.

In February 2007 the Washington Post published an August 2006 classified intelligence assessment of the al Anbar province written by Marine Colonel Peter Devlin. Col Devin noted that al Qaida has enacted a tactical alliance with the small Ansar al-Sunna cells operating in “some parts of al-Anbar, particularly in the Haditha Triad.”⁹ Col Devlin’s assessment was that while “most al-Anbar Sunni dislike, resent and distrust AQI, many increasingly see it as an inevitable part of daily life...”¹⁰

Col Devlin specifically pointed out the increase in attacks in the al Anbar province between 2003 and 2006. In Col Davis’s interview for the AR 15-6 investigation¹¹, the RCT- 2 commander stated that, “we have had other places where insurgents go into these places [homes, government offices, hospitals, etc], will bunker them, they did this at Haditha hospital back in May of ’05, suicide vehicle bomb attack killed three of our guys...whether the insurgents had got into the buildings, killed people, you know, and this is part of an IO setup knowing full well we are going to attack through if we are taking fire from those buildings.”¹²



Col Devlin’s and Col Davis’ assessments are perceptive. The young girl that was allegedly present in house two on 19 November 2005 said during an interview with CNN that “I was planning to go to school. I was about to get out of bed. I knew the bomb would explode, so I covered my ears.”¹³ Indeed, the insurgency is a part of everyday life on Chestnut Road in Haditha.

Of course one of the U.S. military’s goals in al Anbar is to win the hearts and minds of the Iraqi people. Of the hearts and minds strategy to combating an insurgency, Col Davis said, “what you are trying to do there is you are trying to build some bonds with the community, traditionally called hearts and minds. Hearts and minds does not work up there... That is a misinterpretation of the culture that you are involved with in that particular area of Iraq...”¹⁴

Col Davis continued, “There is a very aggressive murder intimidation campaign and it is at such a point that the people, it takes very few insurgents to keep the majority of the people

⁹ *Id.*

¹⁰ *Id.*

¹¹ AR 15-6 refers to Army Regulation 15-6. This regulation gives commander’s a tool for investigating issues short of initiating a criminal investigation.

¹² Enclosure 18: Col Davis Interview.

¹³ Enclosure 21: 30 May 2006, CNN interview transcripts with Safa Younis, page 2.

¹⁴ Enclosure 18: Col Davis Interview.

sitting on that fence knowing full well someday the Americans are going to go and the insurgents are still going to be there.”¹⁵

The U.S. occupation of Haditha had begun to take shape in March 2003 when Army Delta Force operators were tasked with investigating several suspected Weapons of Mass Destruction (WMD) sites.¹⁶ They were then ordered to push east towards Haditha Dam to secure the infrastructure and investigate Kuwaiti claims that WMDs could be hidden inside of the dam.¹⁷ The possible destruction of the Haditha Dam by Saddam loyalists or foreign fighters would have had a disastrous impact on the country, causing flooding and a lack of water supply during the summer months.

On 1 April 2003, Army Rangers swiftly secured the infrastructure of the dam, but the fighting would rage for days as Iraqi soldiers fired RPGs, mortars, and artillery rounds into the dam.¹⁸ On 4 April, a suicide car exploded near a check-point killing three Soldiers, the car’s driver, and a pregnant woman.¹⁹ By the 10th, ground forces were beginning to fortify the area. The violence, however, continued to rage with constant attacks on U.S. forces and key infrastructure in the region. On 17 July 2003, the American-backed mayor of Haditha and his son were gunned down at 2:30p.m. while driving from the mayor’s office to his home. According to Al Jazeera, the mayor had been “accused of cooperating” with American forces. That morning, insurgents had distributed pamphlets cautioning residents to steer clear of American troops and anyone assisting them.²⁰

The struggle for control of Haditha continued for the next two years. By October 2005, Kilo Company was operating in Haditha. On 4 October 2005, 2d Marine Division launched Operation River Gate, which was the largest operation in the al Anbar province in 2005. The Operation kicked off with air strikes. The goal was to deny Al Qaeda in Iraq (AQI) the ability to operate in the Euphrates River Valley and to subdue the insurgents grip on the local citizens.²¹

On 5 October 2005, the Marines were attacked with a roadside bomb in the late afternoon. The triggerman was apparently wired in the Qaryat al Khadfah mosque.²² Marines found artillery rounds and roadside bombs inside the Mosque. No Marines were injured in the IED explosion.

¹⁵ *Id.*

¹⁶ Gordon R. Michael and General Bernard E. Trainor “Cobra II: The Inside Story of the Invasion and Occupation of Iraq” pg 381, Random House, 2007.

¹⁷ Gordon R. Michael and General Bernard E. Trainor “Cobra II: The Inside Story of the Invasion and Occupation of Iraq” pg 375, Random House, 2007.

¹⁸ *Id.*

¹⁹ Enclosure 22: Defense & Foreign Affairs Daily – Timeline of Principal Combat Operations of the US-led Coalition Attack on Iraq, March 19-April 9, 2003.

²⁰ Enclosure 23: The New York Times – After the War: Combat; G.I. Killed and 6 are Wounded in Stepped-Up Attacks, 17 July 2003. *See also*, The Washington Post – Iraqi Mayor’s Killing Reinforces Fear; Many Say Working with U.S. Will Lead to Retribution from Resistance Groups, 18 July 2003.

²¹ Enclosure 24: United States Marine Corps Press Release, Operation River Gate Continues, 6 October 2005.

²² *Id.*

Around 9 October Iraqi Security Forces discovered propaganda production equipment in a house while conducting clearing operations. They found compact discs, audio tapes, three computers, printers, banner makers, multi-disc copiers, and thousands of blank discs and tapes. They also discovered a bomb-making factory with pre-wired bombs, mortar rounds, propellants, blasting caps, and detonation cord.²³

The same day, three men in a white 4-door sedan were stopped and a search revealed a video camera.²⁴ Minutes later, another white 4-door sedan approached and detonated within yards of the Marines, killing the driver. After viewing the tape in the video camera, they saw the driver speaking to the suicide car bomb driver. Video-taping suicide car bombings is a known terrorist propaganda tactic used to spread fear and to intimidate Iraqi citizens.²⁵ On 10 October 2005, two additional weapons caches were found in Haditha. The cache sites contained bomb-making material, small-arms, RPGs, and ammunition.²⁶ Eventually US Forces would switch their attention to providing security for the 15 October elections. Operation River Gate ended on 21 October 2005.²⁷

During Col Watt's AR 15-6 Investigation, he succinctly summarized the threat assessment in the Haditha Triad as follows:²⁸

Since early 2005, cells from Ansar al Sunna (AAS) and Aqiz had established the Triad (Haditha, Barwana, Haqlaniyah) as a safe haven and key line of communication (LOC) between the border and points east, such as Ramadi and Mosul. Operation River Gate resulted in many mid-high level insurgents fleeing the three cities. While CF conducted detailed clearing operations throughout the AO, most local AAS operatives likely remained in outlying areas such as Bani Dahir, Abu Hyatt, Cykla, Anah, and Rawah. While overall insurgent activity dropped precipitously, this was likely the result of overwhelming numbers of CF on the ground within the Triad. As CF transitioned from offensive operations to a continuing security and stability mission, they expected these operatives to re-infiltrate the cities, reestablish contact with local criminal level insurgents, and conduct planning for attacks on CF firm bases and patrols. CF began to see an increase in probing attacks of the firm bases, small caliber IDF at close range, SAF attacks within the city, and VBIED/IED attacks within the city. CF also expected that local AAS operatives would establish contact with high-level foreign fighters and begin planning for spectacular attacks (SVBIED, coordinated ambush) against CF in Haqlaniyah, in an attempt to preserve access to vital LOC. AAS has begun re-infiltrating from outlying areas into Haditha, establishing contact with local criminal and insurgent operatives. They have continued intelligence gathering and passive observation of CF patterns throughout the city, while determining remaining resources that have not been discovered by CF.

²³ Enclosure 25: United States Marine Corps Press Release, Operation checkpoint disrupts insurgent suicide bomb mission, 10 October 2005.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Enclosure 26: Col Watt AR 15-6 Memorandum, 3 March 2006.

Insurgents continue to conduct attacks of opportunity, including IED, SAF, and small caliber IDF from covered and concealed position, while planning for spectacular attacks in order to attrit CF, establish legitimacy with the local populace, and erode the CF will to fight.

During the previous 6 months, while 3rd Bn 25th Marines owned the battle space they lost approximately 50 Marines. During the last 6 months while 3rd Bn 1st Marines owned the battle space, they lost approximately 4 Marines. During the week of this investigation, 3/1 MAR was attacked with IEDs every day and two on the last day. These IED attacks frequently included SAF, including from the local hospital we visited. Several Marines were injured during these attacks. Also a local Sheik and his son were gunned down about 500m's from K/3/1 MAR's CP. Haditha is still a very hostile environment.

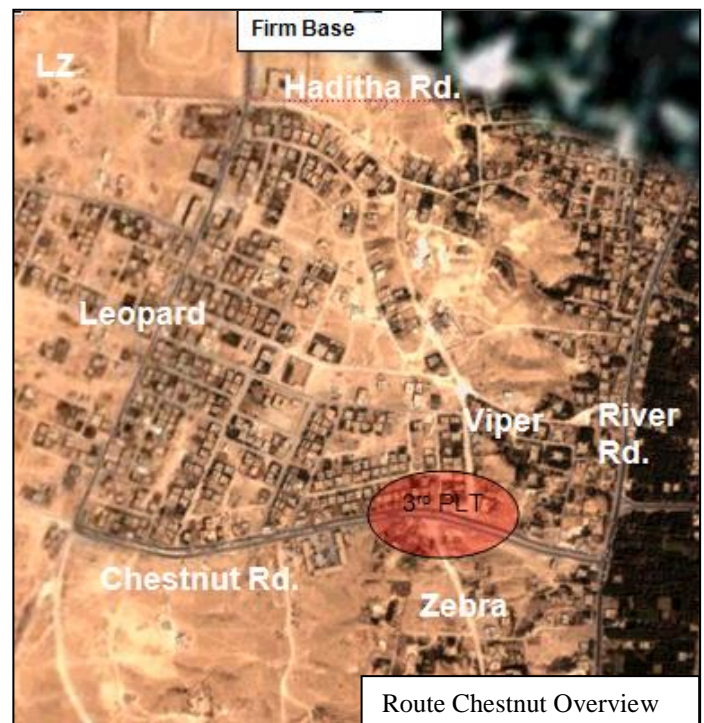
On 27 October 2205 LtGen Abdul Qader, the commander of all Iraqi infantry forces, met with LtCol Chessani in Haditha. LtGen Qader was concerned about how the citizens were dealing with Marines in the city. LtCol Chessani told him that the Marines were encouraging them to come out their homes and to live normal lives. LtGen Qader told the Iraqi soldiers to be careful and not to trust the streets as they become busier.²⁹

II. The Complex Attack

(For a timeline of the attack, see Appendix A.)

a. The IED

On 19 November 2005, first squad departed Firm Base Sparta (hereafter Sparta) on a routine convoy operation to a combat outpost to drop-off four Iraqi Security Forces (ISF) members.³⁰ The route plan was to return to Sparta by way of Route Chestnut (hereafter Chestnut). This particular road was a known insurgent stronghold. 2ndLt Kallop, in his deposition, testified that in the previous month Marines had found 22 IEDs on Chestnut.³¹ ISF Soldiers had reported that a house at the intersection of Route Chestnut and Route Viper was a known mujahedin house.³²



²⁹ Enclosure 30: United States Marine Corps Press Release, 12 Oct 2005.

³⁰ Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement. The Marines were members of 1st Squad, 3rd Platoon, Kilo Company, 3rd Battalion, 1st Marine Division, I Marine Expeditionary Force.

³¹ Enclosure 32C: 2ndLt Kallop 7 May 2006 Deposition.

³² Enclosure 32C: 2ndLt Kallop 7 May 2006 Deposition.

At approximately 0600, the squad departed Sparta in a four-vehicle convoy. After completing the transfer of the ISF Soldiers, the convoy headed back towards Sparta with four new ISF Soldiers in the back of the third vehicle.³³ The vehicle load was as follows:

Vehicle 1: LCpl Rodriguez, Rene (Driver)
Cpl Salinas, Hector (A-Driver)
LCpl Sharratt, Justin (Gunner)

Vehicle 2: Cpl Dela Cruz, Sanick (Driver)
LCpl Tatum, Stephen (A-Driver)
LCpl Mendoza, Humberto (Gunner)
Four ISF members

Vehicle 3: Sgt Wuterich, Frank (Driver)
LCpl Graviss, Trent (A-Driver)
HN Whitt, Brian (Gunner)

Vehicle 4: LCpl Terrazas, Miguel (Driver, KIA)
LCpl Crossan, Trent (A-Driver WIA)
PFC Guzman, Salvador (Gunner WIA)

LCpl Sharratt occupied the turret of the first vehicle in the convoy.³⁴ LCpl Sharratt had entered the Marine Corps on 28 July 2003 as an 0311 infantryman.³⁵ He had participated in Operation Phantom Fury in Fallujah in July 2004.³⁶ During over four days of combat in Fallujah, LCpl Sharratt had fired upwards of 2,000 rounds from his weapon.³⁷ In fact, LCpl Sharratt saved the life of his squad leader, Sgt Francis Wolf. Capt Grapes, his platoon leader in Fallujah, will testify that LCpl Sharratt was considered a “more astute Marine in terms of low level infantry tactics...” In two tours in Iraq, LCpl Sharratt had searched over 1,000 homes.³⁸ The deployment to Haditha was his second deployment. During 2ndLt Kallop’s deposition, he said that, “[LCpl Sharratt] knows that weapon [SAW] inside and out. I think my first time meeting him he told me how quickly he could disassemble and assemble the SAW. And I think based on personal observation of him at ranges and on deployment, I think that he’s one of the best 0331’s, you know, machine gunners, we have.”³⁹

Like many Marines, LCpl Sharratt has a reputation for telling sea stories and embellishing his feats. All of his peers would testify that LCpl Sharratt tends to exaggerate the stories that he tells.

³³ Enclosure 3: Sgt Wuterich’s 21 February 2006 Statement.

³⁴ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

³⁵ Enclosure 2B: LCpl Sharratt’s 24 March 2006 Statement.

³⁶ Enclosure 2B: LCpl Sharratt’s 24 March 2006 Statement.

³⁷ Enclosure 2B: LCpl Sharratt’s 24 March 2006 Statement.

³⁸ Enclosure 2B: LCpl Sharratt’s 24 March 2006 Statement.

³⁹ Enclosure 32C: 2ndLt Kallop 7 May 2006 Deposition, pages 162-163.

On 19 November 2005, activity along the route to the combat outpost was light and LCpl Sharratt had only seen two other vehicles on the road.⁴⁰ After the changeover at the combat outpost, the convoy pulled onto River Road. Traffic was a little heavier, but it was still morning and there were not many vehicles. The lead gunner is responsible for waiving any on-coming vehicles off to the side of the road and, at the same time, is constantly scanning for IEDs – fresh dirt, wires sticking up, big clumps of metal, suspicious boxes, etc.

The convoy took approximately 5 minutes to drive down River Road before they made a left turn onto Chestnut. Route Chestnut is a paved road that is divided by a concrete lifted median and it is not marked with any lanes. Route Chestnut was usually a very busy road. The convoy made a left hand turn from River Road onto Chestnut in the lanes on the right of the median.⁴¹

The convoy drove approximately 500 meters before the insurgents triggered the attack by detonating the IED on vehicle four. The vehicles were driven about 75 -100 meters apart for IED purposes. Vehicle 1, with LCpl Sharratt, was approximately 200 meters in front of Vehicle 4.



Vehicle 4 at the IED site.
(ROI 18 Jul 06, 00277).

As the convoy passed Route Viper, LCpl Sharratt saw a white 4-door sedan with “people in it.”⁴² At about 50 meters, he started to waive the car over to the side of the road. The car started to veer off to the side of the road in a normal manner. It pulled over and LCpl Sharratt’s vehicle passed the car.⁴³ A few seconds later, at 0716, LCpl Sharratt heard the explosion from the IED that destroyed the fourth vehicle.⁴⁴ The explosion killed LCpl Terrazas and wounded LCpl Crossan and LCpl Guzman. The explosion pinned LCpl Crossan under the tire of the vehicle.⁴⁵ The corpsman, Cpl Salinas, and LCpl Tatum had to work furiously to free LCpl Crossan from the wreckage.

When LCpl Tatum and Cpl Salinas reached LCpl Crossan, they quickly did a medical assessment of LCpl Crossan and began to worry that he was going into shock. LCpl Crossan’s eyes were dilated and he kept repeating over and over “How’s TJ? Is TJ okay?” LCpl Tatum told LCpl Crossan that TJ was fine and they cut LCpl Crossan’s flak jacket off and prepared him for the medical evacuation (medivac).

Meanwhile, two quick reaction forces (QRF) were back at the Sparta. Sgt Wolf was the 2nd Squad leader and was laying in his rack when the explosion occurred.⁴⁶ Sgt Wolf felt the

⁴⁰ Enclosure 2B: LCpl Sharratt’s 24 March 2006 Statement.

⁴¹ Enclosure 2B: LCpl Sharratt’s 24 March 2006 Statement.

⁴² Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

⁴³ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

⁴⁴ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

⁴⁵ Enclosure 32C: 2ndLt Kallop’s 21 February 2006 Statement.

⁴⁶ Enclosure 16: Sgt Wolf’s 20 July 2006 Statement.

building shake and then he rolled off of his rack because he was expecting incoming fire.⁴⁷ He immediately went to the command operations center (COC) and saw the first QRF, led by Cpl Sanchez, preparing to leave. 2ndLt Kallop also departed with the first QRF. The QRF left by 0720 and probably arrived at Route Chestnut no later than 0730.⁴⁸



Location of Vehicles at 0716

Sgt Wolf immediately requested that the Company Commander deploy his squad because the first QRF was only acting as a medivac unit.⁴⁹ Approximately 15 minutes after the explosion, Sgt Wolf led second squad on a foot patrol to the IED site – the squad was accompanied by Capt McConnell and Sgt Laughner.⁵⁰ As they set out along Haditha Road, Sgt Wolf could hear AK-47 and M-16 fire.⁵¹ Several times along the patrol to Route Chestnut, Sgt Wolf had his squad take cover because of the sounds of 7.62 round small-arms fire.⁵² At one point, Sgt Laughner saw impact rounds striking the ground 100 meters to their front.⁵³ The fire was probably coming from his east – the area to the north of Chestnut.

The explosion of the IED triggered a complex attack consisting of two main elements.⁵⁴ The first element was the engagement against first squad on Route Chestnut.⁵⁵ The second element consisted of a small arms attack on the Marines and Explosive and Ordnance Disposal (EOD) personnel who were responding on River Road.⁵⁶ Because of the obvious insurgent activity in the vicinity Chestnut, another squad, 1st Platoon, 1st Squad (Spartan 1/1) was deployed to set up a blocking position at the intersection of Routes Viper and Chestnut.⁵⁷

2ndLt Mathes describes what happened to Spartan 1/1 in graphic detail in his statement:⁵⁸

While moving South on River, the squad was delayed by a surface laid IED. The squad set up a cordon around the IED and I requested the explosive ordnance disposal team (EOD). I don't remember what happened between the request for EOD and EOD arriving. As EOD was traveling South on River Road, they reported to us that they were receiving SAF from the Palm Groves East of River Road and North of the hospital. EOD pushed through the SAF and we launched Spartan 1/3 to attack and destroy the enemy in the Palm Groves. As they were exiting from the lines out of entry control point two (ECP2), the squad received SAF from the intersection of Haditha Road and Market Street. The squad pursued

⁴⁷ Enclosure 16: Sgt Wolf's 20 July 2006 Statement.

⁴⁸ Enclosure 16: Sgt Wolf's 20 July 2006 Statement.

⁴⁹ Enclosure 16: Sgt Wolf's 20 July 2006 Statement.

⁵⁰ Enclosure 16: Sgt Wolf 20 July 2006 Statement.

⁵¹ Enclosure 16: Sgt Wolf 20 July 2006 Statement.

⁵² Enclosure 16: Sgt Wolf 20 July 2006 Statement.

⁵³ Enclosure 38: Sgt Laughner 2 June 2006 Statement, page 2.

⁵⁴ Enclosure 33: Declassified Event Rollup Slides.

⁵⁵ Enclosure 33: Declassified Event Rollup Slides.

⁵⁶ Enclosure 33: Declassified Event Rollup Slides.

⁵⁷ Enclosure 37: Lt Mathes 2 May 2006 Statement.

⁵⁸ Enclosure 37: Lt Mathes 2 May 2006 Statement.

the enemy and the enemy broke contact in the vicinity of the hospital. As the squad was returning to base, they found another IED in the intersection of Rhino and Haditha Road. They maintained a cordon there and requested EOD. All the while, we were able to observe live feed from the Scan Eagle, an unmanned aerial vehicle, from within the COC. Scan Eagle reported seeing 7 military age males (MAMs) in a vehicle driving South on Palm Grove Trail near the hospital...The vehicle stopped at this house and four men got out carrying AK-47s and they entered the house. We had air on station...

When the IED that killed LCpl Terrazas detonated, Capt Dinsmore, the Battalion Intelligence Officer, was in the COC providing an intelligence briefing to Lieutenant Colonel Chessani, the Battalion Commander.⁵⁹

As soon as Capt Dinsmore was notified of the explosion, he began tasking the battalion's intelligence assets in support of the Marines.⁶⁰ By 0830, the Captain had the SCAN EAGLE unmanned aerial vehicle (UAV) flying near Route Chestnut.⁶¹ Intelligence personnel later estimated that 10-15 insurgents were involved in the overall attack.⁶² The day after the explosion, Major Gonzalez, the battalion executive officer, returned to Route Chestnut and witnessed the "blast crater, body fluids, vehicle fluids, AK-47 brass, vehicles parts, [and] charred sidewalk."⁶³

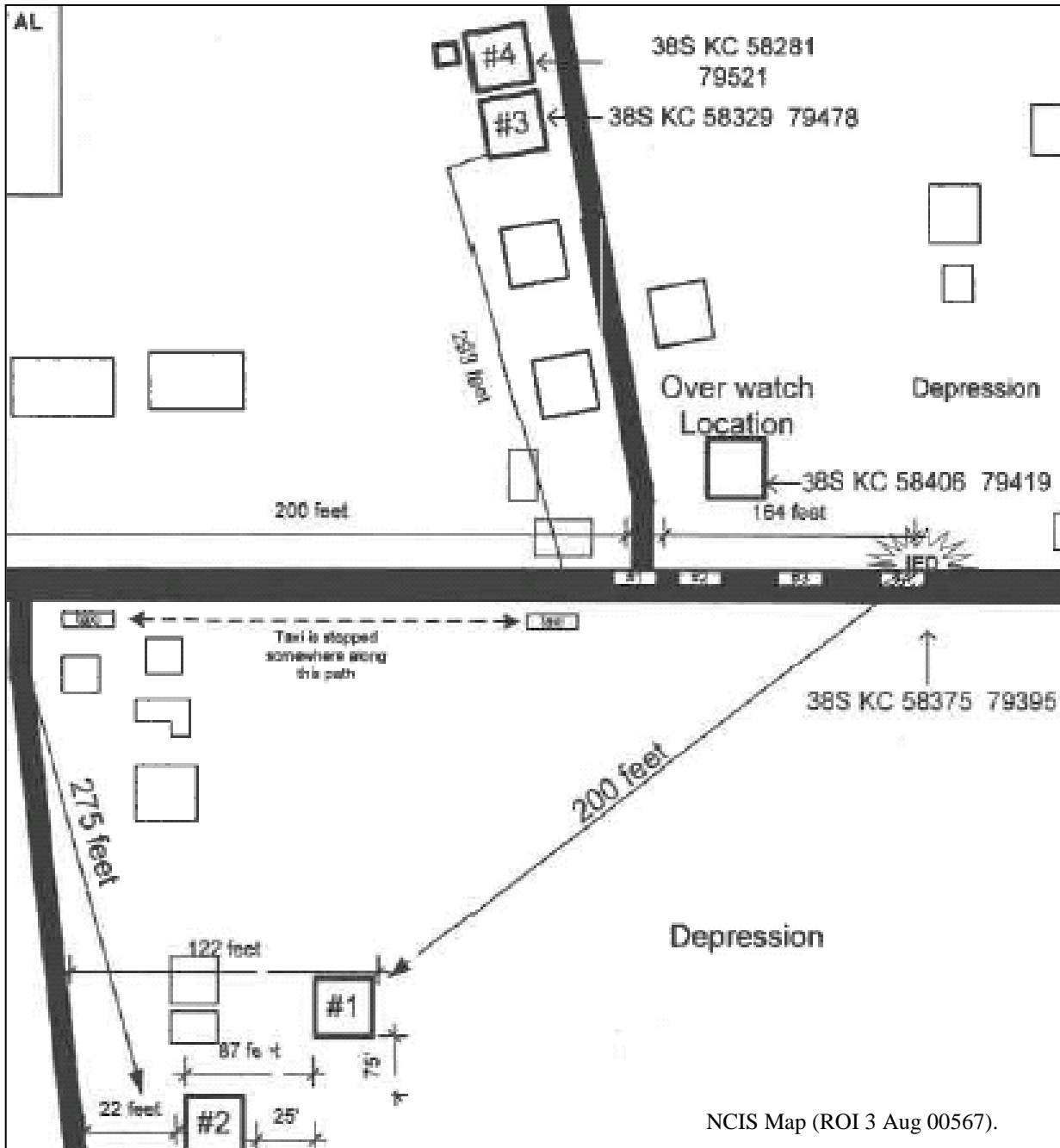
⁵⁹ Enclosure 34: Capt Dinsmore's 2 June 2006 Statement.

⁶⁰ Enclosure 34: Capt Dinsmore's 2 June 2006 Statement.

⁶¹ Enclosure 34: Capt Dinsmore's 2 June 2006 Statement.

⁶² Enclosure 34: Capt Dinsmore's 2 June 2006 Statement.

⁶³ Enclosure 36A: Maj Gonzalez 24 May 2006 Statement.



NCIS Map (ROI 3 Aug 00567).

*Note: NCIS has labeled the houses in this map as 1 – 4. This brief refers to the houses consistent with how NCIS has labeled them.

b. Insurgents Attack First Squad with Small-Arms Fire

At the same time of the explosion that killed LCpl Terrazas, LCpl Sharratt heard gunfire, both AK and M-16 rounds.⁶⁴ LCpl Rodriguez, who was in the passenger seat of LCpl Sharratt's vehicle, also reported hearing small-arms fire that sounded like 7.62 rounds.⁶⁵ LCpl Sharratt turned around to the front and faced his sector to the west in anticipation of a coordinated attack. Because LCpl Sharratt was facing his sector to the West, he did not witness the subsequent event between other members of his squad and the Iraqi military-aged males at the white sedan.

Cpl Salinas and several other Marines reported taking fire from a house located to the South of the IED site.⁶⁶ In fact, every single Marine in first squad, as well as 2ndLt Kallop, reported hearing or seeing AK-47 fire and impact rounds.⁶⁷ This fact was acknowledged both in the NCIS reports of investigation delivered to the Convening Authority and by the Marine Corps upon the announcement of these charges.⁶⁸

c. 2ndLt Kallop Orders Marines to "Clear South"

According to Standard Operating Procedure, the Marines herringboned the vehicles and LCpl Rodriguez moved the first vehicle back to the intersection at Route Viper.⁶⁹ By now, the first QRF had arrived and the lead vehicle went all the way to vehicle 4.⁷⁰ The QRF dropped off 2ndLt Kallop.⁷¹ The other vehicles stopped behind it and set up security.⁷² The QRF loaded the casualties, LCpl Crossan and LCpl Guzman, and left to the helicopter-landing zone (LZ).

Cpl Salinas told 2ndLt Kallop that enemy fire had come from the direction of house one and that he could see a male "turkey pecking" from behind the structure.⁷³ 2ndLt Kallop instructed Cpl Salinas to fire at the male. Cpl Salinas fired a round from his M203 grenade launcher towards the residence. The round fell far short and detonated some 20 feet in front of house one. 2ndLt Kallop then directed Sgt Wuterich to gather a team of Marines and to "clear south."⁷⁴

Sgt Wuterich gathered Cpl Salinas, LCpl Tatum, and LCpl Mendoza and began running down and then back up a small hill leading to the house that insurgents were suspected to have been firing from.⁷⁵ 2ndLt Kallop began to follow the team down into the depression, but was stopped by LCpl Graviss, who reported that he thought they may have found the trigger house on

⁶⁴ Enclosure 2B: LCpl Sharratt's 24 March 2006 Statement.

⁶⁵ Enclosure 31: LCpl Rodriguez Declaration.

⁶⁶ See Enclosure 4: Cpl Salinas' Statements. *See also*, Enclosure 31: LCpl Rodriguez's declaration.

⁶⁷ Enclosure 32C: 2ndLt Kallop's 7 May 2007 Deposition Transcript, page 12.

⁶⁸ Enclosure 51: 4 April 2006 NCIS Report of Investigation, Executive Summary.

⁶⁹ Enclosure 16: Sgt Wolf 20 July 2006 Statement. *See also*, Enclosure 31: LCpl Rodriguez's 20 March 2006 Statement.

⁷⁰ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

⁷¹ Enclosure 32A: 2ndLt Kallop's 24 March 2006 Statement.

⁷² Enclosure 32A: 2ndLt Kallop's 24 March 2006 Statement.

⁷³ Enclosure 32A: 2ndLt Kallop's 24 March 2006 Statement.

⁷⁴ Enclosure 32B: 2ndLt Kallop's 21 February 2006 Statement.

⁷⁵ Enclosure 32B: 2ndLt Kallop's 21 February 2006 Statement.

the north side of the street.⁷⁶ It was approximately 0735. 2ndLt Kallop then departed with LCpl Graviss north of Chestnut. Cpl Salinas, LCpl Tatum, and LCpl Mendoza moved south towards house one.

The next time LCpl Sharratt looked back, he saw Cpl Salinas and LCpl Mendoza running south up the hill.⁷⁷ Thinking it was only two Marines headed to the house, LCpl Sharratt then dismounted the M240G from the turret, adjusted his combat load, and climbed off the vehicle. He then began moving south with the heavy machine gun in the direction of the depression and houses that his fellow Marines were deployed.⁷⁸ LCpl Sharratt had been in the hell-house in Fallujah and understood the danger of being trapped in a house. The M240G would offer more fire power if his fellow Marines were trapped inside of another hell-house. When LCpl Sharratt started down the hill, he saw Sgt Wuterich and LCpl Tatum near the top of the hill.⁷⁹

d. Houses One and Two are Cleared

As LCpl Sharratt was moving up the hill with the M240G, the team that 2ndLt Kallop deployed to house one had finished clearing the house and was moving to house two.⁸⁰ LCpl Sharratt was not in house one when the team cleared the house. He met up with the team as they were moving to house two. LCpl Sharratt momentarily stepped inside the kitchen of house two and saw a dead body. He was only inside of the house for seconds before he realized the nature of the complex attack and the need for outside security. LCpl Sharratt never went more than a few steps into house two. He did not fire a single shot and he did not throw a single grenade. LCpl Sharratt quickly withdrew from the house and provided security.

The team left house two and moved north on Route Zebra. Along the way, they stopped at another house along Route Zebra and LCpl Sharratt shot the lock off the house with his M240.⁸¹ The team discovered that the house was empty and the team moved across the street to a house located at the corner of Routes Zebra and Chestnut. They could see into the windows and the house appeared to be empty.

e. 2ndLt Kallop Establishes the Over Watch Position

Once the team redeployed to Chestnut, at approximately 0815, 2ndLt Kallop instructed Sgt Wuterich to establish an over watch position (OP) on the roof of a house near the IED site. As explained by 2ndLt Kallop, the OP was set up directly across the street from a house known to be a "Muj" house because it belonged to an insurgent.⁸² Sgt Wuterich, Cpl Salinas, LCpl Sharratt, and LCpl Rodriguez moved to the roof of the house to set up the OP.⁸³ Because of the lull in the battle, the Marines on the OP began smoking cigarettes.⁸⁴ The Marines had each

⁷⁶ Enclosure 32A: 2ndLt Kallop's 24 March 2006 Statement.

⁷⁷ Enclosure 2B: LCpl Sharratt's 19 March 2006 Statement.

⁷⁸ Enclosure 2B: LCpl Sharratt's 19 February 2006 Statement.

⁷⁹ Enclosure 2B: LCpl Sharratt's 19 February 2006 Statement.

⁸⁰ Enclosure 4B: Cpl Salinas, 18 March 2006 Statement, pg. 3.

⁸¹ This is not the house referred to as house 3 in the NCIS reports of investigation and this brief.

⁸² Enclosure 32C: 2ndLt Kallop's 7 May 2007 Deposition Transcript.

⁸³ Enclosure 31B: LCpl Rodriguez' 2 March 2007 Transcript of Defense Interview.

⁸⁴ Enclosure 31B: LCpl Rodriguez' 2 March 2007 Transcript of Defense Interview.

smoked at least six cigarettes before 2ndLt Kallop ordered LCpl Rodriguez to accompany him to house one.⁸⁵ LCpl Tatum and LCpl Mendoza were on the first floor of the OP house. LCpl Tatum was ordered to provide security for the detainees and LCpl Mendoza was later ordered to take a radio to Cpl Dela Cruz who had gone north of Chestnut to investigate the house where the IED was suspected to have been triggered from.⁸⁶ This left only Sgt Wuterich, Cpl Salinas, and LCpl Sharratt on the OP.

f. Insurgents Engaged at Route Zebra

While at the OP, LCpl Sharratt saw an adult Iraqi male wearing all black running quickly into the depression in front of houses one and two. The insurgent was running east towards River Road.⁸⁷ LCpl Sharratt reported the target to Cpl Salinas. After receiving authorization to engage the target, LCpl Sharratt engaged him with his SAW.⁸⁸ Cpl Salinas also engaged the individual with his M-16.⁸⁹ Several other Marines may have also engaged the target, who was killed.

About 20 minutes later, Sgt Wuterich reported enemy movement to the west of Route Zebra.⁹⁰ Sgt Wuterich asked for somebody to go with him to investigate and LCpl Sharratt volunteered for the mission.⁹¹ Just beyond the intersection of Routes Zebra and Chestnut, Sgt Wuterich and LCpl Sharratt saw an Iraqi male running across the street approximately 200-300 yards away.⁹² The individual was wearing a red and white checkered scarf wrapped around his head. LCpl Sharratt tried to fire, but his weapon jammed. Sgt Wuterich successfully engaged the man.⁹³ No Marine is charged in connection with these engagements because their actions were clearly justified under the ROE. 2ndLt Kallop was nearby at house two conducting a battle damage assessment with Cpl Salinas when he heard the firing. The lieutenant yelled for the Marines to stop firing because there were friendly forces in the area.⁹⁴ It was approximately 1015. 2ndLt Kallop instructed LCpl Rodriguez to bring a vehicle to house one because there were injured Iraqi children that needed a medivac. 2ndLt Kallop and LCpl Rodriguez drove the evacuees to the helicopter landing zone (HLZ) – leaving Sgt Wuterich in command. 2ndLt Kallop remained at the HLZ for approximately one hour.⁹⁵

⁸⁵ Enclosure 31B: LCpl Rodriguez' 2 March 2007 Transcript of Defense Interview.

⁸⁶ Enclosure 43: LCpl Graviss' 31 May 2006 Statement.

⁸⁷ Enclosure 2B: LCpl Sharratt's 19 March 2006 Statement.

⁸⁸ Enclosure 2B: LCpl Sharratt's 19 March 2006 Statement.

⁸⁹ Enclosure 2B: LCpl Sharratt's 19 March 2006 Statement.

⁹⁰ Enclosure 2B: LCpl Sharratt's 19 March 2006 Statement.

⁹¹ Enclosure 2B: LCpl Sharratt's 19 March 2006 Statement.

⁹² Enclosure 2B: LCpl Sharratt's 19 March 2006 Statement.

⁹³ Enclosure 2B: LCpl Sharratt's 19 March 2006 Statement.

⁹⁴ Enclosure 2B: LCpl Sharratt's 19 March 2006 Statement.

⁹⁵ Enclosure 32C: 2ndLt Kallop's 7 May 2007 Deposition Transcript.

g. The Complex Attack Continues

While the Marines were on the OP, Capt Dinsmore had been in the Command Operations Center monitoring the SCAN EAGLE unmanned aerial vehicle that was deployed shortly after the explosion.⁹⁶ Several units that had responded to the complex attack had been engaged by insurgents throughout the city. In all, three IEDs were located in the vicinity of Chestnut and the Marines took an additional seven casualties because of enemy fire.⁹⁷

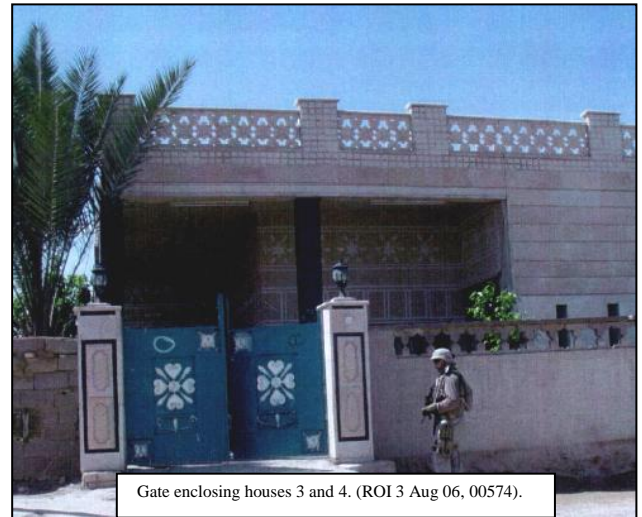
Between 0830 and 0900, Capt Dinsmore had observed insurgents fleeing in a vehicle in the vicinity of Route Chestnut and River Road.⁹⁸ He continued monitoring the movement of those insurgents until they arrived at what was later determined to be a safe house near Route Zebra and River Road.⁹⁹ The Captain's immediate assessment was that this was a "citywide attack coordinated between several insurgent teams working together."¹⁰⁰ At approximately 1030, Capt Dinsmore positively identified the house and called for Hellfire missiles and 500lb bombs. The house was obliterated.¹⁰¹

Footage of the safe-house being destroyed
- as captured by the SCAN EAGLE.



h. Insurgents at House Four Monitor the Activity of the Marines on the OP

The engagement at house four occurred not long after a "safe house" was engaged by Hellfire missiles. By 1040 hours, at approximately the same time as an insurgent "safe house" was destroyed, Sgt Wuterich and LCpl Sharratt saw a military-aged male walking back and forth behind the gate that enclosed houses three and four.¹⁰² Additional men would periodically come outside, walk back and forth, and observe the Marines on the over watch position. The insurgents would go back inside of house four. After a few evolutions of this behavior, Cpl Salinas fired a training purpose (TP) round into the house to signal to the men to go back inside.¹⁰³



Gate enclosing houses 3 and 4. (ROI 3 Aug 06, 00574).

⁹⁶ Enclosure 32C: 2ndLt Kallop's 7 May 2007 Deposition Transcript.

⁹⁷ Enclosure 46: 19 November 2005 Maj Carrasco Email. *See also* Enclosure 33: Declassified Event Rollup Slides.

⁹⁸ Enclosure 34: Capt Dinsmore's 2 June 2006 Sworn Statement.

⁹⁹ Enclosure 34: Capt Dinsmore's 2 June 2006 Sworn Statement.

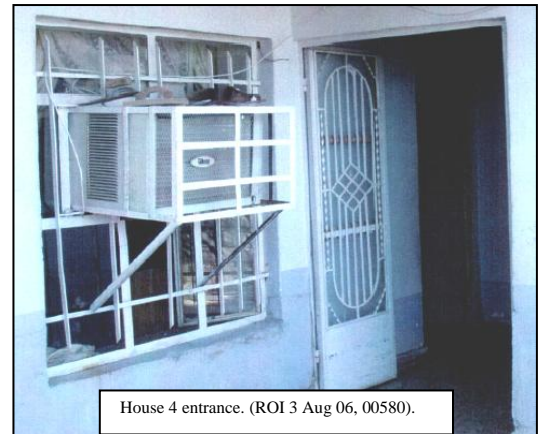
¹⁰⁰ Enclosure 34: Capt Dinsmore's 2 June 2006 Sworn Statement.

¹⁰¹ Enclosure 34: Capt Dinsmore's 2 June 2006 Sworn Statement.

¹⁰² Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement. Enclosure 3: Sgt Wuterich's 21 February 2006 Statement.

¹⁰³ Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement. *See also* Salinas March Statement.

Following the TP round, the men resumed their observation of the Marines. Sgt Wuterich made the decision to approach the house and to conduct a knock and search.¹⁰⁴ Sgt Wuterich, Cpl Salinas, and LCpl Sharratt entered the compound containing house three and four through the gate depicted in the picture two.

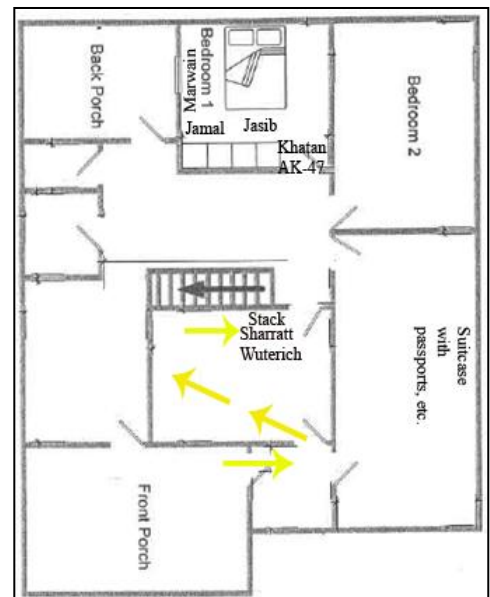


i. Knock-and-search

As the Marines approached house three, they were approached by several women and children at the door.¹⁰⁵ Sgt Wuterich asked where the men were who had been observing the Marines.¹⁰⁶ The standing operating procedure was to first ask if there were any weapons - Enta Salah - and then to ask where the males were - Entaabu.¹⁰⁷ The women had indicated to Sgt Wuterich and Cpl Salinas that the men were next door in house four.¹⁰⁸ Sgt Wuterich decided to leave Cpl Salinas with the women and children to contain them at house three.¹⁰⁹ Meanwhile, Sgt Wuterich made a tactical decision to take LCpl Sharratt and move to house four to investigate.¹¹⁰

j. Insurgents Engage the Marines at House Four

LCpl Sharratt was in the lead as they walked to house four.¹¹¹ The Marines entered from the front side door.¹¹² LCpl Sharratt did as trained and proceeded into the center meeting room.¹¹³ Unsure of who was in the next room, LCpl Sharratt and Sgt Wuterich stacked themselves on the far door that allows access to the interior hallway and stairwell.¹¹⁴



House 4 (ROI 3 Aug, 00568).

As LCpl Sharratt began to stack himself along the wall, he saw an Iraqi male pointing an AK-47 at him as though he was going to fire the weapon.¹¹⁵ LCpl Sharratt quickly shouldered his

¹⁰⁴ Enclosure 3: Sgt Wuterich's 21 February 2006 Statement.

¹⁰⁵ Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement. *See also* Enclosure 3: Sgt Wuterich's 21 February 2006 Statement. *See also* Enclosure 4B: Cpl Salinas's 18 March 2006 Statement.

¹⁰⁶ Enclosure 3: Sgt Wuterich's 21 February 2006 Statement.

¹⁰⁷ Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement. *See also* Enclosure 3: Wuterich 2006 Statement.

¹⁰⁸ Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement. Enclosure 3: Sgt Wuterich's 21 February 2006 Statement.

¹⁰⁹ Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement. *See also* Enclosure 3: Sgt Wuterich's 21 February 2006 Statement. *See also* Enclosure 4B: Cpl Salinas's 18 March 2006 Statement.

¹¹⁰ Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement. *See also* Enclosure 3: Sgt Wuterich's 21 February 2006 Statement. *See also* Enclosure 4B: Cpl Salinas's 18 March 2006 Statement.

¹¹¹ Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement.

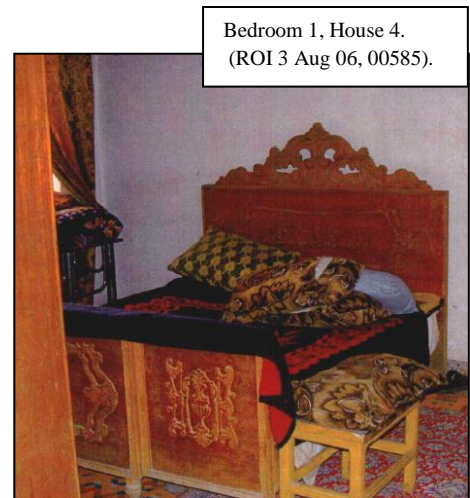
¹¹² Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement.

¹¹³ Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement.

¹¹⁴ Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement.

SAW and attempted to fire, but it jammed.¹¹⁶ As LCpl Sharratt pulled back behind the cover of the wall, he yelled “jam” to Sgt Wuterich and dropped his SAW - allowing the sling to catch the weapon next to his waist.¹¹⁷ He saw the Iraqi male also withdraw into bedroom one.¹¹⁸ As his sling was catching the SAW, LCpl Sharratt simultaneously drew his 9mm pistol from its holster and leaned out into the door waiting for the insurgent to present himself.¹¹⁹ The insurgent again popped out from behind the door with his rifle raised.¹²⁰ LCpl Sharratt shot him once in the head – exactly as the forensic reconstruction would confirm.¹²¹

As the first insurgent fell backwards, LCpl Sharratt could hear an insurgent racking an AK-47 in the bedroom and began to assault through the objective.¹²² He stepped forward into the bedroom and continued to hear an insurgent racking an AK-47.¹²³ As LCpl Sharratt stepped into the room, he saw either three or four insurgents in the corner of the bedroom.¹²⁴ His training and combat experience taught him to quickly establish fire-superiority. He rapidly fired several center mass shots at the insurgent with the AK-47 who was barely two feet away.¹²⁵ LCpl Sharratt next eliminated the other threats in the room until his magazine was empty – because he didn’t know whether the insurgents were wearing body armor or suicide vests as they did in Fallujah.¹²⁶



LCpl Sharratt yelled “I’m out!” and Sgt Wuterich entered the room and fired several shots into the insurgents to ensure that they were no longer a threat.¹²⁷ When Sgt Wuterich stopped firing, LCpl Sharratt grabbed the two AK-47 rifles and set them in the hallway as they finished clearing the other rooms in the house.¹²⁸ Upon closer inspection, LCpl Sharratt found a live AK-47 shell with the primer indented, suggesting that the insurgent’s weapon had also jammed.¹²⁹ The two Marines also found a suitcase containing passports, clothes, and hygiene gear.¹³⁰

¹¹⁵ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

¹¹⁶ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

¹¹⁷ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

¹¹⁸ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

¹¹⁹ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

¹²⁰ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

¹²¹ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement. *See also* Enclosure 5: Results of the Forensic Reconstruction. R.C.F.L. 16 Nov 06.

¹²² Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

¹²³ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

¹²⁴ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

¹²⁵ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

¹²⁶ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

¹²⁷ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

¹²⁸ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

¹²⁹ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement.

¹³⁰ Enclosure 2A: LCpl Sharratt’s 19 February 2006 Statement. *See also* Enclosure 3: Sgt Wuterich’s 21 February 2006 Statement. *See also* Enclosure 4B: Cpl Salinas’s 18 March 2006 Statement.

k. Marines Depart with a Suitcase and Weapons

After seizing the insurgents' weapons, passports, and suitcase, they returned to Chestnut to place the weapons and suitcase in the first vehicle.¹³¹ LCpl Sharratt told LCpl Tatum what had happened so that he could report it to 2ndLt Kallop.¹³² Several Marines have reported physically seeing the AK-47s – including, Cpl Salinas, LCpl Tatum, LCpl Rodriguez. Even the Iraqi witnesses from house three have reported to NCIS that the Marines took two AK-47s from house four.¹³³ After placing the weapons in the vehicle, LCpl Tatum and LCpl Sharratt walked over to the IED site to pay their respect to LCpl Terrazas and to collect the pieces of his rifle. Cpl Stafford would later reconstruct a rifle from the exploded pieces of T.J.'s weapon. They hung the rifle on the wall at the Firm Base.

l. The Marines Redeploy to Firm Base Sparta

For the remainder of the day, LCpl Sharratt remained in the vicinity of Route Chestnut providing security for the vehicles. At approximately 2330 first squad began a foot patrol back to Firm Base Sparta.

m. Time Magazine

On 10 February 2006, a reporter from Time Magazine began inquiring with the Multi-National Forces (MNF) Command regarding the engagement on 19 November 2005. By 14 February, Col Gregory Watt was appointed to conduct an AR 15-6 investigation into the allegations. On 3 March 2006, Col Watt concluded that the Marines had positively identified insurgents in house four and had acted in accordance with their inherent right to self-defense. Days later, in anticipation of a Time Magazine story, NCIS was ordered to initiate a criminal investigation into the events on 19 November 2005. On 13 March 2006, NCIS special agents travelled to Haditha Dam to begin interrogating Marines. On 19 March 2006, Time Magazine published a story questioning whether 19 November 2005 was the result of collateral damage.

n. The Iraqis are Interviewed

The first interviews of the Iraqis that lived in houses three and four did not occur until 29 March 2006, 130 days after the combat engagement and several months after the families were denied *solatia* payments because the intelligence had shown that they lived at “bad guy houses.”¹³⁴

On 29 March 2006, NCIS Special Agent Mannle travelled to Haditha, Iraq to interview several Iraqis. On the 29th, she met with Aiad Ahmed Hameed (father of the insurgents), Khadega Hassan Hameed (mother of the insurgents), Yosef Aiad Ahmed (the older brother who

¹³¹ Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement.

¹³² Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement.

¹³³ See Enclosures 9, 11, 12, and 13.

¹³⁴ Enclosure 9: Maj Hyatt's Statements.

was not present on 19 November 2005), Najla Abid-al-Razak Hamad (insurgent Jamal's wife), and Khaled Jamal Aiad (insurgent Jamal's son).

The story that the Iraqis told was irreconcilable with the recounting of events by the Marines and the eventual forensic reconstruction. According to Najla, there was an explosion that sent glass flying around 0600 hours that morning.¹³⁵ Najla, Jamal, and Khaled were in house three when the Marines arrived between 0930 - 0945.¹³⁶ She alleged that the three Marines ordered them out of their house while yelling "erhab" (terrorists), "mujahedin" (insurgents), and "qunbehlah" (bombs).¹³⁷ Najla claimed that the Marines were angry and repeatedly referred to the bomb while pointing in the direction of the explosion.¹³⁸ She claimed that the Marines asked about who lived in house four and Jamal explained that it was Aiad's home. The Marines then allegedly ordered Jamal, Najla, and Khaled to house four.¹³⁹

Meanwhile, Ehab had been in house four with her husband Jaseb.¹⁴⁰ Nagham, Marwan, and Khatan were also in the house.¹⁴¹ Allegedly, Nagham and Marwan were preparing to go to Baghdad – Khatan was also allegedly planning on leaving.¹⁴²

Following the explosion, Ehab had reported hearing gunfire and yelling and screaming.¹⁴³ Nagham did not hear anything following the explosion.¹⁴⁴ Najla told SA Mannle that around 0945 Jaseb called out to her and told her that everyone had to go outside into the courtyard.¹⁴⁵

Once outside, Najla claimed that the Marines had them wait near a patio.¹⁴⁶ According to Najla, the Marines ordered Aiad and the other occupants out of house four.¹⁴⁷ Once the Iraqis were outside, the Marines allegedly divided them into two lines with the father and four women sitting in a first row and the four men and Khaled in the second row.¹⁴⁸ The Marines then allegedly continued questioning them. Khaled even claimed that one of the Marines set his rifle with a tripod or bipod down on top of the car and racked it.¹⁴⁹

Najla claimed that during the questioning, one Marine went into house four. Meanwhile, Jasib allegedly tried to claim that he was a traffic police officer and Marwan allegedly tried to show a Haditha Key Persons Identification card.¹⁵⁰ Maj Hyatt, the civil affairs officer, had given out over 140 identification badges to different professionals in Haditha to help identify

¹³⁵ Enclosure 10: 23 January 2007 Transcripts of Videotaped Interview of Nagla Abd Al-Razak Hamed, pg. 1.

¹³⁶ Enclosure 11A: Results of Interview / Family Members of House #4 - SA Mannle's Report.

¹³⁷ Enclosure 11A: Results of Interview / Family Members of House #4 - SA Mannle's Report.

¹³⁸ Enclosure 11A: Results of Interview / Family Members of House #4 - SA Mannle's Report.

¹³⁹ Enclosure 11A: Results of Interview / Family Members of House #4 - SA Mannle's Report.

¹⁴⁰ Enclosure 11B: Results of Interview / Family Members of House #4 - SA Platt's Report.

¹⁴¹ Enclosure 11B: Results of Interview / Family Members of House #4 - SA Platt's Report.

¹⁴² Enclosure 11B: Results of Interview / Family Members of House #4 - SA Platt's Report.

¹⁴³ Enclosure 11B: Results of Interview / Family Members of House #4 - SA Platt's Report.

¹⁴⁴ Enclosure 11B: Results of Interview / Family Members of House #4 - SA Platt's Report.

¹⁴⁵ Enclosure 11A: Results of Interview / Family Members of House #4 - SA Mannle's Report.

¹⁴⁶ Enclosure 11A: Results of Interview / Family Members of House #4 - SA Mannle's Report.

¹⁴⁷ Enclosure 11A: Results of Interview / Family Members of House #4 - SA Mannle's Report.

¹⁴⁸ Enclosure 11A: Results of Interview / Family Members of House #4 - SA Mannle's Report.

¹⁴⁹ Enclosure 8A: 24 January 2007 Transcripts of Videotaped Interview of Khalid Jamal Aiad Ahmed, page 2.

¹⁵⁰ Enclosure 11A: Results of Interview / Family Members of House #4 - see SA Mannle's Report.

them and give them a sense of legitimacy.¹⁵¹ Maj Hyatt created a logbook of the badges and Marwan was not listed in the logbook.¹⁵²

The Marines asked them if they had any weapons and Jasib allegedly told them about an AK-47 located in house four that was issued for his traffic officer employment.¹⁵³ Jamal then supposedly stated that he too had an AK-47 in house three.¹⁵⁴

According to Najla's story, one Marine went back with Jamal to house three to retrieve the AK-47, empty magazines, and five rounds from house three.¹⁵⁵ Nagham reported that Najla went with Jamal and the Marine to retrieve the weapon.¹⁵⁶ During the video-taped interview, Najla reported that she went with the Marine to retrieve the weapon.¹⁵⁷ Another lone Marine allegedly went with Jasib into house four to obtain his weapon.¹⁵⁸ Aiad admitted that he owned a weapon that was locked up in house four, but did not disclose it to the Marines until days later when Marines returned to his house and took the weapon.¹⁵⁹

When the Marines returned, two of them allegedly went into house four and Najla could allegedly see them through the window talking and pointing fingers.¹⁶⁰ When the two Marines allegedly came back out, they spoke with the Marine that had remained behind to guard them.¹⁶¹ One of the Marines then allegedly directed the women and Aiad back into house three.¹⁶² Najla said that she pleaded for her son Khaled's life and the Marines allegedly let the boy go to house three.¹⁶³

Once the women were inside house three, Najla claimed that she tried to open the door at least twice, but was stopped by the Marine guarding them.¹⁶⁴ Khaled stated that the Marine guarding them was taller than the other Marines.¹⁶⁵ LCpl Sharratt, of course, is taller than both Cpl Salinas and Sgt Wuterich. Najla then alleged that she heard muffled gunfire and four distinct gunshots.¹⁶⁶ As discussed later in this brief, Najla's report of four distinct gunshots may have supported her erroneous claim that the four men in house four were executed, but her allegation is completely undermined by the NCIS forensic reconstruction of the combat

¹⁵¹ Enclosure 9C: Maj Hyatt's 25 May 2006 Statement, page 3.

¹⁵² Enclosure 9C: Maj Hyatt's 25 May 2006 Statement.

¹⁵³ Enclosure 9C: Maj Hyatt's 25 May 2006 Statement.

¹⁵⁴ Enclosure 9C: Maj Hyatt's 25 May 2006 Statement.

¹⁵⁵ Enclosure 9C: Maj Hyatt's 25 May 2006 Statement.

¹⁵⁶ Enclosure 9C: Maj Hyatt's 25 May 2006 Statement. *See also* Enclosure 11B: Results of Interview / Family Members of House #4 - SA Platt's Report.

¹⁵⁷ Enclosure 10: 23 January 2007 Transcripts of Videotaped Interview of Nagla Abd Al-Razak Hamed, page 2.

¹⁵⁸ Enclosure 11A: Results of Interview / Family Members of House #4 - see SA Mannle's Report.

¹⁵⁹ Enclosure 11A: Results of Interview / Family Members of House #4 - see SA Mannle's Report.

¹⁶⁰ Enclosure 11A: Results of Interview / Family Members of House #4 - see SA Mannle's Report.

¹⁶¹ Enclosure 11A: Results of Interview / Family Members of House #4 - see SA Mannle's Report.

¹⁶² Enclosure 11A: Results of Interview / Family Members of House #4 - see SA Mannle's Report.

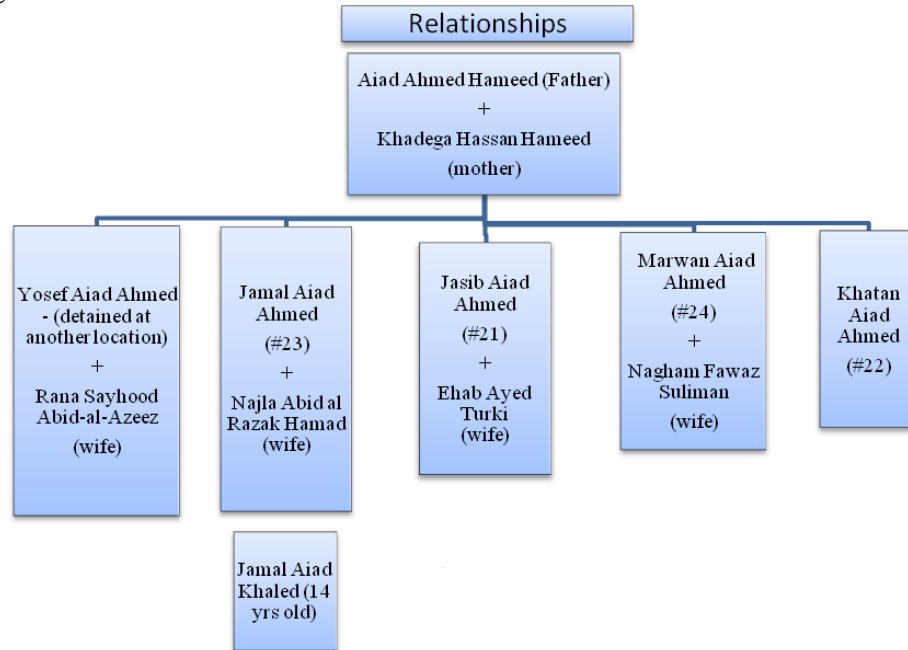
¹⁶³ Enclosure 11A: Results of Interview / Family Members of House #4 - see SA Mannle's Report.

¹⁶⁴ Enclosure 11A: Results of Interview / Family Members of House #4 - see SA Mannle's Report.

¹⁶⁵ Enclosure 8A: 24 January 2007 Transcripts of Videotaped Interview of Khalid Jamal Aiad Ahmed, page 15.

¹⁶⁶ Enclosure 11: Results of Interview / Family Members of House #4 - see SA Mannle's Report.

engagement.¹⁶⁷ Following the shots, the Marine guarding them left and she saw all three Marines running down the street.¹⁶⁸



Najla then allegedly ran to house four.¹⁶⁹ Ehab claimed that 30-60 minutes later, four different Marines returned to the house.¹⁷⁰ Ehab allegedly asked them to leave, but two Marines stayed outside and two Marines went into house four.¹⁷¹ The Marines again had the Iraqis wait outside in the courtyard.¹⁷²

According to Ehab, eventually one of the Marines left house four carrying a suitcase.¹⁷³ Ehab claimed that she did not know what was in the suitcase, but that the suitcase belonged to Khatan, who allegedly worked near the Jordanian border and was planning to travel to Trabil near where he works.¹⁷⁴ This is a rather startling coincidence, as LCpl Sharratt and Sgt Wuterich reported taking a suitcase from house four containing Jordanian passports.

Nagham reported that around 2100 that night three more Marines came to the house to take pictures of the bodies.¹⁷⁵ In reality, at 1540 Sgt Laughner did his assessment of house four.¹⁷⁶ When he arrived, he observed a female cleaning up. Sgt Laughner asked her to leave

¹⁶⁷ Enclosure 5: Results of the Forensic Reconstruction. R.C.F.L. 16 Nov 06.

¹⁶⁸ Enclosure 11A: Results of Interview / Family Members of House #4 - see SA Mannle's Report.

¹⁶⁹ Enclosure 11A: Results of Interview / Family Members of House #4 - see SA Mannle's Report.

¹⁷⁰ Enclosure 11B: Results of Interview / Family Members of House #4 - SA Platt's Report.

¹⁷¹ Enclosure 11B: Results of Interview / Family Members of House #4 - SA Platt's Report.

¹⁷² Enclosure 11B: Results of Interview / Family Members of House #4 - SA Platt's Report.

¹⁷³ Enclosure 11B: Results of Interview / Family Members of House #4 - SA Platt's Report.

¹⁷⁴ Enclosure 11B: Results of Interview / Family Members of House #4 - SA Platt's Report. See page 3 for information regarding Khatan's alleged employment as a police officer. See also, enclosure 12, 24 January 2007 Transcript of Videotaped Interview of Ehab Ayad Turki Wagga'a, page 5.

¹⁷⁵ Enclosure 11B: Results of Interview / Family Members of House #4 - SA Platt's Report.

¹⁷⁶ Enclosure 38: Sgt Laughner 2 June 2006 Statement.

and he proceeded into the house where he saw a body in the doorway covered by a sheet – he suspected that the bodies had been moved.¹⁷⁷

After he left house four, Sgt Laughner walked across Route Viper to a house on the other side of the road – the house 2ndLt Kallop believed was the trigger house.¹⁷⁸ At this house, Sgt Laughner interviewed 5-6 detainees, he found 30 Jordanian passports, \$1,000 U.S. dollars, and 1 million Iraqi dinar.¹⁷⁹ Sgt Laughner did not report taking a suitcase of any kind from house four.

o. Marines Charged

On 21 December 2006, LCpl Sharratt was charged with three counts of unpremeditated murder. Specifically, LCpl Sharratt was charged with the deaths of Jasib Aiad Ahmed, Kahtan Aiad Ahmed, and Jamal Aiad Ahmed in house four. (Sgt Wuterich was charged with the death of Marwan Aiad Ahmed).

Section 4: Analysis

I. The Government's Case

The Government has charged LCpl Sharratt with three counts of unpremeditated murder primarily on (1) the basis of the statements of the Iraqi's that were allegedly in the vicinity of houses three and four during the combat engagement; and (2) the alleged inconsistencies in the statements of the Marines; and (3) the uncorroborated details of the Marines' Statements (where are the weapons and suitcase). To bring these charges against LCpl Sharratt, the Government had to wholly ignore the NCIS forensic reconstruction that concluded that the Marines were not tactically in control of house four when they were engaged by the insurgents. As shown below, the Government's case is unfounded.

a. The Erroneous Allegations of the Iraqis

The essence of the Government's case is based on the Iraqi claims that Sgt Wuterich, Cpl Salinas, and LCpl Sharratt allegedly divided the Ahmed family at houses three and four into two lines separating the men from the women and children. Then, according to the Iraqi account, while Cpl Salinas watched over the women and children in house three, Sgt Wuterich and LCpl Sharratt allegedly took the men into house four and executed them. Several Iraqis reported hearing four distinct gunshots spaced several seconds apart. However, the NCIS investigation and the subsequent government forensic reconstruction wholly contradict this erroneous Iraqi version of events.

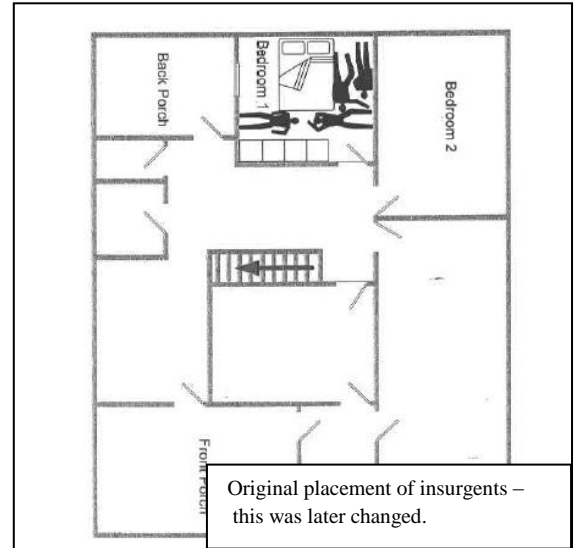
¹⁷⁷ Enclosure 38: Sgt Laughner 2 June 2006 Statement.

¹⁷⁸ Enclosure 38: Sgt Laughner 2 June 2006 Statement.

¹⁷⁹ Enclosure 38: Sgt Laughner 2 June 2006 Statement.

i. The Forensics Demonstrate that the Iraqis were in control of house four (See Appendix D)

On 1 September 2006, NCIS Special Agent Maloney completed a forensic reconstruction (hereafter reconstruction) of the events that took place in house four.¹⁸⁰ A second forensic report was revised and completed on 9 November 2006. Both reports confirmed that most of what LCpl Sharratt had told NCIS was true – which is not surprising given that he passed a polygraph examination. The remaining portions of his statement are easily attributed to the fog of war given that house four was a close quarters combat engagement that occurred in a matter of seconds in a small room. What the report shows is that LCpl Sharratt and Sgt Wuterich were not tactically in control of bedroom one when they dynamically entered house four.



The reconstruction was based upon an analysis of the evidence, photographs, bloodstain patterns, firearms/trajectory evidence, explosive/post blast evidence, injury/wound dynamics, medical reports, and pathology consultations.¹⁸¹ The evidence had been collected on 29 March 2006.¹⁸² No bodies were ever exhumed for autopsy or evidence recovery.¹⁸³

The reconstruction acknowledged that the location of the bodies depicted in the 18 May 2006 Results of the Death Scene Examination reflected their position at the time of the battle damage assessment – after they had been moved.¹⁸⁴

The insurgents killed in house 4 were labeled as follows:

| | | |
|-------------------|---------------------|-----------------------------|
| Marwan Aiad Ahmed | Photographic ID #24 | DNA ID #1 (Wuterich Charge) |
| Khatan Aiad Ahmed | Photographic ID #22 | DNA ID #2 |
| Jasib Aiad Ahmed | Photographic ID #21 | DNA ID #3 |
| Jamal Aiad Ahmed | Photographic ID#23 | DNA ID #4 |

¹⁸⁰ Enclosure 5: Results of the Forensic Reconstruction. RCFL 16 Nov 06. The original report was completed as early as 1 September 2006.

¹⁸¹ Enclosure 5: 5 Oct 06, Forensic Reconstruction & Pathology Consultation House #4.

¹⁸² Enclosure 6: 18 May 2006, Results of Death Scene Examination – House 4.

¹⁸³ Enclosure 5: 5 Oct 06, Forensic Reconstruction & Pathology Consultation House #4.

¹⁸⁴ Enclosure 5: 5 Oct 06, Forensic Reconstruction & Pathology Consultation House #4.

The reconstruction was able to establish the sequence of shootings and shooter positions. Specifically, the reconstruction found:¹⁸⁵

- a. It is probable that AHMED, Khatan Aiad was positioned just inside the open door when he was shot. He was forward into the doorframe allowing his blood to strike both the wall inside the room as well as facing the doorframe.
- b. It is likely that AHMED, Jasib Aiad was behind and slightly to the side of Khatan when shot. The bloodstain patterns behind the open door indicate that Jasib was most likely just behind the open door when he was shot.
- c. AHMED, Jamil Aiad was likely to have been crouched down or sitting against the south wall near the closet. The closet door was open at the time he was shot. He would have been at least partially obscured from view as the bullet passed through the open closet door and then struck him continuing on to the wall. He was shot with a 9mm round. This is consistent with X/TATUM [Sharratt] stating that he fired all of his 9mm rounds before S/WUTERICH entered and fired his M-16.
- d. AHMED, Marwan Aiad was most likely observed moving into the closet section and pulling the door closed. He was then shot through the closed closet door by S/WUTERICH. The 5.56 round recovered from this projectile path is consistent with having been fired from S/WUTERICH's M-16 and was defiantly (sic) not fired from any of the other M-16's from the co-suspects.

In the 1 September 2006 reconstruction, SA Maloney concluded that:

The recounting of events by the Marines is neither entirely accurate nor entirely false. It would appear that the Marines did engage a man in the doorway and another just inside the doorway of the bedroom with small arms fire. It is unlikely that it appeared to X/SHARRATT that the other two men in the room were moving towards their fallen "comrades" and their weapons. One of these men was shot while crouched or sitting against the far bedroom wall and the other was shot while crouched or sitting in the closed wardrobe/closet.

The forensics demonstrate without equivocation that LCpl Sharratt's explanation of his conduct is absolutely true. See Appendix D for a complete analysis of the forensics.

The NCIS forensic reconstruction of the events in house four confirms that when the Marines dynamically entered house four, they were not tactically in control of the house. There are a number of critical NCIS reports that are relevant. On 18 May 2006, NCIS completed a Report of the Death Scene Examination that detailed the methodology and collection of forensic evidence. On 1 September 2006, NCIS completed the Report of the Forensic Reconstruction that concluded that "[t]he recounting of events by the Marines is neither entirely accurate nor entirely

¹⁸⁵ Enclosure 5: 5 Oct 06, Forensic Reconstruction & Pathology Consultation House #4.

false. It would appear that the Marines did engage a man in the doorway and another just inside the doorway of the bedroom with small arms fire..." The only real question that remained for the science to determine was the location of the other two individuals in the room when they were engaged. The final Forensic Analysis of the Death Scene at house four was completed on 8 November 2006.

The reports were all authored by Special Agent Michael S. Maloney and incorporated the work of the scientists of USACIL and AFIP. The results of the pathology report concluded only that four individuals were killed as a result of gunshot wounds to the head. All victims are identified by number only. A positive identification of the deceased could not be accomplished.¹⁸⁶

In short, the reports confirm that Sgt Wuterich and LCpl Sharratt were not in control of the movements of the individuals inside of house four, meaning they did not line-up, order and then execute the four deceased males found in the back bedroom of house four. Instead, the physical evidence points to the Marines being confronted by one individual as he stood in the doorway to the bedroom. A second male was shot standing against the North wall of the bedroom. The third Iraqi was shot moving into the closet and the fourth Iraqi man was apparently shot inside the closet by Sgt Wuterich with his M-16. The location of the individuals as well as the bloodstain patterns completely corroborate the statements provided by both Sgt Wuterich and LCpl Sharratt.¹⁸⁷

The Iraqi version as told to NCIS investigators is completely unsupported by the forensic evidence. As stated previously, the results of the Forensic Reconstruction show that the Marines were not tactically in control of house four. Further, many rounds were fired inside of house four from both LCpl Sharratt's 9mm pistol and Sgt Wuterich's M-16 - not four individual execution style shots as described by the Iraqis. The Iraqi testimony attempts to frame an execution style killing. The forensic evidence shows that this is simply not true.

ii. The Forensic Reconstruction is Irreconcilable with the Iraqis Statements

According to the January interview with Khaled, he claimed to have heard four distinct gunshots spaced out several seconds apart over approximately one minute. This type of gunfire obviously suggests an execution style killing. The NCIS forensic reports, of course, prove that house four was a dynamic environment in which the Marines were not in control. The report further establishes that many more than four shots were fired by the Marines.

During his 27 January 2007 interview, Khalid told Maj Erickson, a prosecutor, that "After they [the Marine] broke the window we heard four shots. It was like one shot, then silence for four or five seconds, and then the second shot. Then again four or five seconds another shot.

¹⁸⁶ Enclosure 45: Dr. Elizabeth Rouse, Armed Forces Institute of Pathology dtd 24 Aug 2006 (ROI 16 Nov 06 00047).

¹⁸⁷ Enclosure 6: Results of the Death Scene Examination for House 4. Enclosure 5: NCIS Violent Crimes Division, Forensic Consultant Unit, Report of Forensic Reconstruction.

So in a span of less than a minute...we have four shots, pop, pop, pop, pop like this.”¹⁸⁸
According to the Iraqi witnesses, the Marines allegedly took the men from the family into house four and executed them.

The NCIS forensic reports, in large part, confirm LCpl Sharratt’s statement – as did his successful polygraph examination. When Sgt Wuterich and LCpl Sharratt entered the home, they stacked themselves along the wall outside of the hallway. Suddenly, LCpl Sharratt saw Khatan standing in the doorway pointing an AK-47 at LCpl Sharratt as though he was going to fire.

Fearful for his and Sgt Wuterich’s lives, LCpl Sharratt pulled the trigger on his SAW and the weapon jammed. Khatan’s weapon may have also jammed because LCpl Sharratt reported in his statement that he later found a 7.62 mm round with a dented primer, suggesting that Khatan’s weapon had also jammed. LCpl Sharratt pulled back behind the cover of the wall, bumping into Sgt Wuterich who was behind him, and simultaneously drawing his 9mm pistol.

From his experience in the hell-house, LCpl Sharratt understood the importance of quickly establishing fire-superiority. LCpl Sharratt moved back into the hall-way and when Khatan reemerged into the doorway, LCpl Sharratt shot him once in the head – exactly as the forensics confirm.

After Khatan was shot, LCpl Sharratt assaulted through the objective just as any Marine would do. As he was stepping into the doorway, he heard another AK-47 racking. He saw three or four insurgents in the corner of the bedroom. The first insurgent was Jasib – who was allegedly a traffic police officer and had allegedly been issued an AK-47. LCpl Sharratt heard Jasib racking his AK-47. He rapidly fired multiple shots into Jasib, who was just inside of the doorway. LCpl Sharratt then expended his remaining rounds on the remaining threats in the room. LCpl Sharratt started off with the full magazine that he had obtained from 2ndLt Kallop. There is no question, LCpl Sharratt fired many more than the four distinct rounds that the Iraqis alleged that they heard. The forensic reconstruction identified at least 6 bullet holes in the wall of the room. Several other 9mm rounds remained in the bodies of the insurgents – which were not exhumed. When LCpl Sharratt ran out of ammunition, Sgt Wuterich entered the room and fired several rounds ensuring that there were no other threats in the room.

The fact that the Iraqis claim that they heard four shots fired over the course of one minute is the single most important fact proving that the Iraqis are lying. Their story is simply not possible and is contradicted by LCpl Sharratt’s statement and the NCIS forensic reports.

iii. The Iraqis Have a Motive to Lie

The Iraqis had ample motive to fabricate their story. The most compelling reason was financial. One of the tools that commanders have in providing urgent humanitarian relief and reconstruction assistance is the Commander’s Emergency Response Program (CERP) funds.¹⁸⁹ The program authorizes commanders to use funds as condolence payments to families that suffer

¹⁸⁸ Enclosure 8A: 24 January 2007 Transcripts of Videotaped Interview of Khalid Jamal Aiad Ahmed, page. 9.

¹⁸⁹ Enclosure 13: 2d Marine Division CERP Purchasing Officer Training Slides.

collateral damage from combat engagements.¹⁹⁰ The payments signify an expression of sympathy for combat action, but do not signal moral or legal responsibility for the event.¹⁹¹ Commanders are prohibited from authorizing more than \$2,500 for the death of a family member.¹⁹²

On 20 November 2005, Maj Hyatt of the Civil Affairs Group took the lead in handling the civil military affairs involving the attack on the Marines in Haditha. By approximately 21 November 2005, Maj Hyatt had travelled to the Haditha Hospital and saw a list of the names of those killed in the combat engagement.¹⁹³ He also received a list of 15 names from Mr. Raseef, an Iraqi lawyer.¹⁹⁴

Capt Dinsmore, the battalion intelligence officer, had reviewed the intelligence and determined that of the 23 bodies recovered, eight were enemy killed in action – including those killed in house four.¹⁹⁵ Because house four was identified as a “bad guy” house, no payments were made involving that house.¹⁹⁶

On 10 October 2006, as a result of the Iraqi claims of an execution in house four, the Marine Corps paid Yusif Ayed Ahmed \$10,000 in *solatia* payments.¹⁹⁷ This money was paid despite the fact that the 1 September 2006 NCIS forensic reconstruction that largely confirmed LCpl Sharratt’s statement and completely debunked the erroneous Iraqi allegations of an execution in house four.

The erroneous Iraqi version of a massacre, specifically that Sgt Wuterich, Cpl Salinas, and LCpl Sharratt first called the Iraqis outside into the courtyard of house three, separated them into two lines, then marched the women and children into house three and the men into house four where they were executed, is completely unbelievable and uncorroborated by any fact or logic. This version was not forwarded in any detail to any Marine or U.S. source until months after the November incident. There are no spontaneous statements or recorded accounts that could be presumed to be free of coaching and/or exaggeration if not a complete fabrication. The Iraqi accounts came after Maj Hyatt, the CAG officer for the battalion, paid the sum of \$38,000 to the surviving family members of houses one and two, but refused to pay any compensation to the family members of houses three



¹⁹⁰ Enclosure 13: 2d Marine Division CERP Purchasing Officer Training Slides.

¹⁹¹ Enclosure 13: 2d Marine Division CERP Purchasing Officer Training Slides.

¹⁹² Enclosure 13: 2d Marine Division CERP Purchasing Officer Training Slides.

¹⁹³ Enclosure 9A: Major Hyatt’s 16 March 2006 Statement Summary.

¹⁹⁴ Enclosure 9A: Major Hyatt’s 16 March 2006 Statement Summary.

¹⁹⁵ Enclosure 9A: Major Hyatt’s 16 March 2006 Statement Summary.

¹⁹⁶ Enclosure 9C: Major Hyatt’s 25 May 2006 Statement.

¹⁹⁷ Enclosure 50: CERP Vouchers.

and four. This alone provides the surviving Iraqis a great motive to lie for financial gain.¹⁹⁸ Ultimately, their lie was successful as *solatia* payments were eventually made to the alleged family members.

Further, the town of Haditha was a known insurgent stronghold and it was common for insurgents to exaggerate the actions of the Marines for the purposes of propaganda. In the weeks that followed the incident, the 3/1 Battalion staff attended several town meetings where the Mayor of Haditha and other civic leaders made threats and demands of an apology and monetary payments. From these meetings, rumor, exaggeration, and falsehoods were borne.¹⁹⁹

Because of cultural nuances, their lie becomes particularly exaggerated. There is a large body of research studying the stylistic devices of the Arabic language that naturally and commonly results in exaggeration.²⁰⁰ The Iraqis cannot and should not be believed as there is no evidence supporting their claims.

iv. Demonstrable Lies

a. Marwan Lied about his Haditha Key Persons Identification Card

According to the Iraqis, insurgent Marwan Aiad Ahmed, possessed a Key Person Identification card. Nagham, his alleged wife, claimed that Marwan had told the Marines that he met with members of the Civil Affairs Group and was instructed to show a badge when questioned by Marines. Major Hyatt had indeed created the Haditha Key Persons Identification Card program to lend legitimacy to professionals in Haditha. He also created a logbook that tracked all of the cards that were issued.

On 30 March 2006, NCIS agents obtained the logbook that Maj Hyatt had used to track the issuance of the Key Persons cards. No identification card was issued to Marwan. The logbook is at Enclosure 50. The Iraqis lied that Marwan Aiad Ahmed possessed a Key Persons Identification Card. They also lied in claiming that the Marines prevented Marwan from displaying his identification card – because no such card existed. Sgt Laughner inspected house four on 19 November. He apparently collected identification cards from the enemy killed-in-action. There is no evidence in the record that Sgt Laughner collected any Haditha Key Persons Identification card from Marwan.

According to Nsier, an interpreter, 25-30 cards were issued prior to the creation of the logbook. Nevertheless, Sgt Laughner still did not report that Marwan specifically had a Haditha Person Identification card. Sgt Laughner did report that only two of the insurgents had *hueyias*.

When they were denied *solatia* payments, the Iraqis likely sought to justify the fact that the insurgents were indeed hiding in house four when the Marines arrived at the housing complex.

¹⁹⁸ Enclosure 9: Maj Hyatt Statements.

¹⁹⁹ Enclosure 34: Capt Dinsmore's 2 June 2006 Sworn Statement.

²⁰⁰ Patai, Raphael "The Arab Mind" Hatherleigh Press, 2002.

b. Aiad Maintained a Hidden Weapon in Bedroom 1 of House 4

Several days after the combat engagement, Marines returned to house four to speak with the individuals that allegedly lived at the house. At that time, Aiad, the older man, indicated that he owned an AK-47 that he kept in a closet in house four.²⁰¹

This lie is critical, because two of the insurgents were shot while in the closet or moving towards the closet. Thus, it's clear that one insurgent was shot in the doorway of the bedroom. A second insurgent with an AK-47 was shot immediately behind the first. The admission of Aiad about the hidden AK-47 in house four, viewed in light of the forensic examination, clearly explains why Jamal Aiad Ahmed and Marwan Aiad Ahmed were moving so quickly towards the closet when they were killed.

v. The Iraqis were Prepped in their January Interviews

The initial interviews of the alleged Iraqi civilians occurred in late March and early April 2006. The videotaped interviews occurred in late January 2007, nearly 10 months after they provided statements to NCIS and over 14 months after the combat engagement. The order and content of the statements elicited in the videotaped interviews strongly suggests that the Iraqis were prepped for the interview with their previous statements. The suggestion that the interpreter prepped the witnesses becomes particularly apparent in the January 2007 Ehab interview which tracked in both form and substance the NCIS interview synopsis conducted 10 months earlier. Indeed, in her 2007 interview, Ehab even uses the word "house four" to describe the location of the alleged executions.

The other interviews follow a similar progression and the witnesses provide nearly the same information, in the same order, as previously supplied, even 10 months after their initial statement. There is no doubt that the interpreter prepared the witnesses with their previous statements.

b. Alleged Inconsistencies in the Marines' Statements

The remainder of the Government's case is comprised of minor and understandable inconsistencies in the statements of the Marines and a collection of sea stories attributed to LCpl Sharratt. The Government has essentially taken inconsistencies produced by the fog of war and the wild exaggerations of a few members of Kilo Company, and used them to bolster the scientifically disproven statements of the Iraqis.

²⁰¹ Patai, Raphael "The Arab Mind" Hatherleigh Press, 2002.

i. Sea Stories

a. LCpl Casiday

LCpl Casiday is one of the Marines that claims to have had a conversation with LCpl Sharratt in which he made alleged statements against interest.²⁰² When LCpl Sharratt allegedly described to LCpl Casiday what role he had played in the events of 19 November 2005, LCpl Casiday “laughed because it was ridiculously psycho and there weren’t really any words you could say.” LCpl Casiday was later admitted to the Balboa Naval Medical Center in San Diego for psychological care.²⁰³ After four months of treatment he was discharged from the hospital for a urinalysis test positive for ecstasy.²⁰⁴

On 19 November 2005, LCpl Casiday was a member of the second QRF that responded to the IED.²⁰⁵ He claims that after arriving at the IED site he had a conversation with LCpl Sharratt.²⁰⁶ He asked LCpl Sharratt about what had happened. Sharratt described the explosion and about how they set up the cordon.²⁰⁷ LCpl Casiday stated:

He told me about the two dudes that ran heading east. SHARRATT said, “they started engaging them because they assumed they were the trigger men.” SHARRATT told me, “Anything moving within 300 meters, they engaged and killed.” He said, “he made the five guys in the white car walk over to the south side by a Hajji shop, had them line up execution style, turned them around so they were facing away from them, put them on their knees, and put a bullet in their heads using his 9mm pistol.” SHARRATT told me that, “at that point everybody in the squad was trigger happy and put a couple of rounds in the dudes...

SHARRATT told me, “one of the trigger men escaped to the northern group of houses and following that they sent some teams up there and continued to clear the houses using live grenades, not knowing there were civilians in them.” From what I was told by SHARRATT, it was just the houses to the north that they cleared.

The statements made by LCpl Sharratt to LCpl Casiday conclusively demonstrate that LCpl Sharratt has a big imagination and an unfortunate tendency to tell tall tales. There is absolutely no possible way that LCpl Sharratt had anything to do with the deaths of the Iraqis who occupied the white car. Specifically, the evidence collected by NCIS over the last 18 months conclusively establishes that only Cpl DeLa Cruz and Sgt Wuterich engaged the military-aged males that were in the white car. Indeed, LCpl Sharratt was in the turret of the first vehicle facing in the opposite direction when the Iraqi men were shot by either Cpl DeLa Cruz or

²⁰² Enclosure 39A: LCpl Casiday 12 May 2006 Statement.

²⁰³ Enclosure 39B: LCpl Casiday 18 October 2006 Interview Summary.

²⁰⁴ Enclosure 39B: LCpl Casiday 18 October 2006 Interview Summary.

²⁰⁵ Enclosure 39A: LCpl Casiday 12 May 2006 Statement.

²⁰⁶ Enclosure 39A: LCpl Casiday 12 May 2006 Statement.

²⁰⁷ Enclosure 39A: LCpl Casiday 12 May 2006 Statement.

Sgt Wuterich. The net effect of LCpl Casiday's account of LCpl Sharratt's statements does not advance the government's case as it only reveals LCpl Sharratt's tendency to tell sea stories.

b. HN3 Lopez

HM3 Lopez was sleeping when the explosion occurred and he never actually went to the IED site, but he claims to have had several conversations with members of first squad. A few days after the firefight, HM3 Lopez says he spoke to LCpl Sharratt.²⁰⁸ Lopez said, "Man it sounds like you guys were doing your thing." Lopez says that Sharratt responded, "Hell yeah. When the IED exploded, we made sure we got our casualties to a casualty collection point and we went ahead and regrouped and the decision was made to clear the houses around the blast area, and I got the word to shoot anything that has a weapon in their hands, is suspicious, or has a weapon..."²⁰⁹ Lopez says that Sharratt was very vague about it.²¹⁰

c. HN3 Whitt

HN Whitt was the Corpsman assigned to first squad on the morning of 19 November 2005.²¹¹ He was in the third vehicle of the convoy when the IED exploded.²¹² HN Whitt said that he had a conversation with LCpl Sharratt the night of the 19th after Capt McConnell spoke to the platoon about what had happened.²¹³

In his statement, NCIS writes:²¹⁴

Immediately after the meeting was over, LCpl Sharratt gave me possession of my nine-millimeter back. He gave it to me with one magazine empty (fifteen rounds expended) and the other was half full (approximately eight rounds gone). I asked him where did all my rounds go, he had said, "sorry I had to pop your nine-mil's cherry." I asked what exactly did he mean and I think he said how many times did you pop its cherry. That is when he told me very nonchalantly "the number was nine and most of them were headshots."

d. LCpl Prentice

Given LCpl Sharratt's successful polygraph examination, the exculpatory forensic reconstruction, and the demonstrably false Iraqi claims that they heard four shots spread out over the course of one minute, it is unexplainable that the statements against interest that are attributed to LCpl Sharratt form the bulk of the government's case. This is especially true given that those alleged statements are little more than sea stories that NCIS has helped to foster and perpetuate.

²⁰⁸ Enclosure 40: HM3 Lopez 17 May 2006 Statement.

²⁰⁹ Enclosure 40: HM3 Lopez 17 May 2006 Statement.

²¹⁰ Enclosure 40: HM3 Lopez 17 May 2006 Statement.

²¹¹ Enclosure 42A: HN Whitt 9 June 2006 Statement.

²¹² Enclosure 42A: HN Whitt 9 June 2006 Statement.

²¹³ Enclosure 42A: HN Whitt 9 June 2006 Statement.

²¹⁴ Enclosure 42A: HN Whitt 9 June 2006 Statement.

Perhaps the most important government witness against LCpl Sharratt is LCpl James Prentice - who was part of the first QRF that responded to the IED blast.²¹⁵ LCpl Prentice is a Marine that served with LCpl Sharratt while in Fallujah. He was at the IED site twice on 19 November, first as a part of the medivac QRF and later as part of the squad assigned with transporting the deceased to the Haditha Hospital.²¹⁶

LCpl Prentice claims to have heard or to have been told incriminating facts about the incident by LCpl Sharratt while they were standing on Route Chestnut late on the night of 19 November, prior to returning to Sparta. This claim was made to NCIS investigators nearly one-year after the incident during an 18 October 2006 NCIS interview and following three previous sworn statements in which no mention was made of any such conversation with LCpl Sharratt.²¹⁷ Specifically, LCpl Prentice provided two previous statements to NCIS and one previous statement to Col Watt for the Army AR 15-6 investigation prior to providing the alleged incriminating statements of LCpl Sharratt on 18 October 2006. In those previous statements, not only does LCpl Prentice make no mention of the specific statements now attributed to LCpl Sharratt, but he also fails to state that the conversation even took place. In subsequent interviews, LCpl Prentice claims that he spoke at length to LCpl Sharratt on Route Chestnut and that Cpl Stafford would have overheard the conversation as he sat in a nearby vehicle. Cpl Stafford does not recall any such conversation.²¹⁸ In fact, even though SSgt Logan tried to convince him that he heard the conversation, Cpl Stafford refused to submit to the Government's pressure.²¹⁹

Of further concern is the motivation of LCpl Prentice for changing his version of events to NCIS investigators. In the fall of 2006, LCpl Prentice married his wife and was feeling pressure at home as his wife was expressing concern that LCpl Prentice was scheduled to go on his third combat deployment in April 2007.²²⁰ After speaking with NCIS on 18 October 2006, NCIS told him that there was a possibility that he would not go on the April deployment if he was a witness.²²¹ It is no coincidence that 18 October 2006 is the first time that LCpl Prentice makes mention of incriminating statements allegedly made by LCpl Sharratt and it is also suggested to him that he may be held off of the future deployment of his unit due to the importance of the information he has provided.

LCpl Prentice's involvement commenced within minutes of the IED explosion. LCpl Prentice arrived at the scene with the initial QRF as their mission was to evacuate the wounded Marines.²²² When they arrived at the site, LCpl Prentice confirmed that he heard M-16 and AK-47 fire that sounded like it was muffled inside of a house.²²³

²¹⁵ Enclosure 27A: LCpl Prentice's 18 October 2006 Statement.

²¹⁶ Enclosure 27B: LCpl Prentice 27 March 2007 Government Interview, page 11.

²¹⁷ Enclosure 27C: LCpl Prentice 2 March 2007 Defense Interview, pg. 31.

²¹⁸ Enclosure 15A: 19 January 2007 Government Interview. (See page 65 for SSgt Logan's line of questioning clarifying that Cpl Stafford did not know anything about a story being made up by LCpl Sharratt).

²¹⁹ Enclosure 15A: 19 January 2007 Government Interview, page 65.

²²⁰ Enclosure 27C: LCpl Prentice 2 March 2007 Defense Interview, pg.38.

²²¹ Enclosure 27C: LCpl Prentice 2 March 2007 Defense Interview, pg. 32.

²²² Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²²³ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

After the wounded Marines were loaded onto the vehicles, his convoy departed for LZ Bull.²²⁴ After leaving LZ Bull, the QRF returned to Firm Base Sparta to await further orders.²²⁵ By 1500, they were ordered back to the IED site to transport detainees back to the Firm Base.²²⁶

At 2000 hours, they were ordered to return to Route Chestnut to load the bodies of the insurgents and Iraqis that were killed in the combat engagement.²²⁷ Once at Route Chestnut, LCpl Prentice says that he was instructed to hold security on the west side of Route Zebra facing west.²²⁸ After two hours of providing security while the bodies were being loaded, LCpl Prentice allegedly walked back to Route Chestnut where he claims that he had a conversation with LCpl Sharratt.²²⁹

LCpl Prentice says that he asked LCpl Sharratt what happened and LCpl Sharratt replied, “We killed them.”²³⁰ LCpl Prentice conveniently alleges that Sgt Wuterich walked by and had a “paranoid” look on his face when he overheard the conversation.²³¹ LCpl Sharratt then allegedly assured Sgt Wuterich by saying not to “worry about it.”²³²

The Government has become so attached to discrediting LCpl Sharratt with these alleged sea stories that they seem to have accepted all of LCpl Sharratt’s alleged sea story to LCpl Prentice as true while ignoring other aspects of the sea story. For instance, LCpl Sharratt is alleged to have told LCpl Prentice that, “LT KALLOP had gone into the houses where 1st Squad had cleared that day and was, ‘real cool about it.’” Never mind that LCpl Sharratt was never in house one with 2ndLt Kallop, LCpl Prentice continues to describe how LCpl Sharratt said that “LT KALLOP had either planted a grenade on one of the Iraqi males in one of the houses or made it look like an Iraqi male in one of the houses had thrown a grenade.”²³³

According to LCpl Prentice, the conversation continued as LCpl Sharratt said that “men, women, and children were killed and that [LCpl Sharratt] was one of the ones involved. [LCpl Sharratt] said some hand grenades were thrown.”²³⁴ When asked if the Iraqis fired back, LCpl Sharratt allegedly replied, “No, we just killed them.”²³⁵ After allegedly describing how he used the M240G to shoot a lock off of a house, LCpl Prentice claims that he asked LCpl Sharratt if he had used his M249 at all.²³⁶ Sharratt apparently replied, “no, I just used the pistol. If anybody thinks that a 9mm doesn’t work, it does.”²³⁷ He continued to allegedly describe how he used all of his pistol magazines and had to borrow one from 2ndLt Kallop.²³⁸

²²⁴ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²²⁵ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²²⁶ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²²⁷ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²²⁸ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²²⁹ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²³⁰ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²³¹ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²³² Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²³³ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²³⁴ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²³⁵ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²³⁶ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²³⁷ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²³⁸ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

LCpl Prentice continues in his statement that was typed by NCIS:

He had told me there was one Iraqi male that he had shot in the head at point blank range. LCPL SHARRATT told me that the Iraqi male was just standing there in a house to the north of Route Chestnut. LCPL Sharratt said that he and SGT WUTERICH had made up a story that they saw an AK-47 muzzle pointed at them through a doorway and SHARRATT went to go shoot his M249, but it jammed, so he used the pistol. This is the story they were going to say about the Iraqi male that LCPL Sharratt shot at point blank in the head in the house north of Route Chestnut....

About a week later, 3rd Platoon went for R&R at the Haditha Dam and I asked LCPL Sharratt if 19Nov05 was gonna be a big deal and he said 1st Squad has their story if it does. I took it as that they knew they had probably done something they shouldn't have and they had a story to cover it up if it ever got to the point where they needed a story. From what LCPL SHARRATT told me, 1st Squad got together to come up with a story. I don't know of anyone else in 3rd Platoon getting together to come up with a story.²³⁹

The reliability of NCIS agents typing a statement for a witness is always of critical importance when they fail to accurately record his words. According to NCIS-3 Regulation, Chapter 6, Investigative Theory and Procedures, section 6-4.1, "it is a standard policy requirement in NCIS, whenever credible information is developed which may be used in an administrative...hearing, to ask the individual...if he will furnish a written statement." According to 6-4.3, as a matter of preferred practice over hand-written statements, Special Agents should type the statements to ensure that the all of the "detail needed for the investigation" is included.

On 2 March 2007, the Defense interviewed LCpl Prentice and it became apparent that NCIS had indeed typed his statement to include all the details they needed. It was clear that LCpl Prentice had spoken to NCIS for six or seven hours with few breaks. In seven hours they produced only five pages of statement.²⁴⁰ In less than an hour and a half, the Defense produced 39 pages of transcribed testimony of LCpl Prentice.

According to NCIS, LCpl Prentice said that at Haditha Dam LCpl Sharratt claimed that first squad had gotten together and come up with a story to cover up 19 November 2005.

During the Defense interview of LCpl Prentice the following conversation occurred:²⁴¹

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Attorney James Culp: Did anyone tell that the first squad, in general, had a story?

²³⁹ Enclosure 27A: LCpl Prentice 18 October 2006 Statement.

²⁴⁰ Enclosure 27C: LCpl Prentice 2 March 2007 Defense Interview, pg. 28.

²⁴¹ Enclosure 27A: LCpl Prentice 18 October 2006 Statement, pages 26-30.

LCpl Prentice: No. He never said, we have this huge, you know elaborate story that we have or anything like that.

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Attorney James Culp: Is it possible that there are things in this statement that you didn't review very carefully and that NCIS put in there that you didn't actually say?

LCpl Prentice: It could be.

Attorney James Culp: Well, you said, "I asked Lance Corporal Sharratt if 19 November was going to be a bid deal and he said, "First Squad has their story if it does." You didn't actually tell NCIS that?

LCpl Prentice: A lot of stuff I just forget as time goes on, that it really happened. I do remember something like that. But I don't know if that was exact words now.

Of critical importance, LCpl Prentice told the defense that: (1) LCpl Sharratt's "story" was consistent; and (2) LCpl Sharratt never said that he "made up a story," but rather that he had a story to tell if questioned.²⁴²

e. LCpl Graviss

On 31 May 2006, LCpl Graviss spoke to NCIS.²⁴³ In his statement, NCIS writes:

I remember that just after I was interviewed by NCIS while still in Iraq, LCpl Sharratt was bragging to me about the fact that he got away with lying to the NCIS Agent that interviewed him. LCpl Sharratt mentioned that the NCIS Agent told him he could tell when somebody was lying to him and LCpl Sharratt said he lied to the guy about what happened and got away with it. LCpl Sharratt didn't tell me what he specifically lied about. I told LCpl Sharratt that an NCIS Agent instructed me not to discuss the incident and I would rather not talk with him about it.

Even if LCpl Graviss' account of the conversation with LCpl Sharratt is accepted as true, there is a glaring problem with attributing any true significance to the alleged statements made by LCpl Sharratt. Unknown to LCpl Sharratt, but commonly understood to law enforcement officials, a polygraph examination consists of two types of questions: control questions and relevant questions. In order to successfully pass a polygraph examination, a person undergoing the examination must initially lie on several control questions in order for the polygrapher to establish a the base line physiological response that will be measured against the person's physiological response to the relevant questions. In this case, it is clear that LCpl Sharratt merely relayed to LCpl Graviss that he had lied about one or more control questions which does not in any way negate the exculpatory polygraph results.

²⁴² Enclosure 27A: LCpl Prentice 18 October 2006 Statement, page 14.

²⁴³ Enclosure 43: LCpl Graviss 31 May 2006.

While it is consistent with LCpl Sharratt's character to erroneously brag about deceiving highly skilled NCIS agents, it is highly unlikely that LCpl Sharratt, who had previously never undergone a polygraph examination, would somehow fool his polygraph examiner.

f. LCpl Wright

On 22 March 2006, LCpl Wright spoke with NCIS.²⁴⁴ In his statement, NCIS writes:

When we arrived back at the IED site I met with LCpl Justin Sharratt and asked him what happened...LCpl Sharratt responded, "We killed them all." I asked LCpl Sharratt who they killed and he responded, "We killed them punisher style"...LCpl Sharratt appeared to be bragging about what happened but I didn't think much about it because that's just the way he is."

This was not an admission that LCpl Sharratt killed anybody. The "Punisher" is a fictional hero vigilante that was first created as part of the Marvel Comics series and was later made into a movie. LCpl Sharratt's call sign while in Fallujah was "Punisher." LCpl Sharratt's reference to the "Punisher" serves only to further highlight his habit of making his account of any event to his friends and fellow Marines as entertaining as possible without regard to specifics or overall accuracy.

c. Uncorroborated Details of the Marines Statements – (AK47s, Passports, Suitcase)

i. Weapons Accountability

The Government will argue that no weapons were seized from houses three and four because the weapons log does not record such seizures. By most accounts, at least two AK-47s were seized from house four. LCpl Sharratt has stated that two AK-47s were seized from house four. Sgt Wuterich recalled one AK-47 being seized from the house. Cpl Salinas has recalled three AK-47s being seized from the house.²⁴⁵ The Iraqis have claimed that they surrendered two weapons: one from house three and one from house four.²⁴⁶ Aiad has admitted that he had a third AK-47 locked up that he turned over to Marines days after the engagement.²⁴⁷ LCpl Sharratt's statement appears the most accurate. The Iraqis concede that they had three AK-47s at the house. The Marines left the house with two of the rifles after being engaged by the insurgents. Aiad later turned over the AK-47 that was locked up.

Following the engagement, LCpl Sharratt and Sgt Wuterich carried the rifles and suitcase back to the first vehicle. LCpl Sharratt reported to LCpl Tatum what happened and asked him to

²⁴⁴ Enclosure 49: LCpl Wright Statement.

²⁴⁵ Enclosure 4B: Cpl Salinas's 18 March 2006 Statement.

²⁴⁶ Enclosure 11A: Results of Interview / Family Members of House #4 - see SA Mannle's Report.

²⁴⁷ Enclosure 11A: Results of Interview / Family Members of House #4 - see SA Mannle's Report.

report to 2ndLt Kallop the incident.²⁴⁸ LCpl Rodriguez also reported seeing several captured AK-47s in the back of his vehicle that day.²⁴⁹

The procedures for dealing with captured weapons in Kilo Company were clearly stated, but poorly supervised. According to the Company Standing Operating Procedure, the unit that captured the weapon would take it to the weapons custodian – Cpl Stafford.²⁵⁰ His duties were to maintain accountability for all weapons at the Firm Base and those issued to his company.²⁵¹ Cpl Stafford was responsible for making weapons available for repair and for conducting preventative maintenance checks and services.²⁵² He was also responsible for the captured weapons.²⁵³

When squads turned in captured weapons to Cpl Stafford, he was supposed to tag the weapons with yellow NAVMC 1018 form tags. He had to fill out the tag with the date, location, unit section, squad, and most senior Marine that captured the weapon.²⁵⁴ Whenever the company had an opportunity to travel to Haditha Dam, usually once per week, they would take the captured weapons and turn them in.²⁵⁵

On 1 December 2005, Cpl Stafford took 9 AK-47s and 1 RPG to the battalion armory at the Dam.²⁵⁶ He noted on the tags that 2nd Plt, Kilo Company had seized the weapons.²⁵⁷ This was an obvious administrative error related to poor accountability as several weapons were turned in to Cpl Stafford on 19 November. Those weapons are not mentioned in the logbook.

| | | | | | | | | |
|-----|-------|----------|--|------------------|--------|--------|-------------|---------------|
| 156 | AK-47 | 1559 | | 3/1 WPNS 2ND PLT | 051130 | 051208 | CWO3 DUBOIS | AL-ASAD/RCT-2 |
| 157 | AK-47 | 23131 | | 3/1 KILO 2ND PLT | 051201 | 051208 | CWO3 DUBOIS | AL-ASAD/RCT-2 |
| 158 | AK-47 | 26007001 | | 3/1 KILO 2ND PLT | 051201 | 051208 | CWO3 DUBOIS | AL-ASAD/RCT-2 |
| 159 | AK-47 | 2614130 | | 3/1 KILO 2ND PLT | 051201 | 051208 | CWO3 DUBOIS | AL-ASAD/RCT-2 |
| 160 | AK-47 | 2809420 | | 3/1 KILO 2ND PLT | 051201 | 051208 | CWO3 DUBOIS | AL-ASAD/RCT-2 |
| 161 | AK-47 | 45720 | | 3/1 KILO 2ND PLT | 051201 | 051208 | CWO3 DUBOIS | AL-ASAD/RCT-2 |
| 162 | AK-47 | 58661 | | 3/1 KILO 2ND PLT | 051201 | 051208 | CWO3 DUBOIS | AL-ASAD/RCT-2 |
| 163 | AK-47 | 7045572 | | 3/1 KILO 2ND PLT | 051201 | 051208 | CWO3 DUBOIS | AL-ASAD/RCT-2 |
| 164 | AK-47 | S-CD4234 | | 3/1 KILO 2ND PLT | 051201 | 051208 | CWO3 DUBOIS | AL-ASAD/RCT-2 |
| 165 | AK-47 | ACF2501 | | 3/1 KILO 2ND PLT | 051201 | 051208 | CWO3 DUBOIS | AL-ASAD/RCT-2 |
| 166 | | | | 8TH FSB SECURITY | | | | |

Photo 6 – Excerpt from weapons log. (ROI 3 Aug 06, 00651). Enclosure 28.

Cpl Stafford claimed that on 19 November 2005 two AK-47s were turned in to him while he was at house one or two.²⁵⁸ He stated that he entered them into the Captured Weapons Log book and secured them in the Captured Weapons Locker.²⁵⁹ There is no other mention of AK-47s in any of his statements. Though no log book or official record reports the recovery or

²⁴⁸ Enclosure 2A: LCpl Sharratt's 19 February 2006 Statement.

²⁴⁹ Enclosure 31B: LCpl Rodriguez' 2 March 2007 Transcript of Defense Interview.

²⁵⁰ Enclosure 14: SSgt Robinson's 17 May 2006 Statement.

²⁵¹ Enclosure 14: SSgt Robinson's 17 May 2006 Statement.

²⁵² Enclosure 14: SSgt Robinson's 17 May 2006 Statement.

²⁵³ Enclosure 14: SSgt Robinson's 17 May 2006 Statement.

²⁵⁴ Enclosure 14: SSgt Robinson's 17 May 2006 Statement.

²⁵⁵ Enclosure 14: SSgt Robinson's 17 May 2006 Statement.

²⁵⁶ Enclosure 14: SSgt Robinson's 17 May 2006 Statement.

²⁵⁷ Enclosure 14: SSgt Robinson's 17 May 2006 Statement.

²⁵⁸ Enclosure 15A: Cpl Stafford Taped Interview Transcript.

²⁵⁹ Enclosure 15B: Cpl. Stafford's 15 May 2006 Statement.

turning in of the AK-47s at house four, it is overwhelmingly clear that at least two AK-47s were in house four at the time of the combat engagement. Indeed, even the Iraqi witnesses admit that Sgt Wuterich and LCpl Sharratt took two AK-47s from house four.

Despite, the clear and simple procedures described above, there was no weapons accountability in Kilo Company. In his 7 May 2007 deposition, 2ndLt Kallop said that the “weapons accountability at this time was a loose hodgepodge.”²⁶⁰ Specifically, if a weapon was found during an operation, “a squad leader would probably just tell them some convenient place to put them and they would just throw them in the truck.” Once the vehicles were brought back to Sparta there was no actual armory for the seized AK-47’s. 2ndLt Kallop described the building as an “outhouse.” 2ndLt Kallop further stated, “they just – when they opened the door they just stacked them, tossed them in, closed the door.” There was no accountability of AK-47s at this time in Kilo Company. As explained by 2ndLt Kallop, the weapons were brought to the “outhouse” at Sparta daily. Once a week they would be taken to Haditha Dam for destruction. This is why all of the weapons confiscated on 19 November 2005 were mysteriously turned in days later and erroneously attributed to second platoon.

ii. The Suitcase

Sgt Wuterich and LCpl Sharratt took a suitcase filled with passports, clothes, and hygiene gear in house four. Across the street from house four, Marines found a purse with upwards of 30 Jordanian passports and large sums of money. Ehab stated that Khatan worked near the Jordanian border and that the suitcase belonged to him. Though LCpl Sharratt secured the suitcase in his vehicle at Chestnut, the suitcase was never accounted for. LCpl Sharratt’s squad returned to Sparta on a foot patrol. Other Marines had driven the vehicles at Chestnut back to Sparta. There are no records or statements that show who may have driven the vehicle back to Sparta. Nevertheless, Sgt Wuterich, LCpl Sharratt, Cpl Salinas, LCpl Tatum, and LCpl Rodriguez all acknowledge that a suitcase was seized from house four.

In fact, the Iraqi witnesses even corroborate the existence of the suitcase. It is not a coincidence that Ehab also stated that there was a suitcase with passports, clothes, and hygiene gear. Again, LCpl Sharratt was telling the truth.

iii. The Intelligence

It is no secret that Haditha and Route Chestnut was a dangerous place. In the month previous to 19 November 2005, at least 22 IEDs were discovered along Route Chestnut – less than one hundred yards from the house of a police officer that resided at houses three and four. The house at the corner of Chestnut and Viper was a known “muj” house. The suspected trigger house was located less than one hundred yards from house four. After the neighbors of house four detonated the IED, the Marines reported that they may have even been taking small-arms fire from the North.²⁶¹

²⁶⁰ Enclosure 32C: 2ndLt Kallop’s 7 May 2007 Deposition Transcripts, pages 173-173. *See also* Government’s Enclosure 55.

²⁶¹ *See* Cpl Salinas’ statements.

From the Iraqi witnesses one can discern a number of interesting possible facts regarding the Iraqis at houses three and four. Firstly, there were five alleged brothers in the alleged family. Of the five brothers, the Defense is aware of the following Iraqi claims regarding their employment: one brother was a police officer, one was allegedly an engineer, there was one businessman with a car dealership, and there was allegedly a brother who worked near the Jordanian border. The occupation of the fifth brother is unknown. If these occupations are true, then the ideal insurgent cell resided in house four. In house four resided a police officer with access to information regarding the security and movements of U.S. forces in Haditha. There was also an engineer that would be expected to have the educational background to construct the many IEDs located on Chestnut. The alleged businessman also would likely have access to information and the possible means to finance the construction of IEDs. Another brother worked on the Jordanian border. Moreover, Marines found 30 Jordanian passports at the suspected trigger house. Another neighbor was a customs inspector in Baghdad.

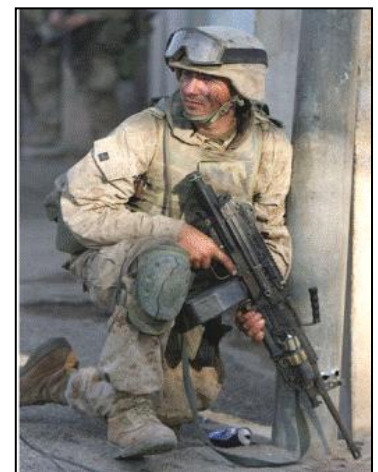
Secondly, as previously stated there was a suitcase with hygiene gear and passports discovered in house four. There was also a suitcase with cash, Jordanian passports, and hygiene gear discovered nearby at the suspected trigger house. It is no coincidence that there are so many suitcases and Jordanian passports located to the north of Route Chestnut. Thirdly, there were at least three AK-47s kept at house four – two of which the Marines seized

The intelligence is overwhelming that house four essentially was located at the center of a known insurgent stronghold. These facts are not coincidences. Capt Dinsmore identified house four as a bad guy house. In the rush to judgment, no efforts were made to determine whether the occupants of house four were involved in any of the myriad of insurgent cells described by Col Watt and Col Devlin in the background section. Nevertheless, these facts are stunning and a factfinder could reasonably conclude, as did Col Watt, that the individuals in house four were indeed members of the insurgency operating in the Haditha Triad.

II. Affirmative Considerations

a. Government's Allegations Contrary to Sharratt's Experience

In 2004, LCpl Sharratt had deployed to Fallujah, Iraq. His squad leader was Sgt Wolf.²⁶² Sgt Wolf states that LCpl Sharratt was one of the best Marines in his platoon.²⁶³ 2ndLt Kallop has also stated that LCpl Sharratt was the best machine gunner in the entire company.²⁶⁴ Sgt Wolf believed that LCpl Sharratt's decision to remove the M240G from the turret to provide more firepower for his squad was a "brilliant move." During one firefight in Fallujah, LCpl Sharratt had even saved Sgt Wolf's life.²⁶⁵



LCpl Sharratt in Fallujah.

²⁶² Enclosure 16: Sgt Wolf's 27 July 2006 Statement.

²⁶³ Enclosure 16: Sgt Wolf's 27 July 2006 Statement.

²⁶⁴ Enclosure 32C: 2ndLt Kallop's 7 May 2007 Deposition Transcript.

²⁶⁵ Enclosure 16: Sgt Wolf's 27 July 2006 Statement.

The events that transpired at the “House from Hell” in Fallujah are depicted in the book “No True Glory.”²⁶⁶ On 12 November 2004, Kilo Company was tasked with searching and clearing several blocks of houses in Fallujah.²⁶⁷ In one cement house, insurgents who were firing their AK-47s through a hole in the roof trapped a small team of Marines that included LCpl Prentice and LCpl Rodriguez, inside of the house.²⁶⁸ Sgt Wolf quickly put together a rescue team to pull the trapped Marines to safety.²⁶⁹ LCpl Sharratt was on that team.

Bing West’s book “No True Glory” captures in vivid detail the events that transpired as LCpl Sharratt and LCpl Rodriguez were guarding the door to a bedroom with a team of Marines as Sgt Norwood was struck in the forehead by a burst of small arms fire from an insurgent.²⁷⁰



LCpl Sharratt in the door way on the right firing up at insurgents.



LCpl Sharratt next to the furniture in the hell-house.

²⁶⁶ Enclosure 29: No True Glory Excerpt, ROI 12 Sep 06, 00272.

²⁶⁷ Enclosure 29: No True Glory Excerpt, ROI 12 Sep 06, 00272.

²⁶⁸ Enclosure 29: No True Glory Excerpt, ROI 12 Sep 06, 00272.

²⁶⁹ Enclosure 29: No True Glory Excerpt, ROI 12 Sep 06, 00272.

²⁷⁰ Enclosure 29: No True Glory Excerpt, ROI 12 Sep 06, 00272.

In another firefight in Fallujah, LCpl Sharratt would save Sgt Wolf's life when Wolf's weapon jammed. While under fire, LCpl Sharratt was able to repair Sgt Wolf's weapon. LCpl Sharratt is a combat-tested Marine that answered his Country's call-to-duty and performed honorably in much of the most difficult fighting in the last 50 years of Marine Corps history. When LCpl Sharratt saw his Marines rushing to clear a house, without hesitation he grabbed his gear and brought as much firepower to the fight as he could. When Sgt Wuterich needed a volunteer to investigate insurgent activity near Route Zebra, LCpl Sharratt selflessly volunteered to support his squad leader. In Fallujah, when Sgt Wolf's weapon malfunctioned, LCpl Sharratt rushed to his aid to repair the weapon while taking fire. When his fellow Marines were trapped in the hell-house, LCpl Sharratt was on the team that rushed inside to rescue them.

LCpl Sharratt is a combat Marine. When faced with multiple insurgents in house four, his training and experience took over and LCpl Sharratt responded exactly as the Marine Corps had trained him to respond.

b. Qualified Combat Immunity

The Uniform Code of Military Justice (UCMJ) and the case law interpreting it is ever-evolving. The UCMJ is grounded in the principle enunciated in 1949 by Edmund Morgan in testifying before the House of Representatives:

[A] Code of Military Justice cannot ignore the military circumstances in which it must operate but...that it must be designated to administer justice.²⁷¹

Regrettably the UCMJ and case law interpreting it have ignored the military circumstance that exists in modern combat conditions where an amorphous enemy has become the order of the day. This case presents a unique opportunity to correct that failing.

In the civilian sector a body a law has evolved which serves to provide pragmatic protection to law enforcement officers who employ deadly force in the line of duty. The concept is called the "Qualified Immunity Doctrine."

In *Graham v. Connor*²⁷² the United States Supreme Court applied this doctrine to a law enforcement officer declaring that such officer could not be sued for his conduct so long as his conduct was reasonable and done under color of law. In *Saucier v. Katz* the United States Supreme Court extended qualified immunity to an active duty military police officer stationed in California.²⁷³

We now ask this Investigating Officer to find that LCpl Justin Sharratt acted under color of law by enforcing the foreign policy of his nation against its declared enemies and that his actions were reasonable under the circumstances of this case and the applicable ROE.

²⁷¹ *Hearings on H.R. 2498 Before a Subcomm. Of the House Armed Services Comm.*, 81st Cong., 1st Sess., at 606 (1949) (statement of Professor Edmund G. Morgan).

²⁷² *Graham v. Connor*, 490 U.S. 386 (1989).

²⁷³ *Saucier v. Katz*, 533 U.S.194 (2001); *Graham v. Connor*, 490 U.S. 386 (1989).

The issues for this Investigating Officer are two-fold:

1. At the time of the engagement was LCpl Sharratt acting under color of law?
2. Did LCpl Sharratt's conduct unreasonably violate the applicable and clearly established rules of engagement in effect at the time of the engagement?²⁷⁴

In addressing the qualified combat immunity issue in this case, the Investigating Officer must first assess whether or not the accused was acting under color of law. This is easily resolvable. LCpl Sharratt was a United States Marine on active duty operating under lawful orders in furtherance of the national security interests of the United States. He was therefore operating under color of law.

The second inquiry requires the Investigating Officer to examine the ROE as well as the actual conduct of LCpl Sharratt from the viewpoint of a Marine in combat under like circumstances. The government has the burden of showing that LCpl Sharratt's conduct unreasonably violated clearly established rules of engagement. If the government cannot establish that clear ROEs existed, then the law affords LCpl Sharratt the presumption of reasonableness. This presumption can only be overcome by showing that LCpl Sharratt's actual conduct was so far outside the penumbra of generally accepted tactics as to offend the sensibilities of justice.

The theater ROE – as developed by the Chairman Joint Chiefs of Staff Standing Rules of Engagement (SROE) – is one of the authorities empowering the accused and other service members to use force both offensively and defensively. At a minimum the government has the burden of establishing that there was in fact an articulated ROE in existence that clearly communicated to LCpl Sharratt his authority to use force under all circumstances.

At the time of the 19 November 2005 incident, the theater rules of engagement also contained specific guidelines concerning Collateral Damage Estimate (CDE) methodologies used by weapons targeting cells for assessing and balancing kinetic strikes on suspected hostile targets. These CDE methodologies have a pre-determined limit of potential civilian casualties that might result from an offensive attack. In almost all cases, the CDE methodologies are applied to air strikes on targets. There is in existence a complex matrix that allows the targeting officers to weigh the perceived value of the target in relation to a probable number of civilian casualties. The command can then make a determination of whether that number of civilian casualties is an acceptable risk to take in order to destroy the target.²⁷⁵

In a scenario such as the present, when Marines are in contact with enemy forces, the CDE methodologies are not required to be followed. The appropriate authority at the Command Operations Center has the capability of authorizing close air support strikes without even

²⁷⁴ *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985); *Harlow v. Fitzgerald*, 457 US 800, 819 (1982).

²⁷⁵ See generally, Joint Publication 2-01.1 – Joint Tactics, Techniques, and Procedures for Intelligence Support to Targeting. Appendix G. 9 January 2003. http://www.fas.org/irp/doddir/dod/jp2_01_1.pdf.

considering civilian casualties. In fact, air strikes and Hellfire missiles were used on a “safe house” near Chestnut.

It is axiomatic that the Marines in harm’s way (as opposed to the targeting cell and command structure often hundreds of miles away) should be given the same deference and authority to employ much less devastating weapons systems without concern that they will be second guessed based solely on the politics of their actions and any apparent resulting civilian casualties. In other words, there are no legal consequences when a targeting cell and command has acted appropriately under the ROE by dropping a 2,000lb bomb on a suspected target - even if more civilians are killed than alleged at Haditha. Similarly, when a Marine squad deploys against a hostile force and there are resulting civilian casualties alleged, then that tactical decision-maker on the ground under fire should be afforded the same deference and protections of the ROE as are the targeting officers and commanders who have the luxury of time, information, and safety to calculate the value of civilian life.

If the Marine Corps seeks to apply a higher standard of legal responsibility on the Strategic Corporal tasked with making more precise and discerning decisions while under fire, then that Marine is entitled to the Constitutional and well-reasoned standards applied to police officers by the United States Supreme Court.

The UCMJ and military case law are deafeningly silent on this point, relegating the Combat Marine to civilian concepts of self-defense. This silence places the burden on the Combat Marine to show some evidence that he acted in self-defense during a combat engagement! Qualified Combat Immunity properly places the burden on the government to show that the Combat Marine’s actions were unreasonable and not under color of law as a threshold barrier to prosecution. This is the very least a Nation can do for those it sends into combat to kill. To do otherwise creates a ground force reluctant to discharge its weapons for fear of enduring prosecutions such as this.

This firm is prepared to present legal arguments to the IO supporting the applicability of the doctrine of qualified immunity to combat Marines.

Section 5: Conclusion

The overwhelming majority of the evidence outlined above indicates that the individuals killed in house four had displayed a clear hostile intent that justified the use of deadly force by LCpl Sharratt. It is inexplicable that the government has granted testimonial immunity to the two Marines that failed their polygraph examinations – Cpl Dela Cruz and LCpl Mendoza. It is likewise inexplicable that the government granted testimonial immunity to the lieutenant that ordered his Marines to clear south. Based on the overwhelming evidence in this case that LCpl Sharratt was justified in using deadly force against the Iraqi men in house four, it is simply unforgivable that the Marine Corps has charged the one Marine that passed his polygraph examination with three counts of unpremeditated murder. Accordingly, we strongly request that a recommendation is forwarded to Convening Authority that the charges against LCpl Sharratt be dismissed and that Qualified Combat Immunity be the standard for the remaining Marines charged for the events of 19 November 2005 and for all service members thereafter.

Appendix A: Timeline of Events on 19 November 2005

- 0600 1st Sqd, 3rd Plt leaves Firmbase Sparta to escort Iraqi Army (IA) members to the Traffic Check Point (TCP) in Haditha Iraq.
- 0630 They arrive at the TCP and complete the task of relieving the IAs.
- 0700 1st Sqd departs the TCP to return to the Firmbase.
- 0716 An IED explodes on RTE Chestnut destroying the 4th HMMWV and killing LCpl Terrazas. The IED wounded LCpls Guzman and Crossan. The Marines take small arms fire following the explosion.
- 0720 Five military-aged males are engaged outside of a white sedan on RTE Chestnut.
- 0725 A QRF from 3rd Plt, 3rd Sqd arrives at the IED site with 2ndLt Kallop.
- 0730 Cpl Salinas fires multiple M203 rounds at House 1 after he sees an individual firing an AK-47 at that location.
- 0735 A fire team lead by 2ndLt Kallop and consisting of Sgt Wuterich, Cpl Salinas, LCpl Tatum, and LCpl Mendoza forms to clear the houses to the South where the squad was taking fire. 2ndLt Kallop leaves before reaching the house.
- 0745 Sgt Wuterich, Cpl Salinas, LCpl Tatum, and LCpl Mendoza advance to house 1. LCpl Sharratt links up with the team as they are leaving house 2.
- 0750 The Marines advance to house 2. LCpl Sharratt provides security outside.
- 0755 The Marines advance up RTE Zebra and back towards the vehicles. LCpl Sharratt uses the M240G to shoot the lock off a residence.
- 0800 3rd Plt, 2nd Sqd is dispatched to the soccer field to set-up LZ Bull.
- 0810 1st Plt, 1st Sqd is delayed by a surface IED on River Road. EOD is called to the area and receives SAF from the Palm Groves east of River Road.
- 0815 1st Sqd returns to RTE Chestnut and establishes an Observation Post (OP).
- 0830 LCpl Guzman and LCpl Crossan are MEDIVAC'd out of LZ Bull.
- 0900 Scan Eagle identifies 8-10 insurgents off of River Road north of RTE Chestnut in the Palm Groves.
- 0915 1st Plt, 1st Sqd is launched to the attack the enemy in the Palm Groves. They

receive SAF at Haditha Road and Market Street. They find a 3rd IED at Rhino and Haditha Road.

- 0930 While at the OP on over watch, an insurgent is engaged and killed on the ridgeline.
- 1000 Cobra air strikes are conducted against insurgents.
- 1015 4th Plt, 1st Sqd conducts BDA at the Palm Groves. The squad is hit by a grenade and SAF. The squad suffers 7 casualties.
- 1020 2ndLt Kallop takes Cpl Salinas to house 1 to conduct an assessment.
- 1030 4th Plt, 2nd Squad reacts as a QRF to the Palm Groves. Tanks and fixed-wing air assets are called. An insurgent house is destroyed with a 500lb bomb.
- 1040 Sgt Wuterich, Cpl Salinas, and LCpl Sharratt detect a suspicious MAM peeking his head over a wall and then returning to the cover of a house. They dispatch to investigate.
- 1050-1055 The Marines are engaged by 4 insurgents in house 4.
- 1110 Sgt Wuterich briefs 2ndLt Kallop.
- 1115 Two AK-47s and the suitcase retrieved from house 4 are placed inside the first HMMWV.
- 1145 The MEDIVAC of wounded children is completed.
- 1200 Sgt Laughner arrives to conduct an assessment and take photographs.
- 1300 QRF returns to the IED site to pick-up detainees.
- 1400 1st Squad remains at Route Chestnut to provide security.
- 1900 QRF returns to IED site to transport bodies back to Firm Base Sparta.
- 2300 HMMWV loaded with deceased returns to Firm Base Sparta.
- 2330 1st Sqd patrols back to Firm Base Sparta on foot.

Appendix B: Chain of Command

| | |
|--|---|
| CO RCT -2 | Colonel Davis, Stephen |
| CO 3rd Bn, 1st Marines XO 3/1 Sergeant Major Civil Affairs Officer Operations Officer Intelligence Officers | Lieutenant Colonel Chessani, Jeffrey Major Gonzales, Kevin Sergeant Major Sax, Edward Major Hyatt, Dana Major Carrasco, Samuel Captain Dreger, Oliver Captain Dinsmore, Jeffrey Captain Stone, Randy |
| BN Judge Advocate | |
| HUMINT Officer HUMINT NCO | 1st Lieutenant Grayson, Andrew Sergeant Laughner, Justin |
| CO Kilo Company XO Kilo Company First Sergeant CO Gunny | Captain McConnell, Lucas 1st Lieutenant Mathes, Adam 1st Sgt Espinosa, Albert Gunnery Sergeant Dunlap, Larry |
| PLT CDR P2NDLT Sgt | 2nd Lieutenant Kallop, William Staff Sergeant Fields, Travis |
| First Squad Leader | Sergeant Wuterich, Frank |

Appendix C: 1st Squad, 3rd Plt, Kilo CO, 3rd BN, 1st Marines (3/1)

Date: 19 November 2005

Time: 0716

Vehicle 1: LCpl Rodriguez, Rene (Driver)
Cpl Salinas, Hector (A-Driver)
LCpl Sharratt, Justin (Gunner)

Vehicle 2: Cpl Dela Cruz, Sanick (Driver)
LCpl Tatum, Stephen (A-Driver)
LCpl Mendoza, Humberto (Gunner)
Four ISF members

Vehicle 3: Sgt Wuterich, Frank (Driver)
LCpl Graviss, Trent (A-Driver)
HN Whitt, Brian (Gunner)

Vehicle 4: LCpl Terrazas, Miguel (Driver, KIA)
LCpl Crossan, Trent (A-Driver WIA)
PFC Guzman, Salvador (Gunner WIA)

Appendix D: Analysis of the Forensic Reconstruction

The firearms trajectory analysis conducted by NCIS demonstrates conclusively that the combat engagement in house four was not an execution and transpired exactly as LCpl Sharratt described in his sworn statements. This analysis is so compelling and so consistent with the evidence that the Investigating Officer must recommend against the referral of charges.

The analysis in this appendix will guide the Investigating Officer through LCpl Sharratt's statement in relation to the firearms trajectory and forensic analysis.

1. The Stack:

In LCpl Sharratt's 19 March 2006 statement he described how he and Sgt Wuterich tactically entered house four and stacked themselves along the wall near the stairwell. See the first number on the firearms trajectory analysis at the end of the appendix.

2. Khatan ambushes the Marines in the doorway:

While stacked along the wall LCpl Sharratt reported seeing an Iraqi male across the hallway pointing an AK-47 at him. The forensic reconstruction concluded that "Khatan...was positioned just inside the open door when he was shot. He was forward into the doorframe..." See page 38 of this brief.

LCpl Sharratt quickly tried to establish fire superiority, but his SAW jammed. He withdrew behind the wall just long enough to draw his 9mm sidearm. He reemerged into the doorframe and shot Khatan in the head. The AFIP report noted that Khatan had an "entrance gunshot wound of the left cheek just lateral to the nose...there is a dark area just below the left lateral edge of his lower lip that may represent a second entrance gunshot wound."

3. LCpl Sharratt Assaults through the Objective:

After killing Khatan LCpl Sharratt stepped into the doorframe and was confronted by Jasib who was holding another AK-47. LCpl Sharratt immediately shot Jasib. The forensic reconstruction concluded that "Jasib was behind and slightly to the side of Khatan when shot." This means that Jasib was concealing himself behind the door to the room. The AFIP report noted that Jasib had "at least two gunshot wounds of the head with one entrance gunshot wound on the bridge on the bridge of his nose between the eyes, just to the left of midline...In addition, he has a second exit wound of the left temple and left ear..."

4. LCpl Fires at Jamal who was moving to a location behind the closet door:

After LCpl Sharratt stepped into the doorway and engaged Khatan and Jasib he saw the other insurgents moving in the back of the room. He began firing at the remaining threats in the room. The forensic reconstruction found that Jamal “was likely to have been crouched down or sitting against the south wall near the closet. The closet door was open at the time he was shot. He would have been at least partially obscured from view...” AFIP found a large exit gunshot wound on the left side of his forehead...”

There are two identified bullet holes that reflect missed shots from LCpl Sharratt’s weapon. These shots strongly indicate that Jamal and Marwan were both moving in the darkened room towards the closet. This is an important because there is evidence that Aiad kept an AK-47 in that closet. Further, proof that the room was darkened comes from the fact that one missed shot simultaneously penetrated both the right and left side curtains that were overlapping. This resulted in one uniform hole through both sides of the curtain.

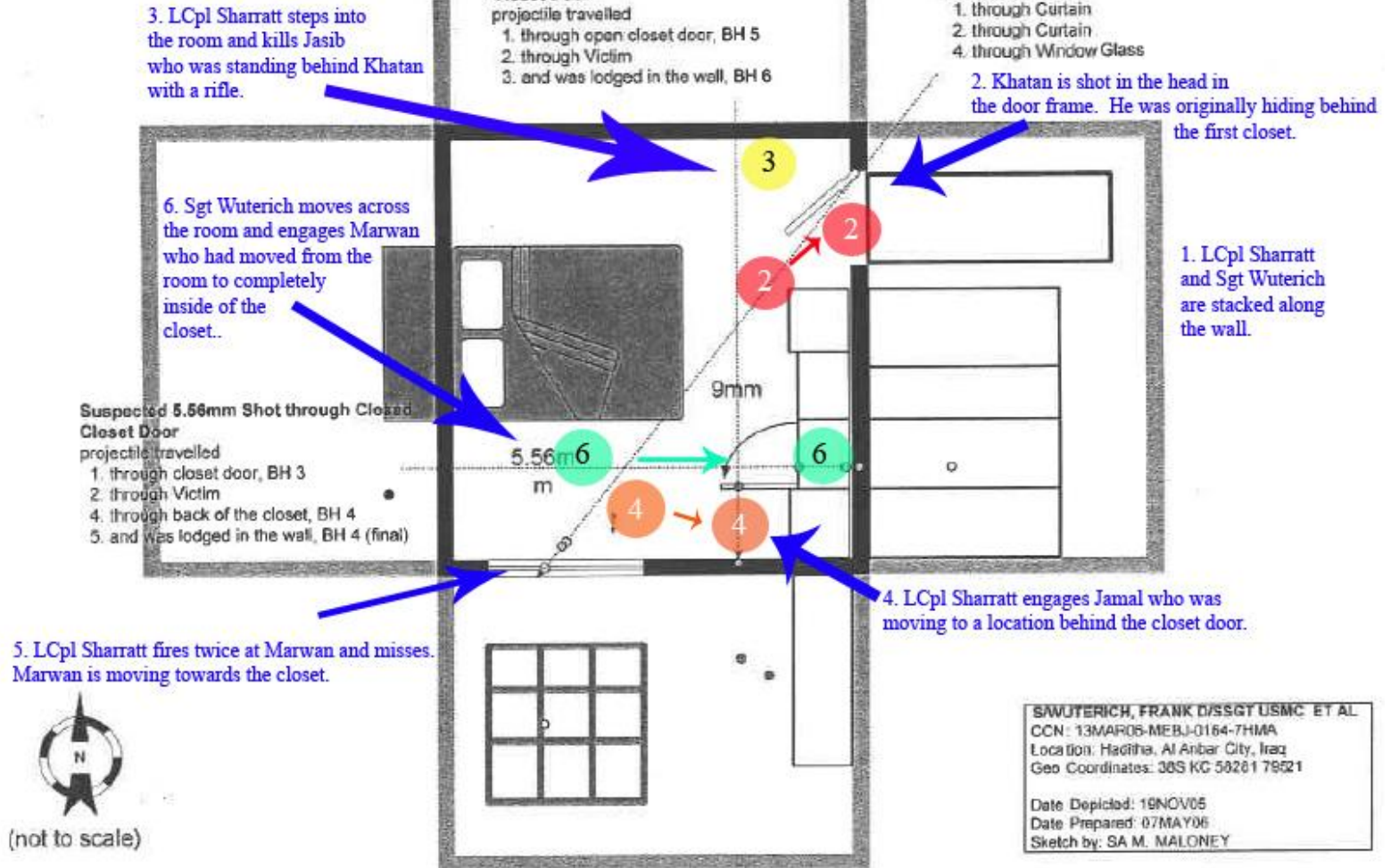
5. LCpl Sharratt fires twice at Marwan and misses:

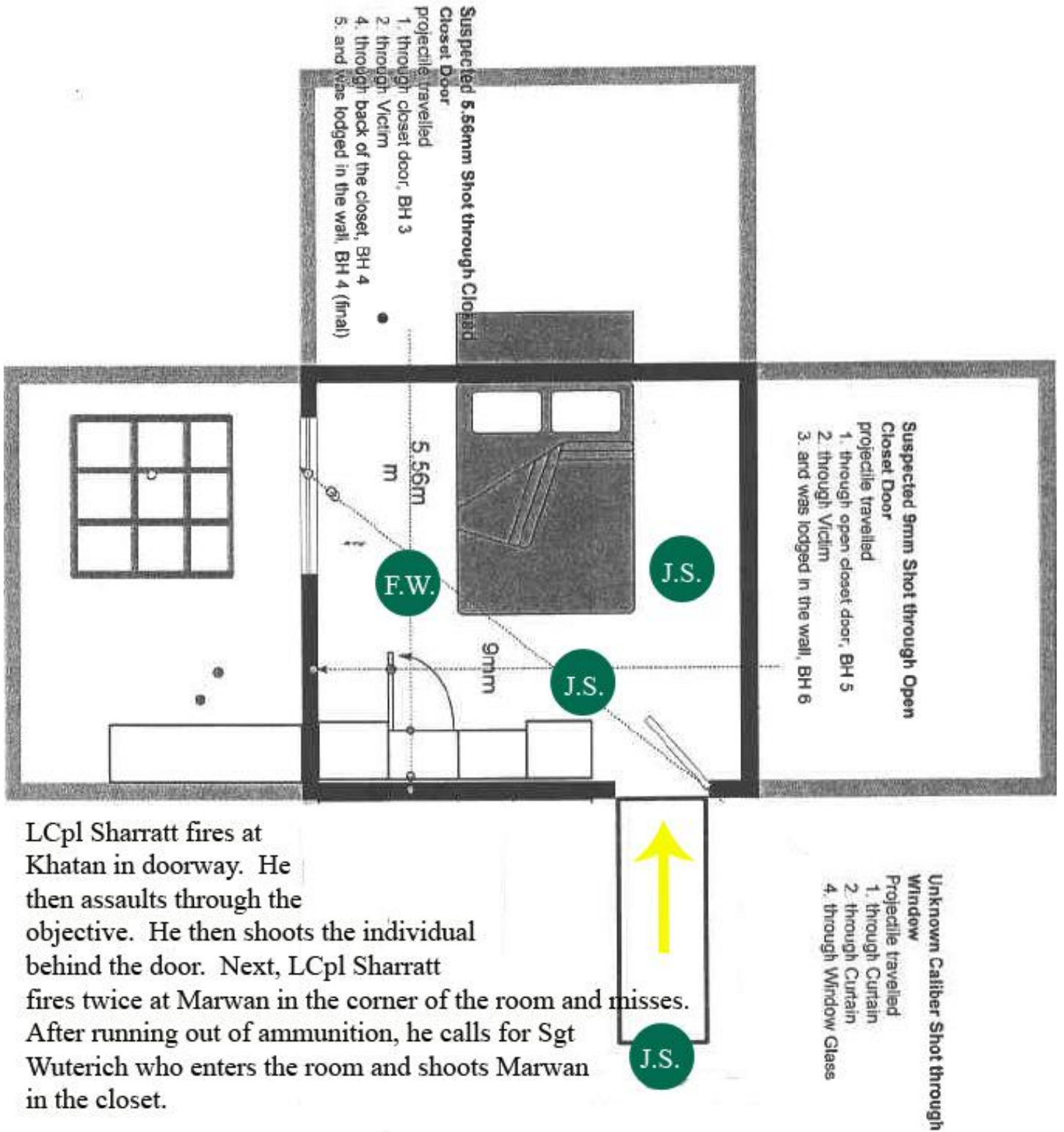
After engaging the first three insurgents LCpl Sharratt engaged a fourth insurgent moving in the back of the room. The forensic reconstruction concluded that Marwan “was most likely observed moving into the closet section and pulling the closet door closed.” When LCpl Sharratt saw Marwan moving, LCpl Sharratt fired twice and missed with the bullet exiting through a window. See number five on the firearms trajectory analysis diagram.

6. LCpl Sharratt runs out of ammo and Sgt Wuterich engages Marwan:

After LCpl Sharratt fired at Marwan and missed, he yelled to Sgt Wuterich that he was out of ammunition. Sgt Wuterich entered the room and crossed over the bed to avoid the bodies lying next to the door. Sgt Wuterich turned and engaged Marwan who was crouched in the closet and was attempting to pull the door closed.

House #4: Firearms Trajectory





LCpl Sharratt fires at Khatan in doorway. He then assaults through the objective. He then shoots the individual behind the door. Next, LCpl Sharratt fires twice at Marwan in the corner of the room and misses. After running out of ammunition, he calls for Sgt Wuterich who enters the room and shoots Marwan in the closet.