

### INVESTIGATING OFFICER'S REPORT

*(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)*

<b>1a. FROM:</b> <i>(Name of Investigating Officer - Last, First, MI)</i>  Ware, Paul J.	<b>b. GRADE</b>  LtCol	<b>c. ORGANIZATION</b>  Navy-Marine Corps Trial Judiciary, WESTPAC Circuit	<b>d. DATE OF REPORT</b>  6 Jul 07
<b>2a. TO:</b> <i>(Name of Officer who directed the investigation - Last, First, MI)</i>  Mattis, James T.	<b>b. TITLE</b>  Commanding General	<b>c. ORGANIZATION</b>  I Marine Expeditionary Force	
<b>3a. NAME OF ACCUSED</b> <i>(Last, First, MI)</i>  Sharratt, Justin L.	<b>b. GRADE</b>  LCpl	<b>c. SSN</b>  000-00-1095	<b>d. ORGANIZATION</b>  HqCo, 1st MAR, 1st MarDiv
			<b>e. DATE OF CHARGES</b>  21 Dec 2006

*(Check appropriate answer)*

<b>4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)</b>	YES	NO	
	<input checked="" type="checkbox"/>		
<b>5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)</b>	<input checked="" type="checkbox"/>		
<b>6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d) (2), 502(d)</b>	<input checked="" type="checkbox"/>		
<b>7a. NAME OF DEFENSE COUNSEL</b> <i>(Last, First, MI)</i> Cosgrove, Brian G.	<b>b. GRADE</b> LtCol	<b>8a. NAME OF ASSISTANT DEFENSE COUNSEL</b> <i>(If any)</i> Myers, Gary	<b>b. GRADE</b> N/A
<b>c. ORGANIZATION</b> <i>(If appropriate)</i> 1st MLG, CLR-17, LSSS-C (Defense)		<b>c. ORGANIZATION</b> <i>(If appropriate)</i> Gary Myers & Associates	
<b>d. ADDRESS</b> <i>(If appropriate)</i> Bldg 22163, Box 555607, Camp Pendleton, CA 92055		<b>d. ADDRESS</b> <i>(If appropriate)</i> 78 Clark Mill Rd, Weare, NH 03281	
<b>9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)</b>			
<b>a. PLACE</b>		<b>b. DATE</b>	

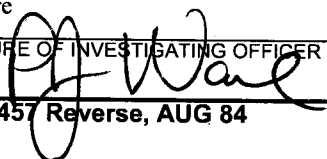
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.

**c. SIGNATURE OF ACCUSED**

<b>10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF:</b> <i>(Check appropriate answer)</i>	YES	NO
<b>a. THE CHARGE(S) UNDER INVESTIGATION</b>	<input checked="" type="checkbox"/>	
<b>b. THE IDENTITY OF THE ACCUSER</b>	<input checked="" type="checkbox"/>	
<b>c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31</b>	<input checked="" type="checkbox"/>	
<b>d. THE PURPOSE OF THE INVESTIGATION</b>	<input checked="" type="checkbox"/>	
<b>e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE</b>	<input checked="" type="checkbox"/>	
<b>f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT</b>	<input checked="" type="checkbox"/>	
<b>g. THE RIGHT TO CROSS-EXAMINE WITNESSES</b>	<input checked="" type="checkbox"/>	
<b>h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED</b>	<input checked="" type="checkbox"/>	
<b>i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION</b>	<input checked="" type="checkbox"/>	
<b>j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING</b>	<input checked="" type="checkbox"/>	
<b>11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE</b> <i>(If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)</i>		<input checked="" type="checkbox"/>

**b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL**  
 Mr. Culp was absent, with the consent of the accused, for a short time during one session of the hearing. Mr. Myers and LtCol Cosgrove were present for all sessions.

**NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c"). Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."**

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
See attached witness list.				
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.			<input checked="" type="checkbox"/>	
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)		YES	NO
See attached exhibit list.				
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			<input checked="" type="checkbox"/>	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)				<input checked="" type="checkbox"/>
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)				<input checked="" type="checkbox"/>
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL				<input checked="" type="checkbox"/>
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM			<input checked="" type="checkbox"/>	
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED				<input checked="" type="checkbox"/>
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d) (1).)			<input checked="" type="checkbox"/>	
20. I RECOMMEND:				
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input checked="" type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)				
14. Neither counsel presented evidence or indicated the accused was not mentally responsible. Additionally, my observations and interaction with accused satisfied me that he was mentally competent to participate in the defense.				
15. No written objections were filed although the defense did object to my consideration of the interviews of 4 Iraqi witnesses claiming the statements were not under oath. See attached pages for discussion of this objection.				
16. Government counsel represented that key Iraqi witnesses are willing to cooperate but was unsure if such cooperation included traveling to the United States to testify at a Courts-martial.				
18. Please see attached sheets with analysis.				
20. I recommend dismissal of the Charge and Specifications without prejudice.				
22a. TYPED NAME OF INVESTIGATING OFFICER		b. GRADE	c. ORGANIZATION	
Paul J. Ware		LtCol	Navy-Marine Corps Trial Judiciary, Western Pacific Judicial Circuit	
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	
			6 Jul 07	

12a The following witnesses testified under oath:

Name	Organization/address
SSgt Justin Laughner, USMC	CLR 17 Svc Co
Dr. Barak A. Salmoni	CAOCL MCTEC, Quantico, VA
Mr. Amir Alkaysey	Corona, New York
Special Agent Nayda M. Mannle*	NCIS, Washington DC
LCpl James, Prentice, USMC *	13 <sup>th</sup> MEU
LtCol David G. Bolgiano, USAFR	COIC, Pentagon, Washington DC
Major Dana Hyatt, USMCR*	New Haven, CT
LtCol Elizabeth Rouse, USAFR	Bethesda, MD
Special Agent Michael S. Maloney	NCIS, Okinawa, Japan
Special Agent Mark Cranfill	NCIS, Washington DC
Special Agent Mark Platt	NCIS, Washington DC
Cpl Robert Stafford, USMC	MCRD, Paris Island, SC
Mr. Francis Wolf III*	Crestwood, KY
Mr. Trent Aaron Gravis*	Fairdale, KY

\*These witnesses testified via telephone.

A verbatim transcript of the testimony is included with this report.

13a The following statements, documents or matters were considered; the accused was permitted to examine each. Other than noted in paragraph 21, there were no objections to any of the documents by either party.

Exhibit number	Description
1	Charge Sheet & Appointing Order
2	Email of James D. Culp, Esq . dtd 19 Feb 2007
3	Email of Col Chester dtd 20 Feb 07
4	LtCol Sullivan ltr 5800 of 5 Mar 2007
5	LtGen Mattis ltr 5800 of 7 Mar 2007
6	LtGen Mattis ltr 5811 of 6 April 2007
7	Defense witness request dtd 16 February 2007
8	Defense witness request dtd 8 March 2007
9	Defense witness request dtd 28 March 2007
10	Defense witness request dtd 3 April 2007
11	Defense witness request dtd 5 April 2007
12	Defense witness request dtd 10 April 2007
13	Defense witness request dtd 1 May 2007
14	Government 23 March 2007 response to Defense witness request dtd 16 February and 8 March 2007
15	Government 30 March 2007 response to Defense witness request dtd 23 March 2007
16	Government 5 April 2007 response to Defense witness request dtd 3 April 2007
17	Government 19 April 2007 response to Defense witness requests dtd 16 February, 8 March, 28 March, 3 April, 5 April and 10 April 2007
18	Government 2 May 2007 response to Defense witness request dtd 1 May 2007
19	Defense email withdrawal of request for SgtMaj Kasal as an Article 32 witness dtd 2 May 2007
20	Defense discovery request dtd 24 January 2007
21	Defense discovery request dtd 16 February 2007
22	Defense discovery request dtd 10 April 2007
23	Government 23 March 2007 response to defense discovery request dtd 24 January 2007
24	Government 23 March 2007 response to defense discovery request dtd 16 February 2007
25	Government 19 April 2007 response to defense discovery request dtd 10 April 2007
26	PFC Andrew Wright Resp to Req to Testify
27	Mr. Gardner Resp to Req to Testify
28	Mr. Grapes Req to Testify ICO Sharratt
29	Trial Counsel ltr 5800 LSST-C of 7 Mar 07. (SSgt Wuterich Req to Testify)

30 Email from Maj Faraj dtd 21 Mar 07 (SSgt Wuterich  
invoking 5<sup>th</sup> Amen)

31 Trial Counsel ltr 5800 LSST-C of 7 Mar 07 (LCpl Tatum  
Req to Testify)

32 Email from Mr. Zimmerman dtd 30 Mar 07 (LCpl Tatum  
invoking 5<sup>th</sup> Amen)

33 OMPF of LCpl Sharratt

34 SRB of LCpl Sharratt

35 Results of Interview of Ehab Ayad Turki dtd 6 Apr 06 (w/  
sworn affidavit)

36 Results of Interview of Nagham Fawaz Suliman Rajas dtd  
6 Apr 06 (w/ sworn affidavit)

37 Statement of Nagham Fawaz Suliman Rajab dtd 23 Jan 07  
(w/ sworn affidavit and translator declaration), transcript

38 Statement of Najla Abid Al Razak dtd 23 Jan 07 (w/ sworn  
affidavit and translator declaration), transcript

39 Statement of Khalid Jamal Aayed Hamed 24 Jan 07 (w/  
sworn affidavit and translator declaration), transcript

40 Statement of Ehab Ayad Turki 24 Jan 07 (w/ sworn  
affidavit and translator declaration), transcript

41 Video Interviews of Nagham, Najla, Khalid, Ehab

42 Rights Advisement and Statement of SSgt Wuterich dtd 21  
Feb 06

43 Rights Advisement and Statement of SSgt Wuterich dtd 18  
Mar 06

44 Rights Advisement and Statement of LCpl Sharratt dtd 20  
Feb 06

45 Rights Advisement and Statement of LCpl Sharratt dtd 19  
Mar 06 with NCIS SA McDaniel

46 Rights Advisement and Statement of LCpl Sharratt dtd 24  
Mar 06 with NCIS SA Platt & SA Mannle

47 Rights Advisement and Statement of Cpl Salinas dtd 19  
Feb 06

48 Rights Advisement and Statement of Cpl Salinas dtd 18  
Mar 06

49 Rights Advisement and Statement of Cpl Salinas dtd 24  
Mar 06

50 Results of receipt of 3/1 Captured Weapons Log dtd 1 Jun  
06

51 Statement of LCpl Prentice dtd 18 Oct 06

52 Statement of LCpl Prentice dtd 27 Mar 07

53 Deposition transcript for Capt Dinsmore dtd 26 March 07  
(redacted version Unclassified)

54 Deposition transcript and video for Capt Dreger dtd 27  
March 07

55 Deposition transcript and video for GySgt Dunlap dtd 29  
March 07

56 Deposition transcript and video for 2ndLt Kallop dtd 5 May  
07

57 Pathology Report of House #4 excerpt from 16 Nov ROI  
58 Pre death photos of Jasib Aiad Ahmed (with authentication  
documents: NCIS 12 Sept 06 ROI, Exhibit 491, Enclosure  
O)

59 Pre death photos of Kahtan Aiad Ahmed (NCIS 12 Sept 06  
ROI, Exhibit 491, Enclosure P)

60 Pre death photos of Jamal Aiad Ahmed (NCIS 12 Sept 06  
ROI, Exhibit 491, Enclosure Q)

61 Photo of Jasib Aiad Ahmed, Kahtan Aiad Ahmed and  
Jamal Aiad Ahmed deceased (with authentication  
documents: 12 Sept ROI, Exhibit 412, p. 333, photo #  
30/31)

62 Photo of Jasib Aiad Ahmed deceased (12 Sept ROI, Exhibit  
412, p. 329, photo # 26/31)

63 Photo of Kahtan Aiad Ahmed deceased (12 Sept ROI,  
Exhibit 412, p. 330, photo # 27/31)

64 Photo of Jamal Aiad Ahmed deceased (12 Sept ROI,  
Exhibit 412, p. 331, photo # 28/31)

65 Photo of Marwan Aiad Ahmed deceased (with  
authentication documents: 12 Sept ROI, Exhibit 412, pp.  
332 & 334, photo #s 29/31 & 31/31)

66 Translation of Death Certificate of Jamal Aiad Ahmed  
(with authentication documents: 3 Aug 06 NCIS ROI,  
Exhibit 377, Enclosure EE)

67 Translation of Death Certificate of Jasib Aiad Ahmed (with  
authentication documents: 3 Aug 06 NCIS ROI, Exhibit  
377, Enclosure GG)

68 Translation of Death Certificate of Marwan Aiad Ahmed  
(with authentication documents: 3 Aug 06 NCIS ROI,  
Exhibit 377, Enclosure II)

69 Translation of Death Certificate of Kahtan Aiad Ahmed  
(with authentication documents: 3 Aug 06 NCIS ROI,  
Exhibit 377, Enclosure KK)

70 Satellite images of Haditha, Iraqi in the vicinity of route  
chestnut and viper (Google Earth)

71 Forensic Report of House #4 excerpt from 16 Nov ROI  
72 Results of Death Scene Investigation from 3 Aug ROI  
73 71a. Pictures continued from IE 71

74 *Curriculum Vitae* of Jennifer M. Coslin  
75 *Curriculum Vitae* of Thomas F. Brady  
76 *Curriculum Vitae* of Ross M. Gardner  
77 *Curriculum Vitae* of Elizabeth A. Rouse

78	<i>Curriculum Vitae</i> of Patrick D. Ball
79	<i>Curriculum Vitae</i> of Michael S. Maloney
80	Jennifer Coslin DNA Report
81	Patrick Ball Ballistics Report
82	Immunity Request for Sgt Salinas
83	LCpl Stephen Tatum Invocation Affidavit
84	Google Earth Satellite Image Map with markings by SSgt Laughner
85	SSgt Laughner Immunity documents
86	Sgt Hector Salinas Invocation Affidavit
87	LCpl James Prentice SRB
88	SSgt Laughner photos
89	Barak Salmoni, PhD <i>Curriculum Vitae</i>
90	Youssef ROI
91	Audio Clip of House 4 Forensic Examination
92	LtCol Bolgiano Power Point Slides
93	HN Brian Whitt
94	PFC Andrew Wright
95	Mr. Brian Casidy Statement
96	LCpl Max Schaal Statement
97	Google Earth Satellite Image Map with markings by Cpl Stafford
98	Request for Grant of Testimonial Immunity, RE: Sgt Francis Wolf
99	SSgt Wuterich Invocation Affidavit
100	LCpl Gravis Statement dtd 19 February 2006
101	LCpl Gravis Statement dtd 19 March 2006
102	House 4 Diagram created by Special Agent Maloney
103	Defense Exhibit Diagram Chart used during Special Agent Maloney Cross Examination, RE: Victim positions
104	Defense Exhibit Diagram Chart used during Special Agent Maloney Cross Examination, RE: Gunfire direction
105	Defense Article 32 Summary Binder
106	Defense Article 32 Large Exhibit Binder (55 enclosures)
107	Government's Written Closing

### Summary of facts

On 19 November 2005, LCpl Sharratt fatally shot Jasib Aiad Ahmed, Kahtan Aiad Ahmed and Jamal Aiad Ahmed in the province of Haditha Iraq. LCpl Sharratt engaged each with a M9 service pistol in a back room of a house owned by the Ahmed family. A fourth person, Marwan Aiad Ahmed was fatally shot by SSgt Wuterich after LCpl Sharratt's magazine ran out of rounds. This incident occurred several hours after an IED fatally wounded a Marine and Marines engaged in several firefights and house clearings to the South and East of the Ahmed houses. LCpl Sharratt played a minor role in the assault on houses to the South and spent most of the morning tasked with sector security and focusing his observation to the North.

After the assaults to the South were completed and insurgent activity and firefights had all but ceased, LCpl Sharratt, Cpl Salinas and SSgt Wuterich manned an observation post established by 2ndLt Kallop. While manning the observation post, the Marines talked and smoked cigarettes while keeping a watch for suspicious activity. The Marines noticed several men peeking over a privacy wall at the Ahmed houses. The Marines suspected that the men might be forward observers for another assault or IED attack. Cpl Dela Cruz fired a "training round" at the men to get them to move. The men initially withdrew but then returned to the wall. SSgt Wuterich then took a team of Marines to investigate. Cpl Salinas, LCpl Sharratt and SSgt Wuterich approached the house where the men were last seen. Unknown to the Marines at the time was that the house was actually two houses separated by a very small alley. Inside the first house the Marines encountered several women.

It is at this point that the evidence presents two different versions of events. For simplicity, I will call the Iraqi witnesses' version the government version and LCpl Sharratt's account as the defense version. Common to both versions are the following facts: Four men identified in the first paragraph were killed inside Ahmed's house referred to in the investigation as house four (4); all four were killed inside the same room within house 4; two (2) AK-47's were seized by Marines and removed from the Ahmed's possession; and a suitcase with clothing was removed from house 4 by Marines.

The government version alleges that the Marines ordered all the people out of both houses 3 and 4 and asked if they were insurgents and whether they had weapons inside. The Iraqis responded that they had an AK-47 inside each house. A Marine then escorted one couple inside house 3 and retrieved one AK-47. A second Marine then escorted another into house 4 and retrieved the second AK-47. The Iraqis were then ordered into one group with the men standing and the women sitting behind them with an infant and a teenage boy. After two Marines held a private conversation away from the group, the Marines returned and ordered the Iraqis to separate into two groups, women and child in one group and men in another. The teenage boy was initially with the group of men but then switched to the group with women and the child. The group with women was then ordered at gunpoint into house 3 while the men were ordered inside house 4. While inside house 3 the women attempted to open the door but a Marine kept closing the door and yelling at them to stay inside. A short time later, the Iraqis heard gunshots, 4 shots

separated by a few seconds. The women tried to leave house 3 but the Marine forced the door shut and smashed the window while yelling at them. The Marines exited house 4, began laughing then the third Marine joined them and they left. The women found the 4 bodies inside house 4.

The defense version contends that the Marines approached house 3 and found only women and children inside. They asked where the men were and then discovered that there were two houses within the courtyard. Cpl Salinas stayed with the women and children in house 3 while SSgt Wuterich and LCpl Sharratt went to search house 4. They found the door open and without announcing their presence, entered the house in a tactical stacked formation. They moved along the walls to the middle of the house by the stairs leading to the roof. LCpl Sharratt then saw a man standing in a doorway with an AK-47 in his hands and pointing the weapon at LCpl Sharratt. LCpl Sharratt attempted to fire his SAW but it jammed. He dropped the SAW and pulling back behind the wall he retrieved his 9mm pistol. He then peered around the wall and saw the same man returning to the doorway holding an AK-47 and shot him. Hitting the man with at least one shot, he noticed a second man behind the door bending over and retrieving the AK-47. LCpl Sharratt moved swiftly toward the door firing his pistol at the second man. Once inside the doorway LCpl Sharratt began firing his pistol from right to left. There were two more men inside the room on the far left side of the room from the doorway. LCpl Sharratt emptied his magazine firing at least 11 rounds fatally shooting the third man inside the room. The fourth man moved from the left toward the wall locker (closet) as LCpl Sharratt yelled that his weapon was empty. SSgt Wuterich then moved forward and fired his M16 weapon at the wall locker fatally killing Marwan. SSgt Wuterich then shot each of the other three men several times to ensure they were all dead.

LCpl Sharratt retrieved one AK-47 and found a suitcase on a couch in the room closest to the door. They exited house 4 and met up with Cpl Salinas. Cpl Salinas or SSgt Wuterich found another AK-47 and both AK-47s and suitcase were handed over to another Marine with no accountability of the items. The suitcase contained clothing and 3 or 4 passports which were believed to be Jordanian.

It is clear that these accounts are radically different, the government version describing a deliberate execution and LCpl Sharratt's account describing a lawful use of deadly force in either a combat situation or a clearly perceived threat of hostile intent on the part of the Iraqi men. If the government version is true, a charge of premeditated murder with 4 specifications is warranted. If the defense version of events is true, dismissal of the charge is justified.