UNITED STATES MARINE CORPS

1 MARINE EXPEDITIONARY FORCE, FMF BOX 555300 CAMP PENDLETON, CALIFORNIA 92055-5300

IN REPLY REFER TO 5800 JAGT/jtc 07 APR 98

From: Major General John T. Coyne USMC

To: Commanding General, I Marine Expeditionary Force

Subj: INVESTIGATION TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE JOINT TASK FORCE-6 (JTF-6) SHOOTING INCIDENT THAT OCCURRED ON 20 MAY 1997 NEAR THE BORDER BETWEEN THE UNITED STATES AND MEXICO

Ref: (a) JAGINST 5800.7c (Manual of the Judge Advocate General)

Encl: (1) Appointing Order

(2) List of Enclosures (1) - (252)

Preliminary Statement

1. Background

a. On 20 May 97, Mr. Esequiel Hernandez, Jr. died near Redford, Texas after being shot by Corporal Clemente M. Banuelos, USMC, during a Joint Task Force Six (JTF-6) mission in support of the U.S. Border Patrol (USBP). The operation, designated as Mission JT414-97A, was conducted by Marines from Headquarters Battery, Fifth Battalion, Eleventh Marine Regiment (HQBtry, 5/11), 1st Marine Division, Camp Pendleton, California. Mission JT414-97A employed small teams of Marines to conduct surveillance of four areas of the international border between the U.S. and Mexico where USBP officials believed illegal drug smuggling occurred. Cpl Banuelos led a four-man team designated as Team 7. Team 7's assignment during Mission JT414-97A was to occupy a Listening Post/Observation Post (LP/OP) at a location known as Hole 3 along the Rio Grande River and observe an area known as Polvo Crossing, located south of the

town of Redford.

- b. On the evening of 20 May 97, following the report of the shooting, JTF-6 initiated an investigation into the incident. JTF-6's authority for conducting this investigation arose from its responsibilities as the operational command over the elements of HQBtry, 5/11 participating in Mission JT414-97A. On the same evening, the Texas Rangers responded to the scene of the shooting and commenced a state criminal investigation. Shortly thereafter the Department of Justice (DoJ), Criminal Section, Civil Rights Division, opened a criminal investigation to determine whether Cpl Banuelos' shooting of Mr. Hernandez violated federal criminal civil rights statutes. Their active work on this investigation, however, was suspended pending the outcome of the Texas Rangers' state criminal investigation.
- c. A draft version of the JTF-6 investigation report was provided to the Marine Corps in late June 1997. It was determined that the report's operational focus did not address all the facts and issues required by Marine Corps service regulations for a command investigation of a serious incident. As a result, on 10 Jul 97 the Commanding General, I Marine Expeditionary Force (CG, I MEF) signed enclosure (1) directing this investigation.

2. Administrative Comments.

- a. In accordance with the reference, and as directed by enclosure (1), this investigation was conducted to inquire into the circumstances surrounding the 20 May 97 shooting incident near Redford. All reasonably available relevant evidence was collected.
- b. In the course of the investigation, formal statements were taken from more than 60 individuals. In addition, more than 640 documents were collected totaling more than 13,000 pages of material pertaining to the investigation. For administrative ease in review and because of the large number of documents collected during this investigation, the enclosures to this investigation are organized as outlined in Enclosure (2). The original documents and records relating to this investigation have been forwarded to the I MEF Staff Judge Advocate's office for retention.
- c. A JAGMAN team of support personnel were assigned to assist the Investigating Officer with his report. The team was supplemented as needed in certain disciplines. Over the investigative period, a total of 22 individuals provided full time support. They are identified at enclosure (3).
- d. This investigative report addresses the seven broad topics the convening order

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directed be investigated. To assist the reader in obtaining a sequential understanding of events, the essential findings of fact are, generally, presented in chronological order. Amplification of these findings of fact may be found in the referenced enclosures. Some essential facts are not anchored to a specific date or time. These facts are labeled by topic and presented either at the beginning of the narrative to provide context or after the incident chronology as a predicate for later opinions.

- e. The question of compliance with the rules of engagement (ROE) and their adequacy is problematic. The investigation was fortunate to have the assistance of a recognized expert in the field, Colonel W. Hays Parks, USMCR (Ret), who reviewed investigative material and provided an analysis with his observations and opinions.
- f. The USBP District Headquarters in Marfa, Texas, recorded the radio transmissions made on the USBP frequency during the incident. Times noted in the transcript were provided automatically by the USBP recording equipment. Using the original recording of these transmissions, the Federal Bureau of Investigation (FBI) Laboratory in Washington, D.C. technically enhanced the recording to reduce static and permit better voice clarity. Identification of the voices in the transcript is the product of the Marine participants in the mission and USBP personnel listening to the enhanced recording and providing their best judgment and recollection of who spoke.
- g. A three-dimensional scale model of the incident site was created by the Topographical Platoon, Intelligence Company, Surveillance Reconnaissance and Intelligence Group, I MEF. This model has proven to be invaluable for briefings and interviews of witnesses and is available as required for future briefings.
- h. The Department of Defense (DoD) Armed Forces Institute of Pathology provided essential expert opinions regarding the survivability of the medical injuries sustained by Mr. Hernandez. While their findings with respect to what could be deduced from the angle of the gunshot wound are inconclusive, that determination has value to this investigation.
- i. The Fleet Numerical Meteorology and Oceanography Detachment, Ashville, North Carolina, relying upon meteorological data obtained through the National Weather Service, provided a comprehensive review of the detected weather conditions found in the vicinity of Redford, Texas, at about 1800 on 20 May 97. Because the closest weather observing/ recording station to Redford is located 65 miles to the northeast in Marfa, Texas, this review and its attached radar summaries could only provide a general picture of weather conditions in southwest

Texas for 20 May 97. To obtain the highest degree of accuracy concerning the weather conditions at Polvo Crossing, the findings of fact contained in this report provide the specific observations of persons who were at Polvo Crossing during or shortly after the shooting incident.

- 3. <u>Investigation Chronology.</u> The progress of the investigation was frequently dependent upon matters outside the control of the investigative team. Certain phases of the investigation are identifiable, and they reveal the reasons for delays as follows:
- a. Texas Grand Jury Investigation, 7 Ju1-14 Aug 97.
- (1) On 7 Jul 97, the I MEF Investigation Team traveled to JTF-6 Headquarters at Fort Bliss, Texas to begin investigating the numerous areas required by the reference and enclosure (1). The team worked at this location until it returned to Camp Pendleton, California on 23 Jul 97 to continue interviewing witnesses belonging to Eleventh Marine Regiment. During this phase of the investigation, the effort focused on the two principal areas of directed inquiry: facts surrounding the incident on 20 May 97; and the pre-mission training the unit conducted to prepare for the JTF-6 mission.
- (2) Also during July and August, the Texas Rangers and the District Attorney for the 83rd Judicial District of Texas, which includes Presidio County and the town of Redford continued their criminal investigation prior to the Texas Grand Jury hearing. This ongoing state investigation precluded the JAGMAN investigation team from contacting or interviewing the Marines of Team 7 or the law enforcement officers from the various state and federal agencies directly involved in responding to the shooting.
- (3) In August, the District Attorney presented evidence to a Grand Jury in Marfa, Texas, on the issue of whether Cpl Banuelos should be indicted for the unlawful killing of Mr. Hernandez. The three other members of Team 7, Corporal Roy Torrez, Jr., Lance Corporal Ronald H. Wieler, Jr., and Lance Corporal James M. Blood were subpoenaed to this Grand Jury. Each received immunity from both the State of Texas and the U.S. Marine Corps in exchange for their testimony concerning the events on 20 May 97. On 14 Aug 97, the Texas Grand Jury returned a "No-Bill" indicating that it did not find sufficient grounds for an indictment.

b. Conduct of JAGMAN Investigation, 15 Aug - 12 Nov 97.

(1) When the Texas Grand Jury announced its finding, DoJ activated its suspended criminal investigation into possible violations of the civil rights statutes.

- Mr. Barry Kowalski, Special Counsel, Criminal Section, Civil Rights Division, became the attorney directing the federal investigation. Consistent with the 1984 Memorandum of Understanding between DoD and DoJ, this Investigating Officer and Mr. Kowalski coordinated their respective investigative efforts.
- (2) DoJ cooperation provided immeasurable benefit to this investigation. Mr. Kowalski and the FBI persuaded the Texas law enforcement officers and USBP officers to permit a joint interview by Marine Corps investigators in conjunction with Mr. Kowalski's and the FBI's interviews. Without DoJ's intercession many of the local law enforcement officers would have declined to be interviewed by the Marine Corps. Further benefits to the JAGMAN investigation from DoJ cooperation include obtaining transcripts of the Marines' testimony before the Presidio County Grand Jury, forensic evidence, and other documentary evidence obtained by the FBI from the local law enforcement agencies.
- (3) Also during this period considerable effort was expended to obtain a joint USMC and DoJ interview of the three members of Team 7 who testified before the Presidio County Grand Jury. Protracted negotiations with the respective attorneys regarding further immunity from prosecution issues were not successful. The defense counsel collectively argued that a military Court of Inquiry, conducted in accordance with Naval Regulations, should be convened to inquire into the facts of the incident and that only this body could fulfill their interpretation of the legal requirements essential to afford their clients complete immunity.
- (4) While these negotiations continued, LCpl Blood was separated from the Marine Corps on 15 Sept 97. After his discharge, and upon the advice of civilian counsel, LCpl Blood accepted the offer of a joint USMC and DoJ interview. This occurred on 29 Oct 97 in Washington, D.C. Following his interview, LCpl Blood voluntarily consented to a polygraph examination by the FBI to provide additional credibility to his memory of key facts. LCpl Blood passed this examination. In return for this cooperation, he received immunity.
- (5) Despite the success of LCpI Blood's interview, civilian counsel for CpI Torrez and the now-promoted Corporal Wieler continued their objection to the Marine Corps and DoJ jointly interviewing their clients in any forum other than a Court of Inquiry. To accommodate these concerns the CG, I MEF convened a limited Court of Inquiry.
- (6) The particular rules of procedure for the limited Court of Inquiry were the subject of negotiation between the Convening Authority, DoJ and defense counsel. In the expectation of reaching agreement on the rules of procedure the Convening Authority scheduled the Court of Inquiry for 4 Nov 97. Agreement on

the rules was reached between the Convening Authority and DoJ but defense counsel ultimately would not consent to certain portions of the proposed rules. DoJ refused to participate under the rules counter-offered by defense counsel and, when defense counsel proposed proceeding without the participation of DoJ, Mr. Kowalski raised the issue of whether the military could make a valid grant of immunity under the circumstances. Defense counsel then elected to not proceed given the ambiguity of the issue. With this development, the Court of Inquiry recessed and never was recalled.

c. Conduct of JAGMAN Investigation, 13 Nov 97 - 7 Apr 98.

- (1) Because cooperation with Cpls Torrez and Wieler to obtain their testimony in a military forum had proved impossible, DoJ subpoenaed them and other witnesses to a Federal Grand Jury held from Nov 97 to Jan 98 in Pecos, Texas.
- (2) Understanding the Marine Corps' need for access to the testimony of these Marines, DoJ granted Cpls Torrez and Wieler immunity from prosecution for any incriminating statements they might make during a military interview limited to discussing their training for Mission JT414-97A. On 22 Nov 97, at a joint interview with their counsel present, Cpl Torrez and Cpl Wieler answered questions for this investigation about their pre-mission training.
- (3) Pursuant to an agreement reached between defense counsel for Cpl Wieler and Mr. Kowalski of the DoJ, a polygraph examination and interview of Cpl Wieler was conducted in Washington, D.C. on 4-5 Dec 97. With the consent of all parties, the Investigating Officer was a participant in the interview. As a result of the polygraph examination, Cpl Wieler was given transactional immunity in this matter.
- (4) After this interview, negotiations resumed between the Investigating Officer and counsel for Cpl Torrez for an interview regarding the incident. To meet the legal requirements for immunity, as determined by the Marines' counsel, the convening authority ordered Cpl Torrez to present himself for an interview. As agreed upon, Cpl Torrez received transactional immunity from military charges. This required the continued assistance of DoJ, which provided the necessary letters of testimonial immunity from DoJ, the U.S. Attorney for the Western District of Texas, and the District Attorney for the 83rd Judicial District of Texas. Cpl Torrez was interviewed on 15 Dec 97. A follow-up interview of Cpl Wieler was conducted by the Investigating Officer on 18 Dec 97 under the same conditions of immunity.
- (5) DoJ completed its Grand Jury investigation on 8 Jan 98. This investigation ultimately concluded with no federal indictment. On 2 Apr 98, U.S. District Court Judge Royal Ferguson entered an order granting the U.S. Department of Justice's request to permit the Investigating Officer and the Cognizant Staff Judge Advocate

of this investigation to review the federal Grand Jury materials. This review was authorized for the purpose of assisting the Marine Corps investigation into possible violations of the UCMJ. The Investigating Officer and Cognizant Staff Judge Advocate completed their review on 7 Apr 98. The Investigating Officer found insufficient evidence in the federal Grand Jury materials to support preferral of charges under the UCMJ.

- (6) The Federal Rules of Criminal Procedure, like the Texas Rules of Criminal Procedure, require secrecy for the testimony given to a grand jury. No information derived from either Grand Jury is included in this JAGMAN investigation.
- 4. Unique Problems Encountered During The Investigation.
- a. When the Presidio County Grand Jury declined to issue an indictment in August, some misunderstood this decision as a complete exoneration of the Marines. As a result, the continuing requirement for this investigation was questioned. This, coupled with the need to advise certain Marines of their rights under the Uniform Code of Military Justice (Article 31) as a consequence of training issues caused great angst in the command. Over time a better understanding was developed and, in the end, all necessary witnesses waived their right to remain silent and cooperated with the investigation.
- b. The personal information normally obtained in a JAGMAN death investigation regarding a decedent proved difficult to gather. Regrettably, but understandably, local community feelings continue to run high against the military. Out of respect for the grief of the community no attempt to obtain personal information about Mr. Esequiel Hernandez (beyond what is available in the public record) has been made. The estate of Mr. Hernandez and his family have filed a claim against the United States for causing his death. Ample discovery procedures are available during that process to obtain any relevant personal information.
- c. Comment is required on the cooperation given to the investigation by Captain Lance McDaniel, the Mission Commander. While keenly aware his performance of duty during the training and conduct of Mission JT414-97A was being closely scrutinized, he displayed candor and great integrity in providing information. Whatever the consequence of those facts to the judgment of his performance, he sought to hide nothing. His immediate understanding of the need for this investigation and forthrightness is commendable.
- <u>5. Privacy Act Requirements</u>. All social security numbers contained in this report were obtained from administrative sources and not from the individuals concerned.

FINDINGS OF FACT

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BACKGROUND ITEMS

The Military and Counterdrug Missions

- 1. In late 1989, JTF-6 was established at Fort Bliss, Texas by the Chairman, Joint Chiefs of Staff (CJCS), to assist Operation Alliance by coordinating Department of Defense (DoD) support to Federal, state and local drug law enforcement agencies (LEAs) as a result of the Secretary of Defense's guidance for a comprehensive military support role in counter narcotic activities. (Encls (132), (233), (227), (229))
- 2. JTF-6 counterdrug missions are conducted for the purpose of assisting in the interdiction of the flow of illegal drugs into the United States. (Encls (132), (139), (221), (244))

1st Marine Division and JTF-6 Missions

- 3. JTF-6 counterdrug missions assist units of the 1st Marine Division (1st MarDiv) in increasing readiness and achieving unit METLs (Mission Essential Tasks Lists). The counterdrug missions can be conducted by units ranging in size from Platoon to Special Purpose Marine Air Ground Task Forces (SPMAGTF). (Encl (172))
- 4. Participation in counterdrug missions is "strictly voluntary" and involves units that are qualified to conduct the intended missions. Counterdrug missions are not intended to "take priority over Division TEEP'd (Training Exercise Employment Plan) training." (Encls (46), (172))
- 5. 1st MarDiv participated in 119 counterdrug missions between October 1992 and May 1997. These missions were distributed as follows: 19 in FY93; 24 in FY94; 18 in FY95; 38 in FY96 and 20 of 28 scheduled in FY97 (The unexecuted eight missions were canceled when ground missions were suspended in July 1997). (Encls (129), (172), (174))
- 6. A JTF-6 Mission Report compiled by the 1st MarDiv Counterdrug officer on 22 Jul 97, shows that 11th Marine Regiment (Ilth Marines) performed seven counterdrug missions during fiscal years 1995-1997. Three were ground reconnaissance missions and four were Listening Post/Observation Post (LP/OP), which included Mission JT414-97A. (Encl (174))
- 7. Each JTF-6 counterdrug deployment is directly funded by JTF-6. (Encls (144), (171))
- 8. Along with the direct funding provided to units for the expense of participating in a JTIF-6 mission, 1st MarDiv also received funding for indirect costs associated with maintaining readiness for Special Operations Low Intensity Conflict (SOLIC)

operations. (Encls (144), (157), (158), (171))

- 9. A 1st MarDiv briefing presentation prepared in 1997 shows the aggregate of direct and indirect funds provided to 1st MarDiv for participating in JTF-6 missions during the following fiscal years: FY93 19 missions and \$1.4 million; FY94 24 missions and \$1. million, FY95 18 missions and \$2.0 million; FY96 38 missions and 4.0 million; FY97 28 missions and no revenue figures shown. (Encls (157), (172), (173))
- 10. JTF-6 counterdrug missions also have financial value for the individual units involved. In FY96, units received \$1.5 million in OPTEMPO funding based on their counterdrug mission participation. A benefit noted on one of the 1st MarDiv briefing slides is "Training deployment at JTF-6's expense." (Encls (172), (173))
- 11. The Commanding General (CG), 1st MarDiv stated in his FY98 Budget Estimate, "Unequivocally, my commanders depend on, and plan for, this annual infusion (JTF-6 counter drug money) . . . Withdrawal from counter drug missions will impact small unit training and could impact anticipated budget plus-ups." (Encl (155))
- 12. I st MarDiv assigns one of the two Assistant Operations Officers in the Division G-3 Section to be the Counterdrug Officer. From 1995 to present, three officers have held the billet. From the summer of 1995 to the summer of 1996, Lieutenant Colonel Dave Heiland held the billet. From the summer of 1996 to May 97, Major Gary Lehmann performed the duties. In May 1997, Maj Lehmann was succeeded by Major Joe Spair. (Encls (47), (51), (52), (119), (129), (175))
- 13. While Maj Lehmann's oversight and coordination responsibilities for JTF-6 missions were a collateral duty to his role as the 1st MarDiv Assistant Operations Officer, it comprised 50 percent of Maj Lehmann's work load. (Encl (51))
- 14. Maj Lehmann published a "Division CD Newsletter" on roughly a monthly basis from October 1996 until April 1997 and distributed it electronically to the S-3s of the Regiments and Battalions throughout the Division. In the newsletters JTF-6 deployments were characterized as "training deployments." (Encls (43), (51), (125), (175))
- 15. The Counterdrug Officer is the primary repository for lessons learned from counterdrug operations performed by 1st MarDiv units. There were, however, no standard procedures adopted by any of the three officers who held the billet from 1995 to date for capturing and disseminating this information. No use was made of

the Marine Corps Lessons Learned System (MCLLS) nor was it thought relevant for that purpose. While Maj Lehmann initiated a counterdrug newsletter during his tenure, all three officers stated that the primary method of dissemination was individual verbal contact between them and individual mission commanders on a case by case basis. (Encls (41), (51), (175))

- 16. The Division Counterdrug Officer maintained a collection of mission turnover binders obtained from mission commanders at the conclusion of their operations. While newly designated mission commanders were invited to go through the materials as they elected, there was no formal organization or accountability for this collection. (Encl (175))
- 17. There existed a 1st MarDiv Counterdrug SOP signed by Major General J. M. Myatt. It was considered outdated and, since it was not a Division Order, not directive in nature. During his tenure as the Counterdrug Officer, Maj Lehmann did not provide copies of the SOP to mission commanders. Each of the three Counterdrug Officers stated that a revision of the SOP was on their list of projects but had a low priority. (Encls (51), (52), (171))
- 18. As FMFM 0-1 notes, at Paragraph 6009b, "SOPs provide the vital link between MCOs and unit performance. They provide necessary guidance from the commanding general and tailor HQMC and force directives to the specific missions of the command." (Encl (233))

Prior JTF-6 Shooting Incidents

- 19. The CG, JTF-6, "Commander's Intent" is briefed by 1st MarDiv to be that "A Counter Drug mission is an actual MOOTW (Military Operation Other Than War) deployment. Mission Commanders must plan, train and evaluate Risk Assessment and Force Protection. Don't come to these missions unprepared." (Encl (140))
- 20. Between January 1993 and February, 1997, JTF-6 classified eight events as shooting incidents. In these incidents, mission participants reported gun fire directed at them. In three of these cases, mission participants returned fire. (Encls (21), (118), (129))
- 21. Five of the eight incidents between January 1993 and February 1997 involved Marines. In four of the five Marine incidents, the Marines were from 1st MarDiv units. In all four 1st MarDiv incidents, the Marines did not return fire, although in one shooting a Marine was wounded. (Encls (118), (121))
- 22. The fifth Marine shooting incident involved a unit from Second Marine

Expeditionary Force (II MEF) from Camp Lejeune, N.C. In March 1993, they provided covering fire for law enforcement officers who received automatic weapons fire from drug traffickers. One of the assailants was arrested and 2,000 pounds of marijuana were seized. (Encls (118), (129))

- 23. The other three JTF-6 shooting incidents between 1993 and 1997 involved U.S. Army soldiers. In one of these, a soldier was wounded but fire was not returned. In the other two incidents, the soldiers returned fire. (Encls (118), (121), (224))
- 24. The most recent incident where soldiers returned fired occurred on 24 Jan 97. A five-man Special Forces team, conducting a JTF-6 mission near Brownsville, Texas, encountered three men approaching its position. The men were directed to halt. A man, later determined to be an illegal immigrant, ignored the warning and charged the team, firing a weapon. A soldier returned fire, wounding the man. The man who fired at the team was an illegal immigrant. He was later prosecuted by the U.S. Attorney for assault on a federal officer and attempted murder. (Encls (118), (121), (216), (224))
- 25. On 6 Sept 96, another gunfire occurrence took place during a mission, but JTF-6 did not classified it as one of the eight shootings incidents between January 1993 and February 1997. During Mission JT129-96A, four Marines from 1st Marine Regiment, 1 stMarDiv, conducted a reconnaissance of a suspected marijuana garden in San Jacinto National Forest. A single shot was fired in their immediate vicinity. The Marines immediately departed the area and reported the incident to the LEA. There were no injuries. (Encls (121), (122), (124))
- 26. The last gunfire event before 20 May 97 occurred on 16 May 97. In that event, Marines from I Marine Expeditionary Force (I MEF), Camp Pendleton, CA, encountered recreational shooters near their LP/OP during Mission JT329-97. The shooters fired over the heads of the Marines and conducted themselves in a threatening manner. The Marines team leader defused the situation by talking to the individuals even though one of the men was "very hostile." (Encl (123))
- 27. Marines from 1st MarDiv performed 119 JTF-6 missions, including the subject mission. Four involved shooting incidents exclusive of the subject mission. This means 3.3% of the time Marines deployed on counter drug missions from 1st Mar Div a shooting occurred. If the incidents described in Findings of Fact 25 and 26 are counted as shooting incidents, the percentage increases to 5%. (Encls (173),

(174))

Mission JT414-97A Planning and Training

- 28. Lieutenant Colonel Douglas J. Montgomery took command of Fifth Battalion, Eleventh Marine Regiment (5/11) in May of 1996. (Encl (41))
- 29. LtCol Montgomery indicated to his staff that he would like to do a JTF-6 mission within a year's time and he directed his staff to conduct an estimate of supportability. He stated that he wanted "headquarters Marines to do a real world mission." (Encl (41)).
- 30. On 2 Jun 96 during JTF-6 Mission JT177-96, (a ground reconnaissance mission conducted in the Angeles National Forest, California) Lance Corporal Eric D. Davis of Company B, 1st Battalion, 5th Marine Regiment (1/5) died as the result of a fall. (Encls (159), (160), (162))
- 31. On 3 Jun 96, Captain Daniel C. Hodges was appointed as the Investigating Officer to investigate LCpl Davis' death. On 13 Jun 96, he submitted his Report of Investigation (hereinafter "Davis Investigation") to the Commanding Officer, 1/5. (Encl (159))
- 32. On 8 Jul 96, a Formal Safety Investigation Report (FSIR) on the Davis death was forwarded from the CG, I st MarDiv, to the Commandant of the Marine Corps (CMC). This safety report was required by Marine Corps Order (MCO) to address ground safety issues associated with operations and training. (Encl (161))
- 33. In July of 1996, Captain Gregory K. Tesch was designated the Assistant Operations Officer for 5/11, but in the absence of an Operations Officer (S-3), he was the acting Battalion S-3. (Encl (43))
- 34. At this same time Major Russell H. Smith was the Supply/Logistics Officer (S-4) and acting Battalion Executive Officer for 5/11. He was slated to become the Battalion S-3 when the new Executive Officer arrived. (Encl (43))
- 35. Capt Tesch discussed many training and scheduling issues with Maj Smith in anticipation of Maj Smith assuming responsibility for their execution in the future as S-3. Among the issues Capt Tesch discussed was the possibility of 5/11 doing a JTF-6 counterdrug mission during Fiscal Year 1997 because there was "a large, white space in our FY97 training plan" which this training would fill. (Enel (43))
- 36. Maj Smith believed that HQBtry was generally deficient in individual and

- collective tactical security tasks because their administrative and support responsibilities made this type of training difficult to schedule and conduct. (Encl (43))
- 37. Maj Smith saw a JTF-6 counterdrug mission as a great opportunity for HQBtry to improve its small unit training readiness status in the area of LP/OP operations as part of its progressive training plan. (Encl (43))
- 38. In July 1996, Capt Tesch and Maj Smith identified the period of April to May 1997 as being relatively free of scheduled events. After coordinating with Maj Smith, Capt Tesch submitted a request through the chain of command that 5/11 be assigned one of the planned missions during April to May 1997. (Encl (43))
- 39. On 8 Aug 96, the Battalion Commander of 1/5 provided the First Endorsement on the "Davis Investigation." The Battalion Commander's endorsement specifically approved the Findings of Fact, Opinions and Recommendations contained in Capt Hodges' report. Significant recommendations were:
- a) Recommendation 2: "That a minimum of ten uninterrupted training days be allotted to the mission commander, prior to deployment for future missions of this type."
- b) Recommendation 3: "That a minimum of five uninterrupted training days be allotted to the mission commanders for pre-deployment preparation immediately prior to deployment."
- c) Recommendation 4: "That all Standing Operating Procedures be produced in writing and disseminated to key personnel, to include team leaders, for all missions of this type."
- d) Recommendation 5: "That Operations Orders be produced in writing and presented to the team leaders of every patrol prior to insertion." (Encl 159))
- 40. The Battalion Commander's endorsement also specifically noted that "Company B was not staffed, trained, nor supported in a fashion that allowed them to be successful on its JTF mission . . . The company was faced with a personnel tempo that made the company commander the focal point of contact for all aspects of the mission . . . The company had no executive officer for over a two month period prior to the JTF mission The company deployed to its JTF mission with two Second Lieutenants onboard less than four months before the mission . . . it became apparent that the battalion staff did not look at the JTF missions as a deployment or as a serious training opportunity . . . Captain Smith was not afforded the opportunity to prepare operationally due to his having to look into

- each logistical and administrative matter personally. A staff is to administer to the company. This was a deployment as well as a training exercise. The staff accomplished little in support of Company B." (Encl (159))
- 41. On 15 Aug 96, Major Steven Hogg became the Executive Officer, and Maj Smith assumed full-time duties as the S-3 for 5/11. (Encl (43))
- 42. On 5 Sep 96, the Commanding Officer, Fifth Marine Regiment provided the Second Endorsement to the Davis Investigation report. It said, in pertinent part, "The investigating officer and the Battalion Commander noted several possible deficiencies in the preparation and training of Company B. Their observations are well taken and a thorough review of JTF mission preparation will be initiated. However, I do not believe that overall mission preparation was inadequate." (Encl (159))
- 43. The Regimental Commander's endorsement, having indicated what would be done within his command, further recommended to higher headquarters that "a thorough review be undertaken of JTF missions to ensure adequate staffing, logistical support, and written guidance." (Encl (159))
- 44. The Regimental Commander then specifically concurred with all recommendations in the investigating officer's report except for recommendation 7 (that appropriate administrative action be taken against Capt Smith) which he disapproved. (Encl (159))
- 45. In the Fall of 1996, Maj Lehmann contacted Maj Smith and offered him the choice of two missions available during April and May 1997. (Encl (43))
- 46. One of the missions was near San Diego, California, and the other was a detection and monitoring mission in support of the USBP along the international border at the Rio Grande River near Redford, Texas. (Encl (43))
- 47. Maj Smith elected the mission in Texas, titled Mission JT414-97A, so that the unit could undergo long distance deployment training. (Encl (43))
- 48. Maj Smith reviewed the candidates for Mission Commander with LtCol Montgomery. (Encl (43))
- 49. The only batteries in 5/11 available to perform the JTF-6 mission were HQBtry or Tango Battery. (Encl (43))
- 50. Of the two batteries, Tango Battery was under strength due to post-deployment personnel reductions. (Encl (43))

- 51. In any event, Maj Smith and LtCol Montgomery wanted to give the deployment opportunity to a unit like HQBtry that was outside the deployment cycle. (Encls (41), (43))
- 52. Based on the discussion of unit availability, LtCol Montgomery decided that HQBtry would perform the mission. Captain Lance McDaniel, the HQBtry Commander, was chosen to be the Commander for Mission JT414-97A. (Encls (41), (43))
- 53. Capt McDaniel recalls being told in October, 1996 that 1st MarDiv had a block of missions available and HQBtry would be given Mission JT414-97A. With this news, Capt McDaniel began working with the JTF-6 mission planners, Major Charlie M. Hester, Jr., USA, and Major Mark E. Simpson, USAF. (Encls (30), (57), (58))
- 54. Mission JT414-97A called for small teams of Marines to observe from four camouflaged listening posts/observation posts (LP/OPs) near the U.S.-Mexico border along a 20-mile length of the Rio Grande River near Redford, Texas, where USBP officials believed drug smuggling occurred. Eight four-Marine teams, numbered 1-8, were to conduct surveillance from the LP/OPs during the mission. Two teams were assigned to each LP/OP. One team was to be in place for a three-day observation cycle and then be replaced by the other team. The teams were to remain undetected and report any crossing of the Rio Grande River or other suspicious activity to the USBP via radio to their Tactical Operations Center located 65 miles to the north in Marfa, Texas. (Encls (30), (130))
- 55. Capt McDaniel recognized that training for the mission would be a challenge because it is hard to bring the battery together as a unit. (Encl (30))
- 56. Capt McDaniel noted that, "Artillery Battalions view themselves as 'force providers' when it comes to counterdrug missions. Typically, the Battalion staff hands off the mission to the Mission Commander and provides whatever support the Mission Commander asks for (specifically personnel and equipment). There is no training guidance per se." (Encl (30))
- 57. On 5 Nov 96, the Assistant Chief of Staff G-3, Ist MarDiv, Lieutenant Colonel Lewis W. Rollins, sent a memorandum on the Davis Investigation report to the Staff Judge Advocate (SJA) of Ist MarDiv. LtCol Rollins prepared this memo for the SJA's use in preparing the Commanding General's endorsement of the Davis Investigation. The memo stated, in pertinent part, "Concur with recommendations addressed by the Investigating Officer. Battalion Commander, and Regimental Commander as they pertain to JTF-6 missions . . . These are issues that must be addressed by the Regimental/Battalion Commander so that their staffs will provide

- the necessary staffing and support to the JTF-6 Mission Commander . . . No action is needed at this time at the Division level where it concerns JTF-6 missions." (Encl (50), (159))
- 58. LtCol Rollins stated that the memorandum resulted from his review, together with the Counterdrug Officer, of the entire Davis Investigation. LtCol Rollins said, "What we saw from our perspective, they needed to have preparation time exclusively as part of their training to go out on these missions . . . In our opinion, this training needed to be like anything else, locked on. The Marines should be set aside, because this is not a training mission they are going on, this is a real life situation." (Encl (50))
- 59. LtCol Rollins observed that dedicated training is essential because of the nature of the mission. He noted, "It is rare in the Marine Corps that an officer who is in charge will raise their hand and say 'Help me.' When you are dealing with subordinates who are junior, as the Battalion Commander or Regimental Commander, you have to be able to determine whether or not this person is getting his fair share of assistance." (Encl (50))
- 60. On 13 Nov 96, the CG, 1st MarDiv received the final Headquarters, U.S. Marine Corps endorsement on the FSIR for LCpl Davis' death. (Encl (161))
- 61. On 19 Nov 96, Maj Lehmann, as the 1st MarDiv Counterdrug Officer, distributed a memorandum on "Force Protection" to the regimental and separate battalion S-3s that identified four key force protection "take aways" from the accident:
- "A) CD missions should be considered 'mini training deployments.' The mission commander needs the help and support of many on the battalion or regimental staff.
- B) For most mission commanders, these missions are the first time they have total responsibility for their unit's deployment, from pre-deployment training to redeployment. If not careful, these mission commanders may get overly involved with all the mission supporting efforts and lose sight of basic essentials such as written unit SOPs, and supervising the required pre-deployment training.
- C) Eliminate, to the greatest extent possible, seemingly harmless additional taskers on your units conducting their pre-deployment training. Mission commanders already have a full plate with a new responsibility experience. Their ingrained 'can-do' attitude can easily turn against them if they are not comfortable saying, 'I can't.'

- D) If a unit is having difficulty pulling everything together to meet its JTF-6 deadlines, let me know so I can work with JTF-6 to either shift the mission start date or cancel the mission. There is no shame in either course of action when force protection is involved." (Encl (160))
- 62. On 19 Nov 96, the CG, 1st MarDiv, signed the Third Endorsement on the Davis Investigation. In pertinent part it stated:
- a) "The proceedings, findings of fact, opinions, and recommendations of the investigating officer, as modified and endorsed, are approved."
- b) "A copy is provided to each Regimental Commander as a 'lesson learned', for future JTF missions." (Encl (159))
- 63. The Manual of the Judge Advocate General provides the regulations that govern the conduct of administrative fact-finding investigations within the Department of the Navy. In particular, Section 0203 notes:
- a) "One of the primary purposes of conducting investigations of any type is to identify ways to improve the effectiveness and efficiency of the Department or its components. Investigations alone, however, do not achieve that purpose. Put differently, investigations are means, not ends. Thus, if investigations are to serve their purpose, tenacious follow-up action is required."
- b) "Each level of command involved in the investigation process is responsible for taking such action. Merely recommending improvements is not enough; follow through, feedback, and commitment are essential. Superior commanders must ask their subordinates how they implemented the lessons learned, whether economies can be achieved by adopting corrective measures at higher levels, whether other commands may benefit, and so forth. If follow-up action is not completed, then valuable time and resources will have been wasted in conducting the investigation." (Ref (a))
- 64. The 1st MarDiv Chief of Staff, G-3, Division Inspector (G-7) and SJA all play a part in ensuring that corrective actions resulting from investigations are promulgated for review and implementation. (Encl (49))
- 65. Following the CG, 1st MarDiv's approval of the recommendations contained in the Davis Investigation, no actions were taken by the Chief of Staff, G-3, Division Inspector (G-7) or the SJA to provide new Division policy directing a minimum number of dedicated training days for 1st MarDiv units conducting JTF-6 missions. (Encl (46))

- 66. At a Commanders' Meeting on 19 Nov 96, the same day he provided the third endorsement to the Davis Investigation, the CG, 1st MarDiv, told the attending Regimental Commanders, separate Battalion Commanders and their Sergeants Major that he wanted the commands within 1st MarDiv to look at the investigation, read it and learn from it. (Encl (46))
- 67. Colonel John R. Todd, Assistant Division Commander, 1st MarDiv, and Colonel Joseph F. Weber, Commanding Officer, 11th Marines, both related that their take-away from that discussion was that it was necessary to increase the level of attention to safety in all JTF-6 missions. Both indicated that there was no discussion of minimum required training for JTF-6 missions. (Encls (46), (49))
- 68. Among the officers who reviewed copies of the Davis Investigation after it was endorsed by the CG, 1st MarDiv were Col Todd, Col Weber, LtCol Montgomery, Maj Hogg, Maj Smith, Capt McDaniel and Captain Paul Petit, the 11th Marines Air Officer/Counterdrug Officer. (Encls (30), (41), (43), (48), (46), (49))
- 69. The crucial lessons, remembered by these officers from the investigation, addressed issues involved in mission execution, including the importance of not moving at night, not changing plans at the last minute, and ensuring force protection through situational awareness. No officer recalls a minimum amount of dedicated training time being one of the lessons highlighted. (Encls (30), (41), (43), (48), (46), (49))
- 70. Col Todd specifically observed that, "In the context of integrating the required training tasks into the existing training plan, it is not useful to measure in days. Units are continuously training in their core competencies, integrating JTF-6 specific tasks. These tasks have a high correlation with the unit's mission essential tasks." (Encl (49)).
- 71. Col Weber stated, "I do not view these recommendations (regarding uninterrupted training days) as directive in nature, in any way, nor is there any correspondence from higher headquarters of which I am aware that specifies that they are directive in nature. They are concurred with by my Division Commander, but I believe that if my Division Commander would have felt that strongly that this was 'the' solution to keep this type of incident from 'ever' happening again, that we would have gotten something pretty directive in nature." (Encl (46))
- 72. The Of fice of the SJA, 1st MarDiv, is responsible for making copies and ensuring the distribution of JAGMAN investigations within the Division. (Encl (53))
- 73. The Legal Chief of the Office of the SJA, 1st MarDiv maintained no record but is aware of copies of the Davis Investigation reaching at least two of the four

- Regiments of the Division 7th and 11th Marines. (Encls (48), (53))
- 74. No complete copies (i.e. containing all of the pages) of the Davis Investigation presently exist at any of the Regiments of 1st MarDiv. (Encls (48), (162))
- 75. Capt Petit reviewed the copy of the Davis Investigation received by the Regiment. Capt Petit believed that it would be a good idea to present a class to the leadership of the Regiment bringing out important lessons. He recommended to Col Weber that a class be given during the Back-in-the-Saddle Safety Standdown. Col Weber approved the idea. (Encls (46), (48))
- 76. On 16 Dec 96, Capt Petit forwarded to the Operations Officers of 1st, 2nd, 3d and 5th Battalions copies of the relevant investigations he had received. They were the July 1996 Fatality Mishap Brief with Maj Lehmann's covering memo of 19 Nov 96 and the JAGMAN investigation report on the death of LCpl Davis. The latter investigation was incomplete in that it did not contain page 20, the Recommendations portion of the report. It did contain the endorsements up to and including the CG, I st MarDiv endorsement. (Encls (43), (48), (159), (160), (162), (163))
- 77. Capt Petit's transmittal memo noted that "there are an abundance of lessons that can be garnished from it." It was to be "one of the topics discussed at the Officer/SNCO PME at the conclusion of the Back in the Saddle (Bits) Safety Standown [sic] scheduled for 6 January." (Encl (163))
- 78. The 5/11 Routing Sheet shows that LtCol Montgomery noted on it "Ugly Accident!! Alcon Read/Heed!" The routing sheet was endorsed by Capt McDaniel on 19 Dec 96. The route sheet is on top of a file folder containing both investigations referenced in Capt Petit's memo. (Encl (163))
- 79. None of the officers in 11th Marines who were interviewed for this investigation and had reviewed the Davis Investigation noticed it was missing page 20, which contained all the significant recommendations of the Investigating Of ficer. (Encls (30), (41), (43), (46))
- 80. Capt Petit was the 11th Marines Counterdrug Officer from 7 Jul 96 to 17 Jun 97. During this period 11th Marines units participated in three JTF-6 missions, including Mission JT414-97A. Capt Petit never attended a confirmation brief given at 1st MarDiv. (Encl (48))
- 81. During late December 1996, Maj Lehmann confirmed the mission dates for JT414-97A and requested the name of the Mission Commander. (Encl (43))

- 82. On 6 Jan 97, Capt Petit presented a class to most of the officers and staff noncommissioned officers of 11th Marines, reviewing lessons learned from the Davis Investigation. (Encls (46), (48), (163))
- 83. The recommendations for dedicated pre-mission training time were not a subject of discussion identified by any officer attendees interviewed. (Encls (30), (41), (43), (46), (48))
- 84. On 19 Feb 97, JTF-6 formally requested trom Secretary of Defense approval for 5/11 to support Counterdrug mission JT414-97A. In a paragraph titled "(U) Training Value," the request message stated, "This counterdrug mission provides an excellent training opportunity for exercising and evaluating the unit's MCCRES (Marine Corps Combat Readiness Evaluation System) training and for small unit leaders." (Encls (133), (135), (137))
- 85. On 19 Feb 97, the Initial Planning Conference (IPC) for Counterdrug Mission JT414-97A was held at JTF 6 Headquarters in Ft. Bliss, Texas. (Encls (30), (43), (133), (213))
- 86. In the JTF-6 mission planning cycle, the IPC and the site visit that follows is the first face-to-face meeting between the JTF-6 Mission Planner, the Mission Commander, and LEA representatives. (Encl (144))
- 87. The attendees at the IPC from HQBtry, 5/11, included Capt McDaniel (Mission Commander), First Lieutenant G. W. Nelson (Mission Communication Officer), Gunnery Sergeant William F. Fitzgerald (Mission Logistics Chief) and Sergeant Daren R. Dewbre (Mission Intelligence Chief). (Encls (30), (34), (144))
- 88. Neither LtCol Montgomery, Maj Smith nor Maj Lehmann attended the JTF-6 IPC or site visit. (Encls (30), (34), (41), (144))
- 89. Maj Smith wanted to attend the IPC, but felt discouraged from doing so by the JTF-6 Mission Planner. (Encl (43))
- 90. Based on what he perceived to be close mission oversight by MAJ Simpson and MAJ Hester at JTF-6 and Maj Lehmann at 1st MarDiv, Maj Smith believed that the battalion role was simply to be a force provider. He felt that, once the Mission Commander was identified to the Division Counterdrug Officer and to JTF-6, those officers preferred that the Mission Commander contact them directly, rather than via the chain of command. (Encl (43))
- 91. The Mission Planner, MAJ Simpson stated, "We (JTF-6) do not discourage a unit's chain of command visit. The funding for the mission commander and his

planning team at the IPC comes from JTF-6 counterdrug funds. Chain of command visits are funded by the unit." (Encl (58))

- 92. The JTF-6 Counterdrug Logistics Handbook states that JTF-6 funds may not be used to fund command visits. (Encl (153))
- 93. At the IPC, the JTF-6 Mission Planner, MAJ Simpson, provided Capt McDaniel with a JTF-6 IPC handout titled "A Compendium of Operational Considerations For Counterdrug Support Missions." This handout consisted of a number of pages addressing various subjects in a bulletined format. (Encls (30), (144))
- 94. One page in the handout folder was entitled "PREPARATORY TRAINING . . . HOME STATION." It contained the following bulletined sub topics:

Legal and Public Affairs Situational Training Exercises Posse Comitatus Rules of Engagement Communications Procedures Weapons Fam/Qualification Emergency First Aid Combat Lifesaver Land Navigation Counterdrug Tactical Reporting Special OPSEC Measures Pilot Qualifications/Night Vision Goggles/Rope Training Admin/ID's, ID Tags, Pay Talking LEA Onto A Target. (Encl (144))

95. The following page in the handout was entitled "PRE-MISSION ACTIVITIES . . . AREA OF OPERATIONS." It listed the following bulletined sub topics: Mission OPORD to LEA Final Mission Planning Unit-LEA Joint Train-Up Reporting to LEA LEA Response System MEDEVAC Procedures Control Measures

SPOTREP-TRP System;

Team Preparation

Current Intel Update

Immediate Action Drills

Brief Backs

Final Equipment Checks

ROE Review

Border Control Measures

Communications Procedures

Coordination With Adjacent Units (Encl (144))

- 96. The handout contained no textual explanation of the bulletined sub topics under the headings "PREPARATORY TRAINING . . . HOME STATION" or "PRE-MISSION ACTIVITIES . . . AREA OF OPERATIONS." (Encl (144))
- 97. The handout provided to Capt McDaniel at the IPC also contained an Initial Site Survey Checklist that specified the requirement that the Mission Commander develop a suitable pre-mission training plan. (Encls (60), (144))
- 98. Capt McDaniel expressed the opinion that, "The guidance that JTF-6 stresses is primarily logistical and administrative in nature . . . What they do not do is provide tactical type guidance, or specific operational type guidance which would dial you into the box for operations like this . . . I think that JTF-6 should have provided the standards and guidance that I needed to work to." (Encl (30))
- 99. During his IPC/site visit trip, Capt McDaniel said he was told by Patrol Agent In Charge (PAIC) Dave McCutchen of the USBP Station at Presidio, Texas that the Border Patrol Agents' standard response time would be 15 minutes, or perhaps less if agents were nearby. (Encls (30), (72))
- 100. On 20-21 Feb 97, the 5/11 participants at the IPC conducted a site survey of Marfa, Texas, and the four LP/OP sites on the border. MAJ Simpson, PAIC McCutchen and Border Patrol Agent James Kramer of the Presidio Station accompanied the 5/11 participants during this site survey. (Encls (30), (58), (70))
- 101. After returning from the IPC and site visit in Texas, Capt McDaniel attended a 1st MarDiv Planning Conference. The "key players at this brief were Maj Lehmann and Master Sergeant Walls. The meeting was in the Commanding General's conference room . . . It was a chance for the Division to say what needs to be accomplished and the timelines for execution . . . There was no operational guidance given at all. Neither was there any tactical guidance." (Encl (30))
- 102. Upon his return, Capt McDaniel also discussed mission preparation and the idea of dedicated training time with Maj Smith. They discussed using blocks of training days during the Battery Phase of the upcoming Desert Fire Exercise to prepare for the mission. These training blocks were a four-day and two-day segment when Capt McDaniel could ideally have all Mission JT414-97A personnel participate in training dedicated solely to mission preparation in addition to other necessary Battery training. (Encl (43))
- 103. While Maj Smith does not recall Capt McDaniel asking for more training time, he observed that Capt McDaniel apparently accepted the reality that "this is the best I (Maj Smith) can do with the time allocated for the battalion to train, this is what I give you." (Encls (30), (43))

- 104. In late February 1997, Border Patrol Agent James DeMatteo and then Agent-trainee Johnny Urias were working the 1500 to 2300 shift when they became involved in an encounter with a man Agent DeMatteo later identified as Mr. Esequiel Hernandez Jr. (Encls (85), (86))
- 105. While patrolling the Polvo Crossing of the Rio Grande near Redford, Texas, Agent DeMatteo heard "three popping sounds coming from our left. We were not sure what was making the noise or exactly where it was coming from." They left the area. (Encl (85))
- 106. As they drove away from the Polvo Crossing area, Agent DeMatteo observed two vehicles following behind them. The border patrol agents stopped, and Agent DeMatteo recalled "a tall thin male exited from the driver's side of the first vehicle." The man said, "I'm sorry that I was shooting. I thought someone was doing something to my goats. I didn't know you were back there." (Encl (85))
- 107. Agent DeMatteo advised the man that it was not smart to shoot his rifle in the Polvo Crossing area at night. After giving that warning, Agent DeMatteo felt the incident did not warrant any further action, so he made no formal report of the incident. (Encl (85))
- 108. After the shooting incident of 20 May 97, Agent DeMatteo later saw a newspaper photo of Esequiel Hernandez, Jr., and recognized him as the man he talked to in February, 1997. (Encl (85))
- 109. Agent Urias also recalled the incident and hearing a "firecracker kind of pop at a distance," and he remembered the individual saying that he was "sorry he was shooting around the area" but that he "thought he had seen someone trying to steal his goats so he shot to try to scare them off." The man said that "he would not have shot his weapon" if he had realized the agents were in the area. Agent Urias recalled telling the young man to "use more discretion when shooting his weapon, especially at night." (Encl (86))
- 110. Agent Urias is not able to state that the young man was Esequiel Hernandez. (Encl (78))
- 111. Esequiel Hernandez was a 17-year-old high school student at the time of the February 1997 shooting incident with the Border Patrol agents. He turned 18 just prior to his death on 20 May 97. He apparently enjoyed a good reputation among his teachers and contemporaries. (Encls (79), (195), (239))
- 112. Capt McDaniel stated that his mission analysis of the training tasks necessary to accomplish Mission JT414-97A was based on information he

- obtained from Maj Smith, the JTF-6 IPC, and personal observations made during the site visit to Marfa, Texas and the LP/OP locations. (Encls (30), (41)
- 113. The Intelligence Estimate for the mission provided by JTF-6 stated, "The overall threat to LP/OP missions in the Presidio AO is LOW, with a LOW-MEDIUM threat for the river area adjacent to the village of Redford." (Encl (146))
- 114. The Intelligence Estimate for the mission was restated in the Risk Assessment section of Capt McDaniel's Operation Order and in the three Confirmation Briefs he gave as "Low to Moderate Risk (Less than Moderate)." (Encl (141))
- 115. Specific local intelligence about Polvo Crossing, beyond discussion with LEA during the site visit, was not provided to Capt McDaniel. Agents DeMatteo and Urias told no one about the February, 1997 shooting incident involving Mr. Hernandez until after the second incident in May, 1997. (Encls (30), (85))
- 116. In an undated Memorandum to Commanding Officer, 5/11, the Deputy Commander of JTF-6 provided a summary of the threat faced by Mission JT414-97A. This memorandum cautioned LtCol Montgomery that "There are several areas of special concern when conducting counterdrug military operations. The most significant is the threat your unit will face from an organized, sophisticated, and dangerous enemy (drug smugglers). In the Southwest region, your unit may encounter criminal elements engaged in smuggling illegal drugs, weapons, other contraband and the possibility of personal threat. These gangs are extremely dangerous and will also use force. These situations make operations dangerous for the unprepared. Your unit should come to the border region trained accordingly." (Encl (139)
- 117. This was a standard letter JTF-6 mailed during the time frame of an IPC. The purpose of the letter was to bring to the attention of the next higher level of command an appreciation of the threat faced by units undertaking JTF-6 missions and the importance of proper pre-mission preparation. (Encl (185))
- 118. A copy of the JTF-6 Deputy Commander's memorandum was provided to Capt McDaniel sometime after he returned from the mission communication exercise on 12 Apr 97. (Encl (30))
- 119. Capt McDaniel termed the letter an "eye opener for my Battalion." He said the Battalion Commander got with the S-3 to "ensure that Headquarters Battery had all the support they needed to successfully execute this mission." (Encl (30))
- 120. Notes used by Sgt Dewbre in his various briefs mentioned that "Redford not a

friendly town" and "Criminals in A.O. (Area of Operations)" Connections between town residents and drug traffickers were assumed to be the norm. The use of armed scouts to conduct reconnaissance of the U.S. side prior to moving drugs across the border is mentioned as are recreational shooters and hunters. (Encl (145))

- 121. These notes were used in a briefing given to the Mission JT414-97A participants by Sgt Dewbre. Capt McDaniel stated that the emphasis of the brief, however, was more devoted to force protection from drug traffickers than it was to contact with recreational shooters. (Encl (30))
- 122. On 4 Mar 97, the Commanding General, 1st Marine Division issued Frag Order 35-97 to Eleventh Marines to deploy a Battery (-) "to conduct ground reconnaissance and LP/OP operations in support of the USBP . . . to increase unit readiness and achieve unit METLs." (Encl (134))
- 123. The message stated, "This Division has received a great training deployment opportunity in support of the nation's war on drugs. Training in this unfamiliar environment, in support of civil authorities, with an actual potential threat, is both challenging and rewarding. We must take maximum advantage of this opportunity to focus on communications skills (HF, UHF, VHF, SATCOM, SINGARS frequency hopping), patrolling and reporting procedures, land navigation skills, and small unit leadership. Desired end state: Safe and successful deployment and return, full accountability of all personnel and equipment, professional support to assigned law enforcement agencies (LEA), and a more combat ready unit." (Encl (134))
- 124. DoD policy, JTF-6 and 1st MarDiv all require mission commanders to match mission requirements to their unit's combat mission essential tasks to determine training focus for JTF-6 deployments. (Encls (55), (56), (57), (58))
- 125. From the time Maj Smith assumed the duties as S-3 of 5/11 until 2 May 97, 5/11 did not have a Mission Essential Task List (METL) as required by FMFM 0-1. The requirement for a METL is clearly identified as an inspection item on the Marine Corps Automated Inspection Reporting System checklist. During a Commanding General's Inspection Program Inspection on 30 Nov 95 it was noted that 5/11 had a METL. No copy of that METL is available. (Encls (41), (43), (168), (169), (170), (234))
- 126. Capt McDaniel believed he had "sufficient guidance for this training mission from my Battalion. I would have liked to have seen lessons learned or some standards to train to, but I did not feel that it was my Battalion's responsibility to provide those things. I think JTF-6 should have provided the standards and guidance that I needed to work to." (Encl (30))

- 127. When asked whether he received command guidance for JTF-6 mission training from the Regimental Commander or the Division G-3, Major Jeffery M. Seng, Operations Officer/S-3 of 11th Marines, stated, "I don't recall any specific discussion with the Regimental Commander, I am sure we've discussed it at some point," and "I don't recall any specific discussion with the G-3, but I did have some casual conversation with the Division Counterdrug Officer." (Encl (47))
- 128. When asked how he was made aware of the training progress made by a unit in preparation for a counterdrug mission, Maj Seng stated, "That is not something I monitor on a daily basis, or frankly much at all unless the Battalion has required some support." (Encl (47))
- 129. Regarding the degree of oversight the Regiment exercises to ensure that a Battery is properly trained for a JTF-6 mission, Maj Seng stated, "We don't conduct any kind of formal training assessment of the Battery. We authorize or grant DIRLAUTH (Direct Liaison Authorization) for the unit and JTF-6 so they can coordinate the demands of a specific mission for which they're committed, and they get the most current information on the area." (Encl (47))
- 130. When asked what role the Regiment had in directing, conducting or supervising training in preparation for a counterdrug mission, Maj Seng said, "Advertising Counter Drug mission opportunities." (Encl (47))
- 131. Maj Lehmann, the 1st MarDiv Counterdrug Officer, stated that he would not use the term "required" in connection with training because of the "implication that there would be some associated evaluation or validation, there was no such thing." He personally did not review training schedules or visit unit training because he believed "that was for intervening staff." (Encl (5 1))
- 132. Maj Lehmann described his role in providing training guidance to subordinate units preparing for JTF-6 missions as an attempt to "complement but not duplicate efforts of JTF-6. The JTF-6 Mission Planner and other IPC participants had the primary role to provide guidance." (Encl (51))
- 133. Maj Lehmann described himself as, "Mostly an information provider. Primary agent to deconflict issues with JTF-6. Did not review detailed training schedules; would only intervene if mission commander complained that intervening commands were not giving enough time . . . Never visited unit training, that was a job for intervening command." Maj Lehmann stated that he had no role to review mission training plans or schedules. (Encl (51))
- 134. Maj Lehmann stated he had a responsibility to attend the 1st MarDiv Confirmation Briefs and identify unprepared units, but he never had to make such

an identification. (Encl (51))

- 135. LtCol Rollins, currently Assistant Chief of Staff G-7 for 1st MarDiv, stated that the Division's role in supervising training was limited to pointing out Marine Corps Orders and common knowledge. (Encl (50))
- 136. By doctrine and in practice, headquarters batteries conduct (on a day-to-day basis) diverse, decentralized supply, maintenance, and administration tasks in support of the entire battalion, while at the same time conducting individual and team tactical training for their wartime mission. (Encls (30), (41), (43))
- 137. In March 1997, Capt McDaniel was authorized to use a portion of the five days dedicated to battery training during Desert Fire Exercise (DESFIREX) at 29 Palms to conduct JTF-6 preparation training. (Encls (30), (43))
- 138. Capt McDaniel planned for individual and team training at 29 Palms during the Battery portion of DESFIREX, to be followed by a planned team and unit training event at Camp Pendleton. (Encl (30))
- 139. There was no formal mission training plan written, but Capt McDaniel wrote a list of classes and assigned instructors for a two-day block of dedicated training (on specific areas needed for mission success) to occur at 29 Palms on 18-19 Mar 1997. Capt McDaniel tasked the instructors to prepare written lessons, but he did not require written lesson plans for the training at DESFIREX. (Encl (30))
- 140. The training during this two-day block of time at DESFIREX was in camouflage, cover and concealment, movement techniques, hide sites, field sketches, use of optics, communications and field expedient antennas, reporting procedures, first aid, field survival, MEDEVAC procedures, basic map reading, and land navigation. (Encl (147))
- 141. At DESFIREX, the training on cover and concealment included discussion of stealth movement and using the cover of darkness during ingress and egress. It included practice sessions in both daylight and darkness over terrain described as similar to the mission area. (Encls (30), (37))
- 142. Lance Corporal James M. Blood, a member of Team 7, recalled doing some "six to eight hours of training for the JTF-6 mission" during the DESFIREX. Although he had volunteered for the JTF-6 mission early on, he had not been identified as a mission participant at that time. Therefore, he trained with Team 3, led by Sergeant R.R. Macias (who has since been promoted), and the subjects he remembers being covered were medical training from the Battalion Aid Station (BAS), use of night vision devices, night movement and the use of SINGARS HF

- radio and the SABER radio. By Military Occupational Specialty (MOS), LCpl Blood is a Motor Vehicle Operator (3531). (Encls (16), (21), (37))
- 143. Corporal Roy Torrez, Jr. and Lance Corporal Ronald H. Wieler, Jr., both members of Team 7, believe they first learned of the JTF-6 mission about a month before they went to Texas on the deployment. Neither recalled whether they were at 29 Palms on the DESFIREX when they first learned of the opportunity to participate in the JTF-6 mission. (Encl (29))
- 144. Cpl Torrez said that, because of his job, the mission was a "last minute thing" for him. They just asked in his shop "if anybody wanted to go." His primary MOS is a 3531 (motor vehicle operator) with a secondary MOS as a Wrecker Operator (3536). (Encls (10), (29))
- 145. Cpl Torrez recalled that team leaders and others were doing training in the field at DESFIREX, but due to his job he didn't participate in any of that training. (Encl (29))
- 146. LCpl Wieler said that, due to his other duties, the only training he did was "just erecting antennas during communications" back at Camp Pendleton. He never did JTF-6 training at DESFIREX. His primary MOS is as a Field Radio Operator (2531). (Encls (22), (29))
- 147. Cpl Torrez stated that his training as a Combat Aidsman arose from a quota that had to be filled in his shop not as a result of volunteering for Mission JT414-97A. Cpl Torrez completed the Combat Aidsman Course on 7 Mar 97. (Encls (29), (152))
- 148. With respect to the subjects on which training was conducted at DESFIREX camouflage, cover and concealment, movement techniques, field sketches, use of optical devices, night vision devices, basic radio communications, reporting procedures, map reading and land navigation Cpl Torrez stated that the only training he ever received in those subjects was during MCT (Marine Combat Training) following boot camp. (Encl (29))
- 149. LCpl Wieler also stated that MCT was the only place he trained in the areas required for Mission JT414-97A. LCpl Wieler did, however, have some on-the-job experience with vehicle camouflage. He also had some exposure to night vision devices at 29 Palms doing night movement in the vehicle for which he was a driver. (Encl (29))
- 150. LCpl Wieler also noted that he got some basic communications training at

- MCT and then he went on to Communication School. (Encl (29))
- 151. Both Cpl Torrez and LCpl Wieler indicated that the only other experience they had in LP/OP operations occurred at MCT. (Encl (29))
- 152. SSgt Macias recalled that at DESFIREX the battery "conducted training such as, fire team formations, land navigation, site systems, radio procedures, communication checks, cover and concealment and caring for a variety of weapon systems. The training was conducted periodically over a two or three day period (but they) did not do this training as
- a team. We were supposed to have other classes . . . However, time was short, and we didn't accomplish that training." (Encl (37))
- 153. While SSgt Macias knew who the designated members of his team were, they were not always able to train together because of their involvement in other training. (Encl (37))
- 154. Corporal Corey McMillan, who served as team leader for Team 2 during Mission JT414-97A, recalled that HQBtry did some training for the mission at DESFIREX. He was assigned to the Survey Section and did not train with them. He did, however, teach a class for the other team leaders there on the Position Locating Global Positioning System Receiver a miniature Global Positioning System. (Encl (39))
- 155. Cpl McMillan said that the composition of his team changed "every couple of weeks" and was fixed only "about two weeks before we went." (Encl (39))
- 156. Corporal Robert S. Yates was the radio operator for Team 2. He recalled using the Battery phase of DESFIREX for JTF-6 training and remembered that about five of the 14-day field operation was devoted to the training. (Encl (38))
- 157. LtCol Montgomery recalled that, during DESFIREX, HQBtry "had several days set aside to do land navigation, cross training in communications systems and observation post procedures." Capt McDaniel told him that "he had accomplished his personal training plan." He recalled that Capt McDaniel even brought several Marines from Camp Pendleton to the desert to participate in the training. (Encl (41))
- 158. LtCol Montgomery was in a great deal of pain during the DESFIREX from a cervical disc injury. (Encls (41), (42))

- 159. Upon returning from DESFIREX, Maj Smith and Capt McDaniel discussed the training status of HQBtry in general and JTF-6 mission preparation in particular. (Encl (43))
- 160. They agreed that HQBtry needed to do some dedicated training to complete preparation for the JTF-6 mission. (Encl (43))
- 161. Capt McDaniel planned to use the post-DESFIREX period to conduct field training at Camp Pendleton involving practice LP/OP operations and staged contact with role players. (Encl (30))
- 162. On 20 Mar 97, the SJA of I Marine Expeditionary Force (I MEF) prepared a memorandum for the CG regarding significant events in which he participated. He summarized a trip to JTF-6 and noted, "The G-2 and I spent two days with JTF-6 meeting folks and doing a border tour. I looked closely over the Rules of Engagement that they use and noticed that they have, to my mind, made some improvements by making them simpler. . . I did notice that the level of threat is gradually increasing from what I saw two years ago at Division and that it's a matter of 'when' vice 'if' a shooting incident occurs. The Army recently had one with a bandit." (Encl (214))
- 163. On 7 Apr 97, the CG, I MEF, endorsed the Davis Investigation and noted, in pertinent part, "In discretionary operations, I will stress the necessity of not conducting same unless we are fully prepared . . . There was some criticism by the new battalion commander regarding the battalion not supporting the company in this mission. If true, this will not be tolerated." (Encl (159))
- 164. The endorsement of the CG, I MEF lists the CG, 1st MarDiv as a "copy to" addressee. (Encl (159))
- 165. A Division Maintenance Stand Down scheduled between 8-18 Apr 97 precluded any training during that period. (Encl (43))
- 166. On 9 Apr 97, LtCol Montgomery submitted a letter to the Regimental Commander regarding the state of his battalion, 5/11. It noted that it was intended to be a "situational awareness tool for the Regimental Commander." (Encl (164))
- 167. The letter provided a review of key personnel shortages in the battalion, predicted more to come, and indicated that the high operational tempo within the battalion was going to be negatively impacted by the personnel situation. It requested a meeting with the Regimental Commander to discuss this matter of urgency. (Encl (164))

- 168. The cover sheet submitted with the letter requested that the Regimental Commander direct his staff to coordinate closely with all battalions to ensure a systematic approach to the needs of all battalions. (Enel (164))
- 169. The 1st MarDiv personnel status report for 7 Apr 97 showed 5/11 with a Table of Organization (T/O) of 47 officers, a Staffing Goal of 42 officers and an on-board strength of 39 officers. A 5 May 97 report listed an on-board strength of 38 officers. (Enel (165))
- 170. On 9 Apr 97, a USCINCACOM message restated the relationship between JTF-6 and the units conducting counterdrug missions by placing greater emphasis on force protection. Specifically, USACOM directed that the Commander of JTF-6 "will have TACON with directive authority for force protection of forces, to wit:
 - A. JTF-6 would communicate to the supporting unit chain of command the standards and requirements for the mission. The parent command remains responsible for ensuring that the deploying unit meets training and equipment standards before the mission starts. JTF-6 will validate that these standards have been met before the mission starts.

. . .

- C. This new command relationship does not include UCMJ authority over deployed units. The ultimate authority that CJTF-6 has now, and will continue to have under this redefined command relationship, is the authority to halt a counterdrug mission until an unsatisfactory situation is corrected." (Encl (136))
- 171. On 9-12 Apr 97, Capt McDaniel, IstLt Nelson (Communications Officer), Gunnery Sergeant Jimmy Vela (Communications Chief), Sergeant John C. Dick, Sergeant Ernest W. Rose and Lance Corporal James M. Steen conducted a Communication Exercise at Marfa, Texas. (Encl (125))
- 172. Annex K of the Operation Order (OPORD) for Mission JT414-97A addressed the communications plan. The primary eommunications method was VHF frequency hopping radio to the Forward Tactical Operations Center (TOC), with the Forward TOC then relaying the message to the TOC at Marfa via SATCOM. The secondary communications method was High Frequency radio. The tertiary communications method was by SABER radios on the Border Patrol operating frequency. Though designated as tertiary, this net was to be the primary net during emergencies or other incidents requiring Border Patrol response. Annex K states that SABER communications will not be encrypted. (Encl (141))

- 173. The readiness of 1st MarDiv units to deploy to and perform JTF-6 missions is assessed by the Division chain of command through a Confirmation Brief process. (Encls (41), (46), (49), (56), (125)
- 174. On 16 Apr 97, LtCol Montgomery received the Confirmation Brief presented by Capt McDaniel, Lt Nelson, GySgt Fitzgerald and Sgt Dewbre. Other attendees from 5/11 at the brief were Maj Hogg and Maj Smith. (Encls (30), (36), (41), (42), (43), (125))
- 175. Maj Hogg earlier "read Capt McDaniel's Operation Order (and) pre-critiqued his Confirmation Brief." Based on his discussing training topics with Capt McDaniel, he "was satisfied that Capt McDaniel was hitting all the wickets." (Encl (42))
- 176. Capt McDaniel's Confirmation Brief outlined areas of pre-mission training but was not specific about the amount of individual and collective training the unit had conducted. (Encl (140))
- 177. At this brief and the two later Confirmation Briefs (to the Division and JTF-6), Capt McDaniel briefed his training focus for the deployment in the form of a Mission Essential Task List (METL) stating that he intended to train in the following unit combat mission essential tasks during the deployment: communications, land navigation, night operations, stealth movement techniques, reporting procedures, and camouflage, cover and concealment. (Encl (140))
- 178. Capt McDaniel's mission statement, as reviewed and approved by his chain of command during the confirmation briefs, was "Between 15-29 May 97, Headquarters, 5th Battalion, 11th Marines conducts LP/OP operations in direct support of the United States Border Patrol to increase unit combat readiness, improve individual and collective skills, and detect, monitor and report illegal drug activity crossing the border." (Encl (140))
- 179. Also on 16 Apr 97, Captain Michael Gante, a Marine Corps Judge Advocate assigned as Operational Law Officer and Officer in Charge, Administrative Law Section, Legal Services Support Section, 1st Force Service Support Group, Camp Pendleton, conducted a briefing on legal issues that included classroom instruction on the rules of engagement (ROE) for the HQBtry, 5/11 participants of Mission JT414-97A. (Encls (30), (182))
- 180. Capt Gante said he used only the JTF-6 provided ROE materials for his brief. These materials contained lecture slides, speaker notes, a video tape, a ROE information paper, and scenarios with questions and answers to lead discussions. A ROE card was not included in the training materials that Capt Gante used.

(Encls (182), (184))

- 181. In the portion of the lecture concerning ROE, Capt Gante instructed the students that deadly force could be used if they or a member of their unit faced "imminent danger of death or grievous bodily injury AND lesser degrees of self-defense had been exhausted." (Encl (182))
- 182. In a description of this ROE portion of the lecture, Capt Gante stated, "I remember discussing de-escalation of force and how deadly force was to be the last possible resort---Many Marines had questions at this point, however, I do not remember any of the questions specifically. I also remember we discussed a number of scenarios, however, I can not remember specifics. When we finished this portion everyone had a very good idea of non-deadly v. deadly force." (Encl (182))
- 183. Although he does not remember specifics, when giving the ROE brief Capt Gante would use three scenarios for illustration: # I, #2, and #7A, rather than all 24 provided in the ROE teaching materials. (Encls (180), (182), (183))
- 184. On the issue of pursuit, Capt Gante remembered instructing the class not to pursue except to retrieve military personnel and not to cross into Mexico under any circumstances. (Encl (182))
- 185. The speaker notes that accompanied the JTF-6 ROE teaching materials describe "Pursuit" as follows:
 - "1. Can chase person who stole equipment, no threat, no use of deadly force.
 - 2. Can chase person who posed threat, if no present threat-no use of deadly force, if situation changes and during chase faced with threat of death or serious bodily harm then deadly force justified.
 - 3. Cannot pursue across border for any reason." (Encl (180))
- 186. Sometime after the ROE class, HQBtry distributed ROE cards to the Marines participating in Mission JT414-97A. The card used was an older version dating from 1993. There were two subsequent modifications of the card in 1995 and January 1997. (Encl (185))
- 187. The 1993 training card distributed listed the condensed ROE as follows:
 - 1. FORCE MAY BE USED TO DEFEND YOURSELF AND OTHERS PRESENT.

- 2. DO NOT USE FORCE IF OTHER DEFENSIVE MEASURES COULD BE EFFECTIVE
- 3. USE ONLY MINIMUM FORCE NECESSARY.
- 4. YOU MAY DETAIN ANY PERSON WHO POSES AN IMMINENT THREAT OF SERIOUS BODILY HARM TO YOU OR OTHERS PRESENT. RELEASE TO THE CIVILIAN LEA SOONEST.
- 5. YOU MAY PURSUE HOSTILE FORCES ONLY TO DEFEND OR RETRIEVE MILITARY PERSONNEL.
- 6. YOU MAY NOT PURSUE HOSTILE FORCES INTO ANOTHER NATION'S TERRITORY WITHOUT COMMAND AUTHORITY (Encl (185))
- 188. The January 1997 version of the card reads as follows:

JTF-6 RULES OF ENGAGEMENT

"You MAY

- Use only the amount of force necessary and proportional to the threat;
- Use deadly force to defend yourself and others from death or serious bodily injury;
- Detain any person who poses an imminent threat of death or serious bodily harm; release them to civilian LEA at soonest opportunity;
- Pursue armed persons only to defend or retrieve personnel;
- Pursue unarmed forces to retrieve military equipment;
- NOT use deadly force to defend property;
- NOT use deadly force if other measures would be reasonably

effective;

- NOT enter into Mexico/Canada;
- NOT participate in arrests, searches, seizures, or interrogation;
- NOT trespass on private property;

- You WILL make every effort to avoid confrontation and armed conflict with civilians." (Encl (185))
- 189. The normal practice is for the Mission Commander to receive the ROE card at the IPC. He then makes arrangements at his parent command to reproduce the card for the mission participants. Capt McDaniel cannot explain how he came to use an older version of the card if he did not receive it at the IPC unless he confused the card among materials extracted from a prior mission folder. (Encl (185))
- 190. Cpl Torrez recalled attending a class in "Classroom Orange" on the ROE before deploying to Texas. He recalled receiving a helmet card with the rules of engagement on it. He does not recall an intelligence brief. (Encl (29))
- 191. LCpl Wieler recalled attending classes on the rules of engagement and hearing the
- S-2 brief by Sgt Dewbre. He too recalled receiving a helmet card. (Encl (29))
- 192. SSgt Macias noted that the rules of engagement training for Mission JT414-97A would have benefited from civilian law enforcement input. He said the emphasis they place on a "scale of force" to be used is important because of clear differences between hostile forces and civilian U.S. citizens. SSgt Macias has had previous use of the rules of engagement through duty in Desert Storm and Somalia. He has also taken night courses at the Sheriff Academy at Escondido, California. (Encl (37))
- 193. In particular, SSgt Macias observed that the second class on the rules of engagement, conducted at Marfa, was more beneficial because it made extensive use of scenarios for practical application. He felt the first class was too academic in nature. (Encl (37))
- 194. SSgt Macias said that he could understand how someone of Cpl Banuelos' age and experience could react as he did if he had only the rules of engagement training to rely on. SSgt Macias does not believe the rules of engagement training the unit received would overcome prior combat training. In his own case, because he is older and more experienced, he opined he would not have done what Cpl Banuelos did even if he had not had civilian law enforcement training. (Encl (37))
- 195. Capt McDaniel recalled briefing his Marines sometime in April on the shooting incident in Brownsville, Texas involving an Army Special Forces unit on a JTF-6 mission. He told them of this to make sure they understood an incident could arise where they might have to defend themselves. (Encl (30)).

- 196. Neither Cpl Torrez nor LCpl Wieler recalled any one saying anything to them about any incidents where drug traffickers had shot at Marines or soldiers. (Encl (29))
- 197. When asked what he thought the risk to his safety to be from his briefings, SSgt Macias replied that he felt he would have to be cautious. He did not feel that he was in danger but he was aware from the briefings that some of the drug smugglers had high caliber weapons and night vision devices as well as scanners and the ability to jam radio communications. (Encl (37))
- 198. On 17 Apr 97, LtCol Montgomery submitted an E-Mail message to Lieutenant Colonel Larry Lane, Executive Officer, 11th Marines, stating that he had received no response to his letter of 9 Apr 97 to the Regimental Commander. (Encl (166))
- 199. In the E-mail message LtCol Montgomery stated, "If the plan is to [sic] 5/1 1 up for failure congrats! I think Regt is well on the way to doing just that!" (Encl (166))
- 200. The message included the statement: "If the boss wants another 'yes' man, I can guarantee, if I simply say yes and agree to every decision being made for my battalion, we will fail at something and bring the rath [sic] of HHQ down." (Encl (166))
- 201. On 18 Apr 97, 5/11 underwent a Marine Corps Administrative Assistance Team (MCAAT) inspection. (Encl (43))
- 202. There was no confirmation brief for mission JT414-97A at the Regimental level. (Encl (46))
- 203. On 19 Apr 97, Col Todd received the Division Confirmation Brief from Capt McDaniel, Lt Nelson, GySgt Fitzgerald and Sgt Dewbre. Attendees were Maj Lehmann, Captain Joe Spair as the incoming IstMarDiv Counterdrug Officer, and Major Peter Keating as the 5/11 command representative. (Encl (30), (51), (55))
- 204. Capt McDaniel recalled the brief was scheduled to last a little over an hour and actually went over two hours since Col Todd had a lot of pointed questions to ask. (Encl (30))
- 205. Col Todd expressed great concern with the extension of the MEDEVAC response time beyond 60 minutes. He stated that unless the MEDEVAC time was substantially decreased the mission would not be allowed to go forward. (Encls (30) (49))
- 206. Col Todd personally called JTF-6 to request relocation of the MEDEVAC

helicopters to reduce their response time. (Encl (49))

- 207. Col Todd indicated to Capt McDaniel that it was important to work the communications plan so that he would have dedicated, organic Marine Corps communications, rather than relying on SATCOM or Border Patrol SABER radios. (Encl (49))
- 208. Col Todd impressed on Capt McDaniel that it was important that his communications response team and vehicle, located at the Forward Tactical Operations Center, be labeled a React Vehicle in order to maintain the proper operational mind set. (Encl (49))
- 209. Col Todd did not specifically inquire about the amount of pre-mission training Capt McDaniel had planned or conducted nor did Capt McDaniel describe what had been planned or done. (Encl (49))
- 210. Colonel Todd and Major Lehmann expected some mention of pre-mission training at the confirmation brief. However, both explained that if there was mention of a few key training items such as the rules of engagement, situational training exercises, land navigation, and first aid, they would not usually delve further into details. (Encls (49), (51))
- 211. Col Todd expected any 1st MarDiv officer who was performing as a JTF-6 Mission Commander to develop a training plan after the site visit. This training plan would be submitted to the battalion to be placed on the training schedule, integrated into the training cycle and supervised by the battalion. (Encl (49))
- 212. Capt McDaniel recalled Col Todd saying that an LP/OP mission for HQBtry, 5/11 "was a very good mission for us, since operating LP/OP as part of our local security is something we do, and that we are responsible for our own security in the modern battlefield." (Encl (30))
- 213. Each Confirmation Brief given by Capt McDaniel addressed the subject of U.S. Border Patrol response. Capt McDaniel's briefing package contained a slide captioned "Actions with the LEA" that stated "LEA estimated response time to the farthest hole: 15 minutes (significantly shorter for the LP/OPs on the ends)." (Encl (140))
- 214. During his 1st MarDiv Confirmation Brief, Col Todd cautioned Capt McDaniel not to become frustrated with the Border Patrol's response time since they are sometimes otherwise occupied. (Encl (49))
- 215. On 21 Apr 97, Second Lieutenant Enrique Diaz reported to 5/11 and replaced

- IstLt Nelson as the Communications Officer. As a consequence, 2ndLt Diaz became the Communications Officer for Mission 414-97A despite not having participated in any pre-mission planning or training. (Encl (32))
- 216. From 21-25 Apr 97, 5/11 underwent a Division Supply and Maintenance Analysis Team (SMAT) Inspection. (Encl (43))
- 217. On 24 April 97, Capt McDaniel presented a Confirmation Brief to JTF-6 at Ft Bliss in El Paso, Texas. (Encls (30), (56))
- 218. Those attending the JTF-6 Confirmation Brief (also referred to as an OPORD Brief) included Lieutenant Colonel Jerry D. Scott, USA, representing the Commander, JTF-6; Captain Matthew Spencer, USAF, who had recently been assigned as the J-3 Operations Officer for Mission JT414-97A; Captain Robert W. Clark, USA, JTF-6 Assistant Legal Advisor, Sergeant First Class Preston T. Tifft, USA, Communications Specialist for JTF-6; and Associate Chief Patrol Agent (ACPA) Larry Caver of the USBP, who also represented Operation Alliance. It was at this OPORD briefing that JTF-6 validated the training conducted by HQBtry, 5/11, based upon Capt McDaniel's presentation. (Encls (56), (60), (63), (80))
- 219. Capt McDaniel's briefing of his OPORD, which was dated 17 Apr 97, stated that in the event of an incident, "The Border Patrol will have agents close enough to our holes to respond in short order (15 minutes or less). The Border Patrol will handle the situation from that point." (Encl (141))
- 220. Marine Corps personnel understood that the terms of Mission JT414-97A required USBP agents to respond to the "individual sites" for incidents involving Marine Corps personnel on a 24-hour basis. (Encls (21), (30), (34))
- 221. ACPA Caver stated that, as a result of the Confirmation Brief, he understood the required response time by USBP extended only to the hours of darkness. In a USBP memorandum, dated May 21, 1997, he described his understanding and observed that the incident on 20 May 97 was a deviation from what was briefed. In particular, he understood that the Marines were to move to their LP/OP after darkness and the USBP response unit was to arrive in close proximity immediately after darkness to respond. When the Marines came up from their hide site early, the response unit was not in place to respond to the emergency that developed. (Encls (80), (179)
- 222. LTC Scott stated that, during the Confirmation Brief and the following site visit to the LP/OP positions, the USBP agreed to respond to an emergency within 15 minutes. His understanding was that this meant responding to the scene of the emergency, without exception, 24 hours a day. (Encl (56))

- 223. From 28 Apr 97 to 2 May 97, 5/11 participated in a Division Operational Readiness Exercise (DORE). (Encl (43))
- 224. On 29 Apr 97, LtCol Montgomery was hospitalized for neck surgery. On 30 Apr 97, he was released from the hospital and placed on convalescent leave until 16 May 97. (Encls (41), (167))
- 225. Maj Hogg, Maj Smith and Capt McDaniel agree that the Division Maintenance Stand Down from 8-18 Apr 97 followed by the three major inspections experienced in April and May 97 the Marine Corps Administrative Assistance Team Inspection (MCAAT), 18 Apr 97; Supply and Maintenance Analysis Team Inspection (SMAT), 21-25 Apr 97; and Division Readiness Evaluation (DORE), 28 Apr to 2 May 97 placed heavy demands on the personnel of HQBtry and precluded unit training for Mission JT414-97. (Encls (30), (42), (43))
- 226. First Lieutenant Thomas O. Harper was the Executive Officer for HQBtry, 5/11 from 1 March to 1 July 1997. Capt McDaniel tasked him to schedule a training exercise for the Marines going on the JTF-6 mission that would reinforce the training they received in March at DESFIREX. (Encl (44))
- 227. To fulfill this task, lstLt Harper scheduled a two-day training exercise with 1st MarDiv Reconnaissance Company on 1-2 May 97. The training was to encompass four areas: cover and concealment; LP/OP Operations; infiltration/exfiltration for surveillance teams; and field expedient communications. The plan was to provide adequate practical application and field training in these topics. (Encl (44))
- 228. Capt McDaniel's intent was "to determine the ability of the teams to camouflage themselves adequately for the mission . . . (and) . . . get into the Rules of Engagement . . . What kinds of decisions these young Marines will make under stressful conditions or simulated stressful conditions cannot be adequately judged in the classroom." (Encl (30))
- 229. On 30 Apr 97, Reconnaissance Company canceled their participation in the training because of conflicting training commitments. The training was rescheduled for 8 May 97 with HQBtry leadership scheduled to provide the instruction. (Encl (44))
- 230. SSgt Macias is unable to recall any training that was done back at Camp Pendleton. He does recall that there were legal and public affairs classes and Sgt Dewbre gave an intelligence brief. He also remembered that they were "supposed to have somebody from Recon come down and give us a couple of classes but that never happened either." (Encl (37))

- 231. SSgt Macias observed that "we had so many things going on at one time, which I thought to myself, it didn't make any sense we were getting ready to go on a mission and we were doing other things that weren't really important." He mentioned this to the Battery Gunnery Sergeant but he just observed that we had a lot of commitments. (Encl (37))
- 232. SSgt Macias' own training assessment was "I don't think I was as ready as I wanted to be. I think I could have known a little more, had more classes on different stuff but I was pretty confident in myself." (Encl (37))
- 233. On 3 May 97, JTF-6 received SECDEF approval for the execution of Mission JT414-97A. (Encl (137))
- 234. On 5 May 97, IstLt Harper was informed that HQBtry would be providing the "Alphas Platoon" for the uniform portion of the Commanding General's Inspection (CGIP). He sought relief from this requirement from Maj Hogg because it conflicted with the scheduled Mission JT414-97A training. Maj Hogg told IstLt Harper that HQBtry personnel must stand the inspection. Accordingly, 1stLt Harper canceled the JTF-6 mission training to allow the Marines to prepare for the inspection. (Encl (44))
- 235. Neither Cpl Torrez nor LCpl Wieler could recall being notified of training that was later canceled at Camp Pendleton. (Encl (29))
- 236. Maj Hogg believed the CGIP had priority over training and did not request relief from the inspection requirement. (Encl (42))
- 237. LtCol Rollins, who had moved from duties as the 1st MarDiv Deputy G-3 to become the 1st MarDiv Inspector, stated that it was common for a unit to cancel scheduled training in order to accommodate the CGIP. However, LtCol Rollins also stated that if the training situation had been raised, the affected HQBtry Marines would have been permitted to conduct the scheduled training. (Encl (50))
- 238. On 5 May 97, an advance party of GySgt Fitzgerald, Staff Sergeant Jay L. Lillefloren, Sgt Dewbre, Corporal Brad E. Smith, Lance Corporal Jonathan G. Vasiliauskas, and LCpl Steen departed for Marfa, Texas. (Encls (30), (148))
- 239. On approximately 5 May 97, LCpl Blood was told he would participate in Mission JT414-97A as a member of Team 7. (Encl (21))
- 240. Capt McDaniel ultimately assigned Cpl Torrez (combat aidsman), LCpl Wieler, (radio operator), and LCpl Blood (rifleman) to Team 7, led by Corporal Clemente M. Banuelos. (Encl (151))

- 241. At the time of assignment to Mission JT414-97A, Cpl Torrez and LCpl Blood were motor vehicle operators assigned to the Motor Transport Section of 5/11 and LCpl Wieler was a field radio operator assigned to the Liaison Section of HqBtry 5/11. (Encls (10), (16), (22))
- 242. Capt McDaniel believed that, based on training and experience as a scout observer and his demonstrated leadership skills and abilities, Cpl Banuelos was one of the best qualified Marines in the battery for the duties of team leader for a distant LP/OP operation. Because Capt McDaniel identified Hole 3 as the most challenging assignment, he selected Team 3, led by SSgt Macias, and Team 7 to man that hole. (Encl (30))
- 243. Cpl Torrez recalled originally being assigned to a different team but learned about two weeks before deployment on 12 May 97 that he would be on Cpl Banuelos' team. Cpl Torrez did not meet Cpl Banuelos until they arrived in Texas on 12 May 97. (Encl (29))
- 244. LCpl Wieler learned his team assignment at the time he asked to volunteer for the mission, just prior to DESFIREX. (Encl (29))
- 245. Cpl Banuelos and LCpl Wieler worked together in the Liaison Section of HQBtry, 5/11. From April through October 1996, they had deployed together as part of the Shore Fire Control Party attached to Battalion Landing Team, First Battalion, Fourth Marine Regiment (1/4), 13th Marine Expeditionary Unit (Special Operations Capable). Prior to this deployment, LCpl Wieler served as a radio operator for Cpl Banuelos during training. (Encls (4), (22), (29))
- 246. Cpl Torrez had worked in the Motor Transport Section of HQBtry with LCpl Blood since 29 Aug 96. LCpl Wieler did not meet LCpl Blood until they arrived in Texas on 12 May 97. (Encls (10), (16), (22), (29))
- 247. During the week before they deployed to Marfa, Texas, Cpl Banuelos visited LCpl Blood's work area to tell him what gear he needed to bring with him. LCpl Blood recalled that it was hard to get together due to their different work assignments. (Encl (21))
- 248. In terms of actual preparation for the mission, Cpl Torrez said the only thing he did prior to leaving for Texas was make his guille suit. He cannot recall whether Cpl Banuelos told him to make a guille suit or not. (Encl (29))
- 249. LCpl Wieler said he too did nothing to get ready beyond working on his guille suit and "getting more knowledge on the communication with the crypto gear" from Sgt Rose. He doesn't recall talking to Cpl Banuelos about the mission before going

- to Marfa, Texas. (Encl (29))
- 250. On 7 May 97, U.S. Army Forces Command issued the Execute Order for Mission JT414-97A. (Encl (138))
- 251. On 7 May 97, a second advance party consisting of Capt McDaniel, GySgt Vela, Sgt Rose, Sgt Dick and Corporal D. J. Delgadio left for Marfa. (Encls (30), (148))
- 252. On 9 May 97, LtCol Montgomery formally requested retirement from the Marine Corps via a Unit Diary entry with a requested retirement date of 1 Oct 97. He returned to duty from convalescent leave on 14 May 97. (Encls (41), (167))
- 253. The Tactical Operations Center (TOC) for Mission JT414-97A was located at the Marfa airport. A Forward TOC was located approximately 45 miles south of Marfa, Texas and 10 miles east of the Rio Grande. (Encls (30), (140))
- 254. Beginning on 9 May 97, Capt McDaniel filed a "Joint Task Force Six Daily Situation Report." These daily situation reports used a standard format and were sent to JTF-6 and the USBP Presidio Station. From 9 to 11 May 97, these reports documented setup activities at Marfa. They do not document any training activities being conducted. (Encls (30), (126)).
- 255. On 11 May 97, Capt McDaniel and CPT Spencer visited the locations of all four LP/OPs. (Encls (30), (60))
- 256. The four LP/OPs were referred to as "holes" and were located in positions to observe either crossing areas of the Rio Grande or access routes to the crossing areas. The holes were 4-6 miles apart along a 20-mile stretch of the river. (Encl (130))
- 257. On 12 May 97, the daily situation report documented coordination with the USBP regarding land use agreements and exact LP/OP locations. (Encl (126))

MISSION JT414-97A

Deployment of Elements of HQBtry, 5/11

- 258. On 12 May 97, the HQBtry main body left Camp Pendleton for Texas and on 14 May 97 the mission was deemed operational at Marfa, Texas. (Encl (30)).
- 259. The mission personnel were organized into a headquarters and support element and eight LP/OP teams. The headquarters and support element

- contained three officers and 21 enlisted persons. Combined with the 32 Marines assigned to the observation teams, HQBtry had a total of 56 mission participants. (Encls (30), (151))
- 260 During the period of preparation and execution for Mission JT414-97A, HQBtry, 5/11 had an on board strength of approximately 150 Marines. The 56 mission participants were volunteers selected from the diverse work sections of the battery. (Encls (30), (148), (151))
- 261. At the time the Marines of 5/11 deployed for Mission JT414-97A, Capt McDaniel had conducted three days of dedicated training for the mission. (Encl (30))
- 262. At the time of deployment Capt McDaniel believed the mission personnel were trained to an adequate, but not ideal level. He advised LtCol Montgomery that he was confident in accomplishing the mission. (Encl (30), (41)).
- 263. LtCol Montgomery believed that, in spite of scheduling conflicts and the personnel problems within the battalion, the JTF mission was adequately staffed, trained and resourced to perform the mission. He "felt confident that Capt McDaniel would step forward and say 'We're not going to be able to do this' unless he believed that we had trained well enough . . . to accomplish the mission." (Encl (41))
- 264. As the planned response to contact between Marine teams and civilians, Capt McDaniel directed the team leaders to make the immediate force protection decisions and then call the TOC for further instructions. (Encl (30))
- 265. Capt McDaniel did not plan, nor rehearse, any specific actions for use by the LP/OP teams if contact with civilians required the Marines to break contact, abort, execute an emergency extraction, or escape. Capt McDaniel also did not rehearse with the USBP any actions to be taken if an emergency response to an LP/OP was required. Capt McDaniel stated he was too busy with other elements of the mission to conduct any field training for mission personnel while at Marfa. (Encls (30), (31), (37))
- 266. Cpl Torrez, LCpl Wieler and LCpl Blood do not recall any individual team training done at Marfa prior to the insertion of Team 7 into LP/OP#3 on 17 May 97. (Encls (21), (29))
- 267. SSgt Macias stated that his team did no training at Marfa prior to insertion although they could have had he chosen to conduct training. He does not know what training, if any, Cpl Banuelos did with his team prior to their insertion. (Encl

(37)

- 268. On 13 May 97, the daily situation report documented the set up of the Forward TOC, team leader reconnaissance of the positions, and a mission preparation brief on the ROE. (Encl (126))
- 269. During the morning of 13 May 97, Capt McDaniel took the two team leaders for LP/OP #3, SSgt Macias and Cpl Banuelos, to the actual position of LP/OP #3, which was located south of Redford, Texas overlooking the Polvo Crossing area of the Rio Grande River. During this leaders' reconnaissance he oriented them to the area and they walked the ground in and out of the hide site and then the route out from the LP/OP to the insert/extract point on the paved road of Texas State Highway 170. (Encls (30), (37))
- 270. SSgt Macias recalls visiting the location of the LP/OP prior to his team being inserted. He did so in the company of Capt McDaniel, GySgt Fitzgerald, and Cpl Banuelos. He is certain that he and Cpl Banuelos were not told about any families living over the hill from the LP/OP site in the vicinity of Polvo Crossing. He knows that they were told by Capt McDaniel that they should not go forward from the LP/OP site to the old fort area. (Encl (37))
- 271. On the occasion of this visit, he and Cpl Banuelos went down into the hide site where they found an empty box that would have contained .22 caliber bullets. They speculated whether it belonged to recreational shooters or drug smugglers. (Encl (37))
- 272. Neither Cpl Torrez nor LCpl Wieler recall Cpl Banuelos going on a reconnaissance with Capt McDaniel and SSgt Macias to look at the LP/OP site. Nor do they recall receiving any report from any of them about the site. (Encl (15))
- 273. On 13 May 97, CPT Spencer conduced an ROE class with HQBtry personnel to ensure understanding of the ROE prior to commencement of the mission. (Encls (30), (60))
- 274. CPT Spencer recalled that he "conducted a mission brief with the unit, at tent city, near Marfa. Intel oversight and Executive Order 12333 were discussed to ensure all Marines knew who they were working for (Capt McDaniel) . . . We went over a number of situational scenarios and asked the Marines at random to describe appropriate actions based on the rules of engagement, Intel oversight and Executive Order. The instruction lasted about two hours. We covered safety issues, communication issues, public affairs issues, etc." (Encls (30), (60))
- 275. CPT Spencer recalled telling the Marines that "the scenarios we cover are

- extreme and that the chances of them having an armed encounter with anyone are relatively low. Out of 700 or 800 separate missions, we have only had a couple of hostile incidents." (Encl (60))
- 276. LCpl Blood recalled attending this class and believes the ROE lecture lasted a little over an hour. It repeated much of what Capt Gante covered but it used more teaching scenarios. LCpl Blood did not recall any scenarios used by either Capt Gante or CPT Spencer that resembled what happened to Team 7 on 20 May 97. (Encl (21))
- 277. Cpl Torrez also recalled a class being taught in Texas by an officer on the ROE again. In terms of an intelligence briefing, Cpl Torrez recalled only some discussion of "spiders, and ants and snakes and the brush, stuff like that" although he did recall "they were talking about two brothers . . . that were bad guys, that were drug dealers in the area." Cpl Torrez heard nothing to cause him to believe he would be in any personal danger during the mission. (Encl (29))
- 278. LCpl Wieler also recalled the ROE class but remembered little about it. He too did not hear anything that caused him to believe that he might be in any personal danger although he did recall that there was at least the suggestion that somebody might pose a danger to his safety on the mission. (Encl (29))
- 279. LCpl Wieler did remember that their "hole" was considered a "high risk" hole, which he understood it to be because it was near "a Class B entry . . . (with) a lot of traffic, foot, vehicle, horseback." LCpl Wieler recalled that they were simply told to look for people on horseback, in vehicles, or walking across the Rio Grande. (Encl (29))
- 280. On 14 May 97, Teams 1 through 4 were inserted into the correspondingly numbered LP/OPs. They were equipped to operate for 72 hours until 17 May 97 when they would be replaced by Teams 5 through 8. (Encl (30))
- 281. The teams were to man the LP/OPs and observe designated areas of the border during hours of darkness. During the daylight hours, the teams were to remain concealed in a "hide site," a position of cover and concealment near their LP/OP position. (Encls (30))
- 282. The teams were required to provide SALUTE (Size, Activity, Location, Unit, Time, Equipment) reports on a daily basis to the TOC. These were used by Capt McDaniel to provide his own daily situation reports to JTF-6. (Encl (30))
- 283. On 15 May 97, the daily situation report documented the initial insertion of teams and reported one call for a USBP response. The report indicates a

20-minute response time. (Encl (126))

284. On 16 May 97, the daily situation report documented two separate vehicle crossings of the border observed by LP/OP #3. The USBP did not respond. At LP/OP#4, a border crossing of seven people was reported. The USBP responded in 10 minutes. (Encl (126)

285. On 17 May 97, the daily situation report documented the compromise of LP/OP # 1 by a low-flying aircraft that observed the position. Two vehicle crossings were also reported at LP/OP #3. The USBP responded in one case in 10 minutes. They did not respond to the other crossing. (Encl (126))

286. SSgt Macias said he had only two occasions to call the USBP on the SABER radio. In neither case was he able to contact them on the radio. He has no basis to gauge their responsiveness to calls for assistance. He believed they were expected to respond within 30 minutes but cannot be certain. (Encl (37))

287. SSgt Macias observed that even his military communications were not good while he was at Hole 3. He had to transmit to the TOC by calling to an adjacent hole - he cannot recall the number but it was manned by Sgt Rose - which in turn would radio the Forward TOC, which in turn would relay the transmission to the TOC. (Encl (37))

288. In response to what his orders were should he and his team be compromised, SSgt Macias said they were to avoid being seen but, if seen, to identify themselves as Marines on a training mission and to ask the civilians to leave the area. He was always to call the

TOC if anything out of the ordinary occurred. He specifically recalled that Capt McDaniel briefed him on this the morning of the day he was inserted and Capt McDaniel had Cpl Banuelos present for the brief as well. He also recalled that Cpl Banuelos rode down to the insertion point that evening with SSgt Macias and his team. (Encl (37))

289. SSgt Macias stated that it was his practice to move up to the LP/OP around 2100-2200 when it was the darkest. He would return to the hide site around 0630. Further, to ensure they could avoid detection, he planned the turnover with Cpl Banuelos and his team to occur in the hide site. This was done and he had all of his gear down in the hide site for Cpl Banuelos. (Enel (37))

290. SSgt Macias recalled that Mexican cowboys usually brought cows to the river to water around 0900 and 1500. They would be right in the center of the river

- some 25 yards from the hide site. The team also had goats come to their hide site followed by a dog. He never saw any person with the goats. (Encl (37))
- 291. SSgt Macias said that one difference between the way he and Cpl Banuelos conducted the LP/OP mission is that he didn't believe it feasible to take the entire team up to the LP/OP each night. He manned the site with himself and one other Marine. Cpl Banuelos indicated that he was going to take all of his team members up each night. SSgt Macias said that he made it clear to Cpl Banuelos that when he returned with his team to replace Banuelos' team that their turnover should occur in the hide site. (Encl (37))
- 292. On 17 May 97, at approximately 2130, Team 7 departed Marfa for insertion into LP/OP #3. (Encls (30))
- 293. Team 7 was driven to its insertion point just off Texas State Highway 170 (east of the Polvo Crossing area). The team exited the vehicle and was to proceed approximately 700 meters at a 278 degrees magnetic azimuth until reaching its LP/OP on a small bluff to the south of the Polvo Crossing area of the Rio Grande River. (Encl (30))
- 294. LCpl Wieler indicated that Cpl Banuelos was familiar with the terrain from the hard surface road where they were dropped off for the evening insert. He does not recall him having to use a compass to get to the LP/OP site. (Encl (28))
- 295. The insertion was uneventful except that Cpl Banuelos lost an M- 16 magazine with ammunition that GySgt Martinez found the next day between the hole and the insertion point. (Encls (15), (30))
- 296. Cpl Torrez stated that the only thing he recalled from the turnover done with SSgt Macias' team was their saying to watch out for the goats who would come into their hide site. (Encl (15))
- 297. SSgt Macias experienced dehydration on the evening of the turnover with Cpl Banuelos. He stated that although he felt a little dizzy he finished the turnover interview with Cpl Banuelos. (Encl (37))
- 298. On 18 May 97, the daily situation report documented changeover of the teams on the preceding evening and continued high activity at the Polvo Crossing being observed by LP/OP #3. Two USBP responses were recorded each with 15 minute response times. (Encl (126))
- 299. On 19 May 97, the daily situation report documented continued high activity at Polvo Crossing and mentions that it is a "Class B" crossing. One USBP

response was recorded with a 15-minute response time. (Encl (126))

- 300. LCpl Blood stated that Team 7 had no initial knowledge that Polvo Crossing was a "Class B" crossing. They learned this on the second day after they had previously reported crossings on some five or six occasions and the USBP responded only "a couple of times." This was a matter of some concern to him and Cpl Torrez who both felt "if they don't care, why do we need to be out here?" (Encl (21))
- 301. LCpl Wieler was able to recall only three occasions prior to the subject incident when the team called for USBP assistance. He stated that only on one occasion did they respond and then it took them some 30 minutes. He cannot recall what incidents may have led to calling the USBP. (Encl (28))
- 302. Cpl Torrez observed that it was pretty much a daily occurrence to observe lots of people on horses and lots of dogs. (Encl (15))
- 303. Cpl Torrez noted that the Border Patrol did not show up each time they were called and that this was the subject of some griping among the team members. (Encl (15))
- 304. Cpl Torrez recalled an occasion when "we (the whole team) went to the old fort . . . through the ravines . . . to recon the area." He denied going past or to the rear of the old fort and cannot recall on what day this was done or what time of day except that it was done before they returned to their hide site in the morning hours. LCpl Blood also recalled that "the team went forward during early sunrise hours" to explore the area where they were later to see the goat herder. They did this to see if it might be a better location for their LP/OP. "They did not go over the crest of the hill." They did see the dirt road or a trail and they went as far as the old fort. There was also a time when they saw the border patrol drive down to that location in response to one of their calls. (Encls (15), (21))
- 305. On the day they went to the fort, Cpl Torrez recalls that they also went looking for the lost magazine of ammunition. He said that they basically retraced their insertion route back to a point where they were pretty close to the hard surface road and could see it from where they stopped. (Encl (15))
- 306. LCpl Wieler does not recall being a party to a reconnaissance visit to the old fort or being part of a group searching for a lost rifle magazine. (Encl (28))
- 307. On the second day the team was in the hide site, Cpl Torrez remembers that a lot of goats came into their area. The goats were accompanied by a dog but no human being. (Encl (15))

- 308. LCpl Wieler had observed goats in the day or two before in incident when they came through the hide site. He does not recall them being accompanied by a dog or any human. (Encl (28))
- 309. On 20 May 97, the daily situation report noted that LP/OP #1 had been compromised by known drug traffickers in the company of a Presidio County Sheriff's Deputy. Four USBP responses were recorded with 15-minute response times to unidentified LP/OPs. (Encl (126))
- 310. On 20 May 97, Mario Vargas was the Patrol Agent In Charge (Acting) (PAIC(A)) of the USBP Station in Presidio, Texas, which is responsible for a patrolling district that includes Redford. PAIC(A) Vargas had been the shift supervisor at the Presidio Station from 0700 to 1500 on 20 May 97 before being replaced by Senior Patrol Agent (Acting) (SPA(A)) Jerry Succa as the supervisor for the shift beginning at 1500. (Encl (79))
- 311. Vargas assumed the position of PAIC(A) on 11 Apr 97 after the transfer of McCutchen, the prior PAIC of the Presidio Station. McCutchen transferred to the USBP station at Uvalde, Texas on 11 Apr 97. (Encls (66), (72))
- 312. Prior to his transfer, PAIC McCutchen had been the principal Presidio Station USBP point of contact for the coordination of Mission JT414-97A. PAIC McCutchen does not believe he attended the JTF-6 IPC for Mission JT414-97A. He has very little recall of the mission. (Encls (72), (79))
- 313. PAIC(A) Vargas understood that he was to provide a 15-minute response to the Marines only during the hours of darkness between sunset and sunrise. His understanding was that the Marine teams would normally move to their LP/OPs just prior to darkness. (Encl (79))
- 314. On 20 May 97, Ending Evening Nautical Twilight (EENT) was 2043. (Encl (212))
- 315. PAIC(A) Vargas did not believe the 15-minute response time applied to emergency assistance to the Marines in their positions. Rather he believed the 15-minute requirement was for a response to the general vicinity of the area being observed by the Marines for the purpose of dealing with activity reported by the teams during the hours of darkness. (Encls (79), (80), (250))
- 316. At the end of his shift, PAIC(A) Vargas told SPA(A) Succa, as the oncoming shift supervisor, to place Agent Kramer in a unit down river from Hole #4. SPA(A) Succa does not recall PAIC(A) Vargas telling him this. PAIC(A) Vargas said that

- Agent Kramer would have been in that position "pulled off on the side of the road and monitoring the radio" at approximately 2000 hours. PAIC(A) Vargas also indicated that, in such a position, Agent Kramer would have been approximately 5 to 6 miles from Hole #3. (Encls (79), (250))
- 317. SPA (A) Succa indicated he had no knowledge of any type of a 15-minute response time by Border Patrol personnel. He did understand that Agent Kramer had been assigned by PAIC(A) Vargas to patrol the Redford area during the evening shift. (Encl (77))
- 318. Agent Kramer has no recollection of having been briefed on any response time of 15 minutes. He does recall being told that, during the mission, "he should be in the Redford area and ready to respond as quickly as possible. He does not recall being told his response location . . . (but) understood that shortly after 2000 when he came on duty, he would travel to a hilltop east of LP/OP#4 where there was good communication and he was near the highway. He would then await calls from the LP/OPs or roam the area nearby." (Encl (70))
- 319. On 20 May 97, Esequiel Hernandez, Jr. arrived home from school at about 4:00 p.m. His home was in the immediate vicinity of the U.S. side of the Polvo Crossing. He studied his driver's education handbook and helped his father unload some hay before taking his goats out. (Encls (198), (199))
- 320. Hernandez carried a loaded .22 rifle with him while he was herding his goats. His father said he did this because he was concerned with dogs attacking the goats. (Encls (198), (199))
- 321. Esequiel Hernandez, Sr. stated that his son "was right handed and would shoot a rifle by placing it against his right shoulder and pulling the trigger with the finger on his right hand." (Encl (199)
- 322. On 20 May 97, Agent Kramer arrived at the USBP Presidio Station at about 1800 to start his normal tour of duty. (Encl (70))

Shooting Incident Chronology

- 323. On 20 May 97, at approximately 1800, Team 7 left its hide site to move up a hill to their LP/OP approximately 40 meters to the north-west. (Encls (5), (6), (7), (8), (11), (12), (13), (14), (15), (17), (18), (19), (20), (23), (25), (26), (28))
- 324. LCpl Wieler described a practice of going to the LP/OP from their hide site about a half hour to an hour before darkness. This was due to the steep incline from the hide site to the LP/OP site. (Encl (28))

- 325. Cpl Torrez said the team went to their LP/OP site earlier than usual on the evening of May 20, 1997 "because we had a lot of gear to take . . . because were being extracted the next morning." (Encl (15))
- 326. Although it was Capt McDaniel's intent communicated to the team leaders during their pre-mission brief that all movement would occur during the hours of darkness, he did not prohibit the teams from moving during daylight hours. (Encl (30))
- 327. Both Cpl Torrez and LCpl Wieler recall that they were told their LP/OP would be manned at night time but neither recall being told anything about movement during daylight hours. (Encl (29))
- 328. Capt McDaniel was aware that Cpl Banuelos and his team had on occasion moved to the LP/OP prior to 2100. Had Capt McDaniel known the team was moving as early as 1800 "it would have been a cause of concern" for him. (Encl (30))
- 329. As Team 7 moved from its hide site to the LP/OP, they carried two empty, plastic, five gallon water jugs with them, a SINGARS radio and the SABER radio. (Encl(21))
- 330. Team 7 wore guille suits, carried their M-16A2 rifles and had the remnants of camouflage paint on their faces. The members of the team made their own guille suits by sewing burlap strips to their camouflage uniforms. Cpl Torrez' guille suit was made so that only the back was covered with "brownish- yellow rope on it, green burlap sack." The front was just the normal green utilities. (Encls (21), (28), (236))
- 331. Cpl Torrez indicated that there was no normal formation they followed but on that evening he was the first Marine in file coming up from the hide site. LCpl Blood was to his left rear, closest to the river, and Cpl Banuelos was "pretty far off to my right side kind of behind me a little bit." He remembered the weather as overcast at the time and the "wind seemed like it just started right then as soon as we got up to the LP/OP." (Encl (15))
- 332. Because it was daylight they were moving in a "hunched over" posture when they spotted a lone horseman on the Mexico side of the Rio Grande river heading north. (Encls (7), (21))
- 333. Cpl Torrez said that he observed a brown horse on the other side of the river. Although there was nothing unusual about this sighting by this time in their experience, they went into a halt. (Encl (15))

- 334. Cpl Banuelos put the team into a security halt, and the Marines assumed a kneeling position. (Encls (15), (28))
- 335. At this time, LCpl Wieler was attempting to set up the VHF communications antenna for the SINGARS radio. (Encls (19), (28))
- 336. Cpl Banuelos had the SABER radio and, as soon as the need to communicate with the TOC and USBP became apparent, this became the primary communications method for the rest of the incident. All radio communications between USBP personnel and the Marines of Team 7 that evening occurred on the SABER radio frequency. (Encls (25), (28), (32))
- 337. At approximately the same time Team 7 saw the horseman, LCpl Blood observed goats accompanied by a man with a rifle. He called this to the attention of the other Marines. (Encl (21))
- 338. The next thing Cpl Torrez can remember is that "Cpl Banuelos said he had a visual on a person in front of us." Shortly after that LCpl Blood said that it "looks like he has a weapon." Cpl Torrez confirmed this for himself and let Cpl Banuelos know. (Encl (15))
- 339. At 1805:38, Cpl Banuelos radioed to the Tactical Operation Center (TOC), in Marfa, Texas. He said, "We are at the OP. We have an armed individual, about 200 meters from us. He's in front of the old fort, he's heading towards us. He's armed with a rifle, appears to be in uh . . . herding some goats or something." (Encls (116), (117))
- 340. Although Team 7 had observed goats in that area on the previous two days of their observation period, this was the first time they saw a man accompany the goats. (Encl (15))
- 341. At 1805:57, Lance Corporal James M. Steen, the radio operator at the TOC told Cpl Banuelos, "You should remain in your position um . . . and try not to . . . seen but you should know what to do." At the time of his radio transmission, LCpl Steen was accompanied in the TOC by the Watch Officer, 2ndLt Diaz. (Encls (32), (40), (116), (117))
- 342. The armed individual, Mr. Esequiel Hernandez, Jr., fired two shots from his 22. caliber rifle at the immediate location of Team 7 from a distance of approximately 185 meters (Encls (8), (11), (12), (13), (14), (23), (24), (26))
- 343. As Cpl Torrez observed it "seemed like he had a visual on us. The five gallon water jug was sitting like right between us two, myself and Lance Corporal Blood."

He described the jug as "turned sideways in front of us." (Encl (28))

- 344. Cpl Torrez recalled Mr. Hernandez raising the rifle up into a left-hand offhand firing position and then firing in their direction. When the round passed by he "stayed there for a second. The second round we heard go by, we got down in the prone position." He estimated the interval between the rounds as being "a few seconds." (Encl (28))
- 345. LCpl Wieler remembered hearing two shots which sounded like a whistle. At the time of the first shot he was in a kneeling position. He went to a prone position and then was told by Cpl Banuelos to "lock and load" (put a round in the firing chamber of their M-16's). He recalled coming up from the prone position to the kneeling position and then hearing a second shot. (Encls (7), (8), (23), (25), (28))
- 346. LCpl Blood heard only one round which he described as a "cracking sound to his right." He assumed it was a .22 caliber or other small caliber round. He is "90 percent certain" that Hernandez raised the rifle and fired it left handed. Cpl Banuelos also heard only one round fired. (Encls (7), (8), (21))
- 347. At 1807:05, Cpl. Banuelos reported, "We're taking fire." (Encls (116), (117))
- 348. Cpl Banuelos immediately put the team into the prone position and ordered them to

"lock and load" and said "if they saw the man raise the rifle again, to shoot him." (Encls

(7), (8))

- 349. The Marine Battle Skills Training Handbook, Book 2, describes how a Marine should react to enemy direct small arms fire with the following Performance Steps:
 - " 1. React to the direct fire of enemy small arms;
 - a. Seek a covered and concealed position . . .
 - b. Stay low and move utilizing the appropriate form of individual movement, taking maximum advantage of available cover. . .
 - Maneuver to a better vantage point to deliver more effective fire upon the enemy;
 - 2. Return fire;

- a. Locate targets, engaging known or suspected targets;
- b. Return a high volume of accurate fire, and attempt to suppress enemy fire;
- c. Restore security from ground attack;
- 3. Respond to unit leader;
- a. Report the contact; wait for and/or follow instructions;
- b. Continue the advance, as directed." (Encl (235))
- 350. The Marine Battle Skills Training Handbook, Book 3, describes how a Marine, acting as a patrol leader, is to direct his patrol when unexpected contact is made with enemy forces:
 - "1. Conduct an immediate halt drill;
 - a. Give the silent signal for FREEZE;
 - b. Immediately halt in place with weapons at the ready; remain absolutely motionless and quiet.
 - c. Determine your course of action.
 - (1) Engage the enemy.
 - Conduct an immediate assault or hasty ambush.
 - (2) Avoid contact.
 - (a) Keep weapons at the ready.
 - (b) Observe the enemy until out of sight.

IF	THEN
The enemy detects the patrol	Engage by fire and maneuver, or
	Conduct an immediate assault, or

	Break contact.
The enemy does not detect the patrol.	Do Not engage the enemy

- d. Submit a SALUTE report on the enemy. e. continue the mission.
- 2. Conduct an immediate assault drill . . .
- 3. Conduct a hasty ambush . . .
- 4. Conduct drills for breaking contact . . .
- 5. Conduct counter ambush drills;
- a. Determine your course of action.

IF CAUGHT IN A	THEN
Far Ambush NOTE: Beyond 50 meters of the patrol	Direct those in the killing zone to return fire and take the best available positions.
	Direct the men not in the killing zone to maneuver against the ambush force.
	Continue the assault to either eliminate the enemy or break contact

- b. Establish a hasty security position.
- c. Account for all personnel.

- d. Move the patrol rapidly out of the area.
- e. Submit a SALUTE report and continue the mission." (Encl (235))
- 351. The Marine Corps School of Infantry instructional material for training in security patrols includes the statement: "Once contact is initiated, those elements of the patrol in contact return fire and patrol members take cover and get on line. Once the patrol is on line, subsequent actions will depend on the PL's (Patrol Leader's) estimate of the situation." (Encls (176), (177))
- 352. These tactical procedures are also taught as the Marine Corps doctrine response to fire at Marine Corps Recruit Training. (Encl (178))
- 353. After Cpl Banuelos reported that the team was receiving fire, Capt McDaniel, who was located in a gym at the Marfa USBP compound, was informed of the situation. The gym was located approximately 100 feet from the TOC. Capt McDaniel immediately proceeded to the TOC and arrived at approximately 1809. (Encls (30), (31), (127))
- 354. Upon arriving at the TOC, Captain McDaniel was briefed on the situation by the watch officer and remained in the TOC throughout the incident. All the key mission personnel responded to the TOC, and they discussed what actions were authorized under the ROE. (Encls (30), (31), (32))
- 355. Capt McDaniel's concern was for the protection of his team. He felt that by listening and supervising the radio traffic he was best able to track what was happening and monitor the USBP response. (Encl (30))
- 356. Although Capt McDaniel was very familiar with the terrain at Hole #3, he did not feel that he had sufficient situational awareness to radio instructions to Team 7 and direct its tactical movement. (Encl (30))
- 357. "Emerging Marine Corps doctrine '[C]alls for mission command and control . . [which] leave[s] subordinates as free as possible to choose the manner of accomplishment." It ensures that "Subordinates do not have to . . . wait for instructions to be passed down, they act on their own initiative . . . [It] rests on mutual trust throughout the organization, as well as a sense of implicit understanding and communication." (Encls (232), (234), (243))
- 358. Moments after Mr. Hernandez fired upon the Marines, he began to move in a northeasterly direction from left to right as viewed from Team 7's position. (Encls (8), (107), (109) (110), (112), (130))
- 359. Cpl Torrez indicated that he could continue to watch Mr. Hernandez from his

- prone position and he described him as "bobbing and weaving" with his rifle in the alert position that is with his hand in the trigger housing group and the barrel slightly lowered "alert to the dirt." (Encl (15))
- 360. LCpl Blood went immediately to a prone firing position and kept Hernandez in his sights continuously as he moved from left to right in his field of vision. The other Marines had moved off to LCpl Blood's right toward higher ground. (Encl (21))
- 361. At 1807:12, the USBP Marfa Sector Headquarters radio dispatcher (Marfa dispatcher), Ms Frances Razo, notified any Presidio area USBP personnel to contact her by announcing "904 unit . . . 904 unit." This is a standard transmission used when she needs agents to radio her. (Encls (74), (116), (117))
- 362. At 1807:16, SPA(A) Succa of the USBP Presidio Station responded by asking "900 is somebody taking fire? Over." (Encls (116), (117))
- 363. At 1807:33, the Marfa dispatcher told SPA(A) Succa, "Just be advised that position three. 513 advises, that, they're taking fire from a man with a rifle at position three." (Encls (116), (117))
- 364. At that time, the Marfa dispatcher did not know the location of Hole #3 and Team 7. (Encl (74))
- 365. At 1808:21, the Marfa dispatcher advised USBP units to "please assist position three." (Encls (116), (117))
- 366. When Team 7 reported taking fire, USBP Agent Johnny Urias and his partner, Agent Rodolfo (Rudy) Martinez, Jr., of the USBP Presidio Station, were on duty in a vehicle located approximately 16 miles away from Polvo Crossing. Agents Urias and Martinez were in the process of picking up undocumented illegal aliens by the Rio Grande River. (Encl (78))
- 367. Agents Urias and Martinez did not respond directly to the Polvo Crossing area upon hearing Team 7 report it had received rifle fire. Instead, they proceeded to the USBP Presidio Station to secure the aliens and check out rifles and protective vests. (Encl (78))
- 368. When Team 7 reported taking fire, Border Patrol Agent Stanley Myers was "pulling and dragging the river." This practice consists of dragging tires behind a truck near the bank of the Rio Grande river to make the ground smooth so as to disclose footprints of people illegally crossing the U.S. and Mexico border. (Encl (73))

- 369. Agent Myers called SPA(A) Succa at the Presidio Station to report that he was returning to the station. (Encl (73))
- 370. Agent Myers proceeded to the USBP Presidio Station to check out an M-16 rifle and a protective vest. (Encl (73))
- 371. At 1809:18, Cpl Banuelos told the TOC, "We got an individual spotted at the old fort, going into the rear . . . of the building." (Encls (116), (117))
- 372. After the shots were fired, Cpl Banuelos was "in a depression and could not see the man." However, "Corporal Torrez and Lance Corporal Blood could still see the subject." He then "told Lance Corporal Wieler to move right, up the small berm" and he followed him at which point "The man with the rifle came into view. The man was moving towards the 'old fort' . . . still looking towards Corporal Torrez and Lance Corporal Blood's location." (Encl (7))
- 373. At 1809:43, LCpl Steen asked Team 7, "Are you still taking fire?" (Encls (116), (117))
- 374. At 1810:02, Cpl Banuelos stated, "We're gonna pull back to ahh . . . tactical position to try to come to ahh . . . from our . . . right flank. You gotta bead? Right now he's stationary, but he . . . he kind of knows the general vicinity where two of my men are. He doesn't have a visual on me." (Encls (116), (117))
- 375. The JTF-6 investigation of the shooting determined that the authorized non-force defensive measures available to Corporal Banuelos at the time for his consideration were: (1) egress; the terrain along the Rio Grand offered substantial cover and concealment should they choose to withdraw; (2) verbal identification and warning; (3) remain in place and assume a defensive position; (4) maneuver the team approximately 30 meters to the nearest high ground to the north, obtain visual contact with Mr. Hernandez, and assume a defensive position until law enforcement arrived; and (5) move along with Mr. Hernandez to ensure visual contact and prevent any possibility of his flanking the team. (Encl (213))
- 376. The high ground was composed of a gravel and rock surface. It was sparsely covered with creisote bushes approximately 3 feet in height and, other than assuming a prone position on the reverse slope, offered some concealment but limited natural cover. (Encls (106), (108), (110), (213))
- 377. From the high ground, the team had visual contact with Mr. Hernandez, who continued to move away from the team. (Encl (13))
- 378. Cpl Torrez described Mr. Hernandez's movements as being "bobbing and

- weaving" "like when you look at something in the distance, you stand on your tippy-toes and try to move your head around to see." After firing he began to move "pretty slow at first, bobbing and weaving, just looking, normal pace." (Encl (15))
- 379. At 1810:28, LCpl Steen asked Team 7, "What . . . what side of the river is he on?" Cpl Banuelos responded, "U.S. side. Next to the old fort. He's right at the old fort." (Encls (74), (116), (117))
- 380. When Mr. Hernandez was to the right of the old fort, Cpl Torrez recalled seeing the goats and seeing "the back few of them going down into the ravine." (Encl (15))
- 381. At 1811: 19, Cpl Banuelos radioed the TOC, saying "As soon as he readies that rifle back down range, we are taking him." (Encls (116), (117))
- 382. At 1811:24, LCpl Steen, acknowledged and confirmed, by saying "Roger, fire back." Encls (30), (32), (116), (117))
- 383. Capt McDaniel and other supervisory personnel in the TOC immediately felt LCpl Steen's authorization to "fire back" was incorrect, but no immediate correction was issued. (Encls (30), (31), (32), (40))
- 384. LCpl Steen's response also created concern within the TOC regarding whether or not he should continue monitoring the radio, and Sgt Dewbre assumed the duties as radio operator. (Encls (30), (32), (34), (35), (40))
- 385. At 1811:54, Agent Urias began radio communication regarding a Border Patrol response to the shooting scene. (Encls (116), (117))
- 386. At 1812: 26, Agent Urias requested that the Border Patrol Marfa dispatcher notify the Presidio County Sheriff's Office and other local law enforcement agencies in the Presidio area to proceed to Redford to assist with the developing situation. (Encls (116), (117))
- 387. At 1812:53, Agent Urias confirmed for the Marfa Dispatcher that Team 7's position was located in Redford. (Encls (116), (117))
- 388. At 1813:14, Cpl Banuelos stated, "I have a visual on the suspect, in front of the church. There's a brown building facing us. He's standing in front of it, he's got the rifle out." (Encls (116), 117))
- 389. When Cpl Banuelos reported Mr. Hernandez as standing in front of the old brown building, Mr. Hernandez had moved approximately 75-80 meters from the position where he initially fired his rifle. Slightly more than 6 minutes had elapsed

- as Mr. Hernandez covered that distance. (Encls (107), (109), (112), (116), (117), (246), (247))
- 390. Cpl Torrez moved forward to a better defensive position for himself and lost sight of Mr. Hernandez. He remembered LCpl Blood also moving with him and remaining to his left rear. He also recalled Cpl Banuelos as being off to his right on about the same line. (Encl (15))
- 391. Officer Gilbert Spencer of the Permian Basin Drug Task Force was working interdiction duties in the southern region of Presidio County when he heard radio communications from the USBP Marfa Sector dispatcher requesting officer assistance in response to shots fired in the Redford area. (Encls (98), (102))
- 392. At 1813:22, Officer Spencer began radio communications with the USBP as he proceeded en route to the shooting scene. (Encls (102), (116), (117))
- 393. At 1814:25, Sgt Dewbre told Cpl Banuelos, "Just give us an update." (Encls (116), (117))
- 394. At 1814:42, Cpl Banuelos answered, "We have a visual he's kind of moving there at the building, we're not really sure, exactly where he's at right now. He's hiding, he's ducking down." (Encls (116), (117))
- 395. Sgt Dewbre immediately acknowledged Cpl Banuelos' transmission. (Encls (116),

(117))

- 396. At 1814:42, Cpl Banuelos reported, "He knows we're out here, he's looking for us." (Encls (116), (117))
- 397. Deputy Sergeant Oscar Gallegos of the Presidio County Sheriff's Department received a call from dispatch at approximately 1815 reporting shots fired in the Redford area. At the time, he was approximately 17 miles from the Polvo Crossing area. (Encls (97), (103)
- 398. Deputy Gallegos responded to the call and proceeded towards the Polvo Crossing area of the Rio Grande River. (Encls (97), (103))
- 399. While en route, Deputy Gallegos advised Officer Spencer that he was approximately five (5) minutes behind Officer Spencer. (Encl (102))
- 400. At approximately 1815, SPA(A) Succa informed the Border Patrol Marfa

- dispatcher that he and Agent Myers would be responding to the scene as back up. (Encl (83))
- 401. At approximately the same time, Agents Urias and Martinez arrived at the Presidio Border Patrol station with four illegal aliens. (Encl (77))
- 402. At 1815:13, Sgt Dewbre told Cpl Banuelos, "You're to follow the ROE." (Encls (116), (117))
- 403. Nearly four minutes elapsed between LCpl Steen's authorization for the Marines to "fire back," and Sgt Dewbre's transmission directing the team to follow the ROE. (Encls (116), (117))
- 404. The personnel in the TOC were uncertain whether Team 7 received Sgt Dewbre's transmission directing the team to follow the ROE. Team 7 did not acknowledge receipt of the transmission. (Encls (30), (36), (116), (117))
- 405. The TOC personnel did not retransmit any additional instructions directing Team 7 to follow the ROE. (Encls (116), (117))
- 406. At 1815:13, Marfa Dispatcher advised Agent Urias that Deputy Gallegos and Officer Spencer were en route to the scene. (Encls (116), (117))
- 407. At 1816:19, Officer Spencer advised Agent Urias that he had switched to their frequency. (Encls (116), (117))
- 408. At 1816: 47, Agent Urias told Officer Spencer, "... we're ahh ... left the office, we're 10-13 (proceeding), towards Redford." (Encls (116), (117))
- 409. At approximately 1817:15, Agent Urias told Of ficer Spencer, "Be advised that the only information that we have at this time is ahh . . . position #3 . . . has ahh . . . been compromised at . . . There's been shots fired, we're en route right now." (Encls (116), (117))
- 410. At 1817:57, Officer Spencer advised that the frequency he was on was the Chinati Repeater. (Encls (116), (117))
- 411. The Chinati radio repeater is a communication antenna device that picks up a radio transmission and rebroadcasts it on the same frequency at a higher power, enabling the transmission to be picked up by receivers at a further distance. (Encl (74))
- 412. Officer Spencer and Deputy Gallegos were unable to monitor the communication between the USBP and the Team 7 Marines as they proceeded to

- the Polvo Crossing area. (Encls (97), (98), (102))
- 413. Agents Urias and Martinez departed the USBP Presidio Station together in a vehicle. (Encls (77), (78), (117))
- 414. SPA(A) Succa and Agent Myers departed the USBP Presidio Station in a different vehicle at the same time as Agents Urias and Martinez. (Encls (77), (78), (250))
- 415. The emergency lights and sirens for both vehicles were used as the agents drove toward Redford. (Encls (77), (116), (117))
- 416. At 1819:13, Agent Urias informed Cpl Banuelos, "513 this is 420 ahh . . . we're currently en route to the Redford area. You're gonna have to advise us, on what position you're at, we're not familiar with the five holes, ahh . . . with Hole number 3. We're turning around though." (Encls (116), (117))
- 417. At 1819:37, Cpl Banuelos advised Agent Urias that the Team was at the Polvo Crossing, and Agent Urias acknowledged that he knew the location. (Encls (116), (117))
- 418. At 1819:54, Cpl Banuelos stated, "We're at the . . . you'll probably see an old fort, burned out church and a couple of buildings, that individual at the . . . looks like ahh . . . it used to be a house or something . . . the guy is right out, right out in front of the house. He's looking for us." (Encls (116), (117))
- 419. When Cpl Banuelos reported Mr. Hernandez as standing in front of the house, Mr. Hernandez had moved approximately 50 meters from his last reported position in front of the old brown building. The elapsed time was some 5 minutes and 12 seconds. (Encls (116), (117), (246))
- 420. At 1820:05, Agent Urias requested confirmation of Mr. Hernandez being armed. (Encls (116), (117))
- 421. At 1820:19, Cpl. Banuelos stated, "He's armed with a rifle, a 22." (Encls (116), (117))
- 422. Cpl Banuelos motioned Cpl Torrez to come to his position. Cpl Torrez moved to him stopping about five meters away. Banuelos told him to get Blood and come back to that position. This was done and the three of them took positions about 3-4 feet apart from each other. (Encl (15))
- 423. Cpl Torrez recalled no conversations nor any explanation given by Cpl Banuelos regarding his intentions either to him or LCpl Blood. Cpl Banuelos simply

- handed him the radio and moved down the slope into the gully with LCpls Blood and Wieler. (Encl (15))
- 424. When Cpl Banuelos gave the SABER radio (his only direct link with the TOC and Mission Commander) to Cpl Torrez, he maneuvered along with LCpls Blood and Wieler in a northerly direction. (Encl (7))
- 425. Cpl Torrez stated that there were no radio transmissions initiated by Cpl Banuelos from the time that he moved closer to Cpl Banuelos until Cpl Banuelos moved into the gully with LCpl Blood nor does he recall hearing any incoming transmissions. He believes that it was a very little time that they were together before Cpl Banuelos and LCpls Blood and Wieler moved into the gully. (Encl (15))
- 426. When Cpl Torrez received the radio from Cpl Banuelos, he assumed a kneeling position from which he was able to keep Mr. Hernandez in his rifle sights as he moved in a normal walking speed along a path that took him from left to right in Cpl Torrez' vision. (Encl (15))
- 427. LCpl Blood recalled remaining in his initial prone position for an estimated five minutes when he was motioned over to the other Marines' position by Cpl Torrez. By the time he arrived at their position, Cpl Torrez had the radio and Cpl Banuelos and LCpl Wieler had gone down into the ravine. Torrez motioned Blood to follow them down. (Encl (21))
- 428. Cpl Banuelos, LCpl Blood, and LCpl Wieler moved into the draw one at a time. The side of the draw the three Marines moved down was steep and covered with slippery rocks and gravel. LCpl Wieler fell down several times as he moved down the draw. The three Marines then moved up the other side of the draw to the high ground. Their movement placed them approximately 60 meters away from their original high ground position where Corporal Torrez remained posted as an over watch. (Encls (7), (8), (21), (28))
- 429. Cpl Banuelos later explained the purpose of this maneuver was to keep visual contact with Mr. Hernandez and prevent the team from possibly being flanked, exposing them to the potential for further hostile fire (Encls (6), (15))
- 430. LCpl Wieler denied that Cpl Banuelos said anything more to him before leaving the high ground than to get on line and not to flank the individual. He believed that Cpl Banuelos' intent was to "neutralize" the individual. LCpl Wieler understood this to mean "either to wound, to wound or something." (Encl (28))
- 431. LCpl Wieler would not personally have elected to leave the high ground. He "would have stayed and let the Border Patrol handle the situation." But he followed

the orders of the senior man. (Encl (28))

- 432. LCpl Blood never had any discussions with Cpl Banuelos before the movement from the hill crest into the ravine. He had no idea what Cpl Banuelos intended but simply followed his hand and arm signals. (Encls (8), (21))
- 433. Once on the high ground on the opposite side of the ravine, Cpl Banuelos, LCpl Blood, and LCpl Wieler moved in the direction of Hernandez by individual rushes, on Cpl Banuelos' command, traversing the sand and gravel terrain covered with creisote bushes. (Encls (6), (21), (28), (114))
- 434. Cpl Banuelos maneuvered himself, LCpl Blood, and LCpl Wieler on-line and facing Mr. Hernandez. Each Marine was separated from the other by approximately 10 to 30 meters, and oriented in a northwesterly direction. (Encls (8), (21), (28))
- 435. As a consequence of their maneuver, the distance between the Marines and Mr. Hernandez was narrowed from approximately 185 meters at the time of original contact to approximately 130 meters. (Encls (21), (212))
- 436. Cpl Torrez denied ever seeing the Marines again as they maneuvered from the gully in the direction of Mr. Hernandez since he focused his attention on Mr. Hernandez. (Encl (15))
- 437. Their tactical formation had LCpl Wieler to the south; Cpl Banuelos in the center; and, LCpl Blood to the north. (Encls (7), (21), (28))
- 438. At 1820:49, Assistant Chief Patrol Agent In Charge (ACPAIC) Rudy Rodriguez of the USBP's Marfa Sector office directed the Marfa dispatcher to request that Presidio County law enforcement authorities join in responding to the scene. ACPAIC Rodriguez made this transmission from his vehicle while driving toward Redford. Sometime between approximately 1818 and ACPAIC Rodriguez' radio transmission, both he and Assistant Chief Patrol Agent (ACPA) David Castaneda departed from Marfa in separate vehicles en route to the shooting scene. (Encls (74), (75), (92), (116), (117))
- 439. The Marfa dispatcher notified ACPA Rodriguez that Deputy Gallegos, Officer Spencer and Agent Urias were already responding to the scene. (Encls (116), (117))
- 440. At 1821:53, Officer Spencer asked the Marfa dispatcher "What unit is already at the scene, and who do I know . . . need to go exactly. I'm approximate . . . I'm about five minutes or less from there." (Encls (116), (117))

- 441. The Marfa dispatcher told Officer Spencer to "Stand by, I don't believe I have anyone at the scene yet" (Encls (116), (117))
- 442. At approximately 1822:30 Agent Urias informed the Marfa dispatcher "Well we're approximately 12 miles from Redford yet." (Encls (116), (117))
- 443. At 1822:37, the Marfa dispatcher informed Officer Gilbert, "420 advises they're about 12 miles from Redford. Stand by and I'll get an exact location on land line. Stand by." (Encls (116), (117))
- 444. The Marfa Dispatcher explained that she then called the TOC on the phone to ascertain Team 7's location. She believes she got this information from Capt McDaniel. (Encl (74))
- 445. At 1825:14, The Marfa dispatcher informed Agent Urias of Team 7's location, saying "the 10-20 (location) will be at the Polvo Crossing. Polvo Crossing, 1000 meters southeast, is where 513 (Team 7) is. The man will be at the abandoned church, about 200 meters from the team." (Encls (116), (117))
- 446. At 1825:34, Agent Urias acknowledged the Marfa dispatcher's transmission about the location of Mr. Hernandez and Team 7, and he asked SPA(A) Succa, "Were you clear with that traffic?" SPA(A) Succa responded, "We're clear." (Encls (15), (116), (117))
- 447. At 1826:52, Officer Spencer notified the Marfa Dispatcher, "I'm in Redford could you advise that I'm 12 miles east or would you say it was at the Polvo crossing. (Encls (116), (117))
- 448. The Marfa dispatcher responded at 1827:00 and told Officer Spencer "420 was the one en route 12 miles, but the exact location, according to 513 (Team 7) would be at Polvo Crossing, 1000 meters southeast. It's where 513 is located. The man with the rifle is at the abandoned church 200 meters from the team." (Encls (116), (117))
- 449. Once in a position estimated by Cpl Banuelos to be approximately 130 meters from Mr. Hernandez, Cpl Banuelos motioned LCpl Blood to move laterally (north) a few meters. He made this motion while in a kneeling position with his rifle in his shoulder but his right hand free. (Encls (7), (8), (21))
- 450. From this kneeling position, Cpl Banuelos observed Mr. Hernandez raise his weapon and point it in the direction of LCpl Blood. Cpl Banuelos fired a single shot from his M-16A2 rifle striking Mr. Hernandez. (Encls (7), (8), (21))
- 451. Cpl Torrez recalled hearing the 1827:00 radio transmission and, in his

- judgment, it gave a wrong description of the location of Mr. Hernandez. He said he looked away from Mr. Hernandez to speak into the radio to correct the location and, at that moment, he heard a round go off. (Encl (15), (116), (117))
- 452. Cpl Torrez recalled that he "raised my weapon up real quick and I seen feet go in the air." Cpl Torrez denied ever seeing the man point his rifle down range. (Encl (15))
- 453. LCpl Blood was moving at the time of the shot; therefore he did not see Mr. Hernandez raise his rifle and aim it at him. When he heard the shot he turned to his left and all he could see was Mr. Hernandez' hat. (Encls (19), (21))
- 454. LCpl Wieler gave initial statements indicating that at the time of the shot, he did not see Mr. Hernandez raise his rifle and aim it at LCpl Blood due to brush limiting his visibility. (Encls (23), (24), (25), (26))
- 455. LCpl Wieler, however, made a subsequent statement to the Texas Rangers that indicated he saw Mr. Hernandez raise and aim his rifle at LCpl Blood. (Encls (23), (24), (25), (26))
- 456. At 1827:34, Cpl Torrez advised, "We have a man down." (Encls (15), (116), (117))
- 457. Sgt Dewbre immediately asked, "Did I hear you 513? You say you have a man down, friendly or enemy? Over." (Encls (116), (117))
- 458. At the time of this transmission, Officer Spencer believes he was traveling in his vehicle on Highway 170. His vehicle siren was not activated. He remembers turning it off as he drove through the town of Redford. (Encls (98), (116), (117)
- 459. At 1827:42, Cpl Torrez stated, "the man . . . the man pointed his weapon down range and we took him out." (Encls (116), (117))
- 460. When asked how, since he claims not to have seen any raising of the rifle, he knew to radio that "The man . . . the man pointed his weapon down range and our Marines took him out," he stated, "At some point in time from here to there somebody said, you know, the man's going to point his weapon down range again from where we got fired at. I couldn't tell you who or where we were at, you know, we're going to take him out. We had to take him out because he's pointing at one of our Marines." (Encl (15))
- 461. After the shooting, Cpl Torrez moved rapidly forward down from the hill and gave the radio to LCpl Wieler as he passed him and continued forward to check out the old house. (Encl (15))

- 462. Upon arriving at the dirt road leading to Polvo Crossing and the general area of the shooting, Officer Spencer pulled off Highway 170 about 50 to 60 yards and stopped his vehicle there due to the uncertainty of the situation. He then waited in his vehicle for USBP agents to arrive. (Encls (98), (102))
- 463. Officer Spencer exited his vehicle as Deputy Gallegos drove up to the location where he was parked. Officer Spencer cannot recall if Deputy Gallegos had his siren on when he arrived. He estimates he waited several minutes before Deputy Gallegos arrived. (Encls (97), (98), (103))
- 464. Officer Spencer was informed by Deputy Gallegos that an armed suspect was located somewhere further down the dirt road near the church at the top of a small hill. (Encl (103))
- 465. Officer Spencer and Deputy Gallegos decided to remain at their current location until they could ascertain more about the nature of the shooting situation. This decision resulted from their concern that the Marines were armed and they had no way to communicate with them. Although they were unable to monitor the radio communications between the Team 7 Marines and USBP as they waited in their vehicles until the Border Patrol agents arrived, there is no indication that they sought to use Marfa dispatch for this purpose. (Encls (97), (98), (99), (102))
- 466. At approximately 1829:45, SPA(A) Succa asked, "Can you do a current status? Which man is down?" (Encls (116), (117))
- 467. At 1829:51, Marfa Dispatcher responded, "Be advised from Hole number 3 would be the man with the rifle, the man with the rifle." (Encls (116), (117))
- 468. At approximately 1830:21, Officer Spencer asked the Marfa dispatcher, "Is it clear for H503 and myself to roll into uh . . . Polvo Crossing?" The Marfa dispatcher responded, "10-4. Was advised from H513 that a man was down and we [sic] possibly the man with the rifle is down." (Encls (116), (117))
- 469. After Cpl Banuelos fired at Mr. Hernandez, the members of Team 7 tactically maneuvered toward the position where they last saw Mr. Hernandez. While approaching the spot, Cpl Banuelos shouted "U.S. Marines." (Encls (7), (8))
- 470. The Marines of Team 7 indicated that a delay occurred in their approach toward Mr. Hernandez' position because they lost visual contact with him and were unsure what had happened to him. They feared he had not been shot but had taken cover. They therefore moved forward in a tactical manner to secure the area. (Encls (6), (8), (15))

- 471. At 1832:23, Sgt Dewbre asked, "Roger, is the man still down? 513 this is 521. I say again, is the man still down?" (Encls (116), (117))
- 472. At 1832:45, LCpl Wieler, who received the radio from Cpl Torrez stated, "Ahh . . . he's down." (Encls (28), (116), (117))
- 473. As Cpl Torrez finished checking out the house and came around the corner he saw Cpl Banuelos and Mr. Hernandez's feet sticking out of the well. He moved to the well and was the first one to approach his body in the well. He saw "his feet, part of his calves sticking out of the well." He "walked up to the hole and, in a tactical manner, with my weapon in a tactical manner, checked the person to make sure he didn't have his weapon or any weapons. I circled the hole one time, came back and that's when I found the weapon." Cpl Torrez believes he handed the weapon to LCpl Blood. (Encl (15))
- 474. LCpl Blood initially believed Mr. Hernandez was faking injuries but as he observed him he realized he was dying. LCpl Blood thought that he had a broken neck from the way he was lying in the well. (Encl (21))
- 475. As the Combat Aidsman for Team 7, Cpl Torrez had the responsibility to provide emergency care. Cpl Torrez explained his failure to give care to Mr. Hernandez by saying that "When 1 was clearing the hole I could see the person and his neck did not look good . . . we are taught neck, back, lower back, any of those, don't mess -- don't move because it can cause serious problems if you move them with any of those injuries . . . I didn't have a visual on any bullet wounds [and] didn't see no blood . . . I figured, you know, he's not shot. Something is wrong with his neck, don't touch him." (Encls (15), (242))
- 476. No member of Team 7 noted either the presence of a gunshot wound, nor any sign of bleeding from Mr. Hernandez. (Encls (8), (14))
- 477. At 1833:29, Sgt Dewbre informed Team 7, "The Border Patrol should be in the area. Over." (Encls (116), (117))
- 478. LCpl Wieler immediately responded, "We're at the far end, ahh . . . we don't know how far they are, but ahh . . . I hear the sirens." LCpl Wieler later recalled hearing no sirens from the arriving USBP vehicles except as heard over the SABER radio. (Encls (116), (117))
- 479. At 1836:11, LCpl Wieler reported, "Right now we have his weapon. I have his weapon in my hand." (Encls (116), (117))
- 480. SPA(A) Succa and Agent Myers were the first Border Patrol agents to arrive

- at the road leading to Polvo Crossing and the area of the shooting. (Encls (71), (73), (116), (117))
- 481. Agents Urias and Martinez arrived at the dirt road leading to Polvo Crossing almost immediately after SPA(A) Succa and Agent Myers. (Encls (71), (78), (102))
- 482. According to Agent Urias, it took the Border Patrol Agents "more than 20 minutes" to travel from the Presidio station to the Polvo Crossing area because they had to traverse the towns of Presidio and Redford. (Encls (78), (250))
- 483. The Border Patrol agents arrived at the dirt road near Polvo Crossing several minutes after Deputy Gallegos first met with Officer Spencer. (Encls (98))
- 484. Officer Spencer, Deputy Gallegos and the Border Patrol agents then drove down the dirt road closer to the area where the armed individual was reported to be located. (Encl (102))
- 485. Officer Spencer, Deputy Gallegos and the Border Patrol agents parked by an old church at the base of the hill leading to the area where the armed individual was reported to be located. (Encls (102), (107))
- 486. At that time, Cpl Torrez moved back by the house " 'cause we seen cars and things pulling up." He "posted LCpl Blood against the side of the house with some little brush and stuff" and he, himself, "moved up to the edge of the hill with a little bit of brush." (Encl (15))
- 487. At 1836:55, Officer Spencer informed the Marfa dispatcher on a different radio frequency that Border Patrol Agents and a Sheriff's Deputy were on the scene and also advised "We're gonna be out of our vehicles and trying to close on the person that is doing the shooting." (Encls (116), (117))
- 488. Twenty nine minutes and 50 seconds elapsed from Corporal Banuelos' radio transmission announcing that his team had been fired upon by Mr. Hernandez (1807:05) until the broadcast arrival of Border Patrol Agents at the old abandoned church near the Polvo Crossing area (1836:55). (Encls (116), (117))
- 489. Deputy Gallegos proceeded to check the old church at the foot of the hill and, upon locating an elderly woman living in the structure, he escorted her to a nearby house occupied by the Valenzuela family. (Encls (97), (103))
- 490. While escorting the elderly woman to the Valenzuela's house, Deputy Gallegos observed Officer Spencer and several Border Patrol Agents proceed up

- the hill towards the church and the location of the suspect. (Encl (103))
- 491. At 1837:26, Sgt Dewbre asked Team 7, "I understand possibly . . . is he . . . is he actually wounded or you, you got him in ahh . . . a holding position? over." (Encls (116), (117))
- 492. At 1837:38, LCpl Wieler reported "In a well, he's not . . . he is breathing. Visual's got one he's on his back, lying near the well." (Encls (116), (117))
- 493. At 1837:45, Sgt Dewbre stated, "Back up should be in at any time, about 10 mikes." (Encls (116), (117))
- 494. At 1838:02, LCpl Wieler responded, " 10 mikes." (Encls (116), (117))
- 495. Agent Myers initially experienced difficulties contacting the Marines of Team 7 on the radio when he arrived at the Polvo Crossing area. (Encls (73), (116), (117))
- 496. At 1839:05, Agent Myers radioed, "This is 408 (Myers) can you give me your position?" (Encls (116), (117))
- 497. LCpl Wieler immediately responded, "We're right behind a fort." (Encls (116), (117))
- 498. Officer Spencer, Agent Myers and the other USBP agents proceeded to move on foot up the hill towards the old church in a tactical fashion. Officer Spencer and the USBP agents were wearing their uniforms and were armed with rifles. (Encls (98), (102))
- 499. Cpl Torrez saw "about 7,8 guys -- men coming up. They had uniforms on" and were armed. He "stood up in an aiming position and told them 'United States Marines." They came up and he "secured their six." (Encls (6), (15))
- 500. Upon approaching the old church building, Officer Spencer and Agent Myers recall being challenged by a Marine who shouted "U.S. Marines." The Marine was wearing a full camouflage guille suit and was later identified as Cpl Torrez. (Encls (98), (102))
- 501. Upon being challenged by Cpl Torrez, Agent Myers identified himself as a U.S. Border Patrol agent. (Encls (73), (102))
- 502. At 1845:24, the team notified the TOC that the Border Patrol agents had arrived at their location. Slightly more than 38 minutes had elapsed from the time of the shooting until the Marines of Team 7 reported that USBP had arrived.

(Encls (116), (117))

<u>Criminal Investigation and Post-Shooting Activities</u>

- 503. Descriptions of the weather condition at the time Border Patrol and LEA officials initially arrived at the Polvo Crossing area vary. (Encls (71), (73), (78), (97), (98))
- 504. Agent Urias recalled that the weather was windy when he arrived at the scene. (Encl

(72)

- 505. Officer Spencer recalled the weather as being slightly windy. (Encl (98))
- 506. Deputy Gallegos characterized the weather as not real windy. (Encl (97))
- 507. Agent Myers described the weather as a clear day with no wind. (Encl (73))
- 508. SPA(A) Succa described the weather as calm and not windy. (Encl (77))
- 509. Agent Martinez recalled the weather as being cloudy and calm. (Encl (71))
- 510. Cpl Torrez directed Officer Spencer and Agent Myers to the exact location of Mr. Hernandez. (Encl (105))
- 511. Upon arriving at the well near the old church, Officer Spencer observed Mr. Hernandez lying inside the well with his feet protruding out and saw Cpl Banuelos standing beside the well. (Encls (98), (102))
- 512. At 1846:52, Agent Urias advised Marfa dispatch, "Subject is down. Appears to be deceased." (Encls (116), (117))
- 513. At 1847:29, Agent Urias advised, "We are needing you to dispatch an ambulance to . . . Redford area behind the old . . . abandoned church." (Encls (116), (117))
- 514. Upon arriving at the position where Mr. Hernandez had been shot, Deputy Gallegos observed Mr. Hernandez' body lying on his back in the abandoned well. (Encls (97), (103))

- 515. Deputy Gallegos sketched a diagram of the position in which Mr. Hernandez' body was found inside the four-sided, square well. (Encl (103))
- 516. Deputy Gallegos observed that Mr. Hernandez' pupils were fixed and dilated, and he checked for a pulse on Mr. Hernandez' neck and wrists. Initially he believed that he detected a weak pulse. (Encls (97), (103))
- 517. At 1849:21, Agent Urias advised, "It appears that he does have a very weak pulse. Repeat he has a very weak pulse." (Encls (116), (117))
- 518. After checking for a pulse, Deputy Gallegos and Agent Myers removed Mr. Hernandez' body from the well and laid him on his back next to the well. (Encl (97), (103))
- 519. Deputy Gallegos attempted to check Mr. Hernandez for a pulse again but was unable to detect one, and he noted that Mr. Hernandez' body was cold to the touch. (Encl (103))
- 520. At that point, Deputy Gallegos formed the opinion that Mr. Hernandez was undoubtedly dead. (Encl (97))
- 521. In a supplemental report, Deputy Gallegos wrote that he did not detect a pulse upon originally checking Mr. Hernandez' right wrist, and as a result he asked Agent Myers to also check Mr. Hernandez. (Encls (77), (103))
- 522. Upon his initial observation of Mr. Hernandez' body, Deputy Gallegos believed the man had broken his neck when he fell in the well. (Encls (68), (97))
- 523. When Capt McDaniel heard the call for the ambulance on the radio, he made the decision to launch the military medical evacuation helicopter. He did this since he felt it was his obligation to save a civilian life if possible. At 1854, the U.S. Army Medevac helicopter was activated. (Encls (30), (116), (117), (212), (213))
- 524. The primary means of Medevac for this mission was by air. Ground Medevac was the secondary means. (Encl (212))
- 525. An active duty U.S. Army Medevac Detachment from the 36th Medical Detachment, 36th Medical Battalion, Fort Polk, Louisiana was assigned to provide Medevac support for this mission. (Encls (61), (212), (213))
- 526. The Medevac Detachment consisted of two UH- 1 air ambulance-configured helicopters, each having a pilot, copilot, crew chief and medic (who is also Emergency Medical Technician (EMT) certified) assigned to it. For this mission, the detachment was based at Presidio airfield. (Encls (61), (212), (213))

- 527. Officer Spencer was informed, shortly after he arrived, that Cpl Banuelos was the Marine who had shot Mr. Hernandez, Jr. (Encl (102))
- 528. Officer Spencer had Cpl Banuelos take him to the general vicinity from which he fired at Mr. Hernandez in order to permit Officer Spencer to recover the spent shell casing ejected by Cpl Banuelos' weapon. (Encls (92), (98), (100), (102))
- 529. Cpl Banuelos pointed out the area from which he shot, and he told Officer Spencer that he fired from a kneeling position. (Encl (98))
- 530. Officer Spencer did not immediately locate the spent shell casing. After determining that he could relocate the spot from which Cpl Banuelos fired, Officer Spencer returned to the location of the body. (Encls (102), (108))
- 531. Upon returning to the well from his reconnaissance of the shooting site, Officer Spencer discovered that Mr. Hernandez' body had been removed from the well and placed beside it. Mr. Hernandez' rifle had also been placed next to his body. (Encls (98) (102))
- 532. Officer Spencer inquired why the body had been moved and Deputy Gallegos indicated that he and Agent Myers initially believed they may have felt a pulse but, upon removing the body from the well, they could not detect a pulse. (Encls (97), (98), (102))
- 533. Officer Spencer recalled earlier observing the .22 caliber rifle by one of the nearby buildings when he arrived. (Encl (98))
- 534. Cpl Torrez had originally moved the .22 caliber rifle Mr. Hernandez had been carrying from the position where they found it near his body. (Encls (7), (102))
- 535. Officer Spencer asked the Marines to indicate the original position in which they observed the rifle when they found Mr. Hernandez' body in the well. (Encls (98), (102))
- 536. Cpls Banuelos and Torrez indicated that the rifle carried by Mr. Hernandez was found lying behind the well when they initially approached. (Encls (97), (102))
- 537. Officer Spencer attempted to simulate the rifle's position as found by the Marines by using a metal rod near the well and laying it in the position and orientation indicated by the Marines. (Encls (97), (98), (102), (107))
- 538. While the Marines of Team 7 were initially explaining the events of the shooting to the law enforcement officers, they called to Deputy Gallegos' attention a white pickup truck they had frequently observed in the area that day. (Encls (97),

(103))

- 539. Deputy Gallegos drove over to the truck's location near Polvo Crossing and stopped the driver, who was identified as Esequiel Hernandez, Sr. (Encls (97), (103), (199))
- 540. Mr. Hernandez, Sr. informed Deputy Gallegos that he lived in a house by Polvo Crossing and asked what was happening. (Encl (103))
- 541. Deputy Gallegos asked Mr. Hernandez, Sr. to accompany him back to the area near the well by the old house to see if he could assist in identifying the body of the man who had been shot. (Encls (97), (103), (199))
- 542. Deputy Gallegos escorted Mr. Hernandez, Sr. back to the site of the deceased man. Mr. Hernandez became very emotional and identified the man as his son, Esequiel Hernandez, Jr. (Encls (97), (103), (199))
- 543. After Mr. Hernandez, Sr. identified his son's body, Deputy Gallegos, Officer Spencer and Presidio County Sheriff's Office Constable Raul Barriga secured the scene around the well. (Encls (97), (103), (199))
- 544. After the scene around Mr. Hernandez, Jr. had been secured, other members of the Hernandez family began arriving. They were distraught and angry and demanded to see the body. (Encl (97))
- 545. Deputy Gallegos assisted Agent Martinez in providing security to the shooting scene and keeping the Hernandez family members from approaching the body too closely. (Encls (71), (97))
- 546. ACPAIC Rodriguez and ACPA Castaneda arrived at the shooting site at approximately 1905. (Encl (92))
- 547. ACPAIC Rodriguez indicated that upon arriving at the scene of the shooting the sun was shining and a wind that he characterized as somewhat more than a light breeze was blowing in from the east. ACPA Castaneda also characterized the wind as a slight breeze. (Encls (68), (75))
- 548. When they arrived at the shooting site, ACPAIC Rodriguez and ACPA Castaneda found the area cordoned off by Presidio County Sheriff's Office personnel. (Encl (94))
- 549. ACPAIC Rodriguez and ACPA Castaneda determined that Officer Spencer appeared to be in charge of the shooting scene investigation at that time. (Encl (94))

- 550. At 1906:50, ACPAIC Rodriguez advised that "The bird is on the ground, the bird is on the ground." The Army Medical Evacuation helicopter's response time was 12 minutes from 1854 when Capt McDaniel directed the MEDEVAC helicopter to respond to the scene. (Encls (116), (117))
- 551. The Army flight medic, EMT Victor Ward, immediately performed a thorough assessment of Mr. Hernandez, and found him to be unresponsive. The flight medic was told by Border Patrol agents that no treatment had been given to Mr. Hernandez for 20 to 30 minutes. (Encls (103), (212), (213))
- 552. At approximately 1923, EMT Ward determined that Mr. Hernandez was dead. (Encl (103))
- 553. From the time Mr. Hernandez was shot until the Army Medevac crew arrived, a period of 38:26 minutes had elapsed. (Encls (116), (117), (213))
- 554. The Department of Defense Armed Forces Institute of Pathology (AFIP) later concluded that "the extensive injury to multiple internal organs and great vessels caused by the projectile fragments rendered this wound non-survivable, with death occurring within minutes after its infliction." (Encl (193))
- 555. Deputy Gallegos requested that the Presidio County Justice of the Peace, Mr. Dan Bodine, be summoned to the scene. (Encl (103))
- 556. Deputy Gallegos talked with Cpl Torrez in order to get a basic orientation about the events that led to the shooting of Mr. Hernandez. (Encls (97), (103))
- 557. ACPAIC Rodriguez, ACPA Castaneda, and Officer Spencer spoke with Cpl Banuelos, who provided a brief report of the incident. (Encls (68), (92))
- 558. Presidio County Sheriff Danny Dominguez arrived at the shooting scene at approximately 1940. (Encls (95), (103), (104))
- 559. Sheriff Dominguez recalled the weather as being cloudy with a slight breeze when he arrived at the scene. (Encl (95))
- 560. The Presidio County Sheriff's Chief Deputy, Alton R. "Rusty" Taylor, arrived at the shooting scene at approximately 1943 and met with Sheriff Dominguez and Deputy Gallegos. (Encls (97), (99), (103), (104))
- 561. Deputy Gallegos briefed Sheriff Dominguez and Chief Deputy Taylor about the events of the shooting based on the information he had obtained from Cpl Torrez. (Encl (97), (103))

- 562. Contemporaneously, ACPAIC Rodriguez and ACPA Castaneda accompanied Cpl Banuelos as he and Officer Spencer returned again to the spot from which Cpl Banuelos had fired. (Encls (68), (92), (98))
- 563. Upon arriving at the spot from which Cpl Banuelos shot, the group participated in a brief search and Cpl Banuelos pointed out the location of his expended shell casing to ACPAIC Rodriguez, ACPA Castaneda, and Officer Spencer. (Encls (68), (92), (98))
- 564. ACPA Castaneda recalled Cpl Banuelos as standing less than 5 meters from the expended shell casing when he pointed at it and said "There it is." (Encl (68))
- 565. ACPAIC Rodriguez recalled the examination of the shooting scene somewhat differently in that he originally remembered finding the shell himself, but he indicated upon reflection that his recollection of discovering the shell may be mistaken. ACPAIC Rodriguez believes he and Cpl Banuelos may have discovered the shell almost simultaneously. (Encls (75), (250))
- 566. ACPA Castaneda then asked Cpl Banuelos to recreate the sequence of events leading up to the shooting by explaining the chronology of the activity and identifying the location at which each event occurred. (Encls (68), (92))
- 567. Officer Spencer asked the Marines to walk through the area where the shooting incident took place. (Encl (98))
- 568. Cpl Banuelos consented to a walk through but requested that the members of his team be present during his explanation. (Encls (68), (92))
- 569. The Marines of Team 7, ACPA Castaneda and Officer Spencer then went to the site of the team's LP/OP and Cpl Banuelos commenced a walk through in which he explained the chronology of the shooting incident as he identified various spots on the ground where events leading to the shooting occurred. (Encls (68), (92), (98))
- 570. Officer Spencer recalled that the walk through took approximately 30 to 40 minutes, and "Cpl Banuelos and Cpl Torrez did the majority of the talking. (Encl (98))
- 571. Cpl Torrez recalled that he and LCpl Wieler, together with about three or four border patrol agents, went to the hide site to retrieve their gear. (Encl (15))
- 572. Near the end of the walk through the weather started deteriorating quickly. (Encl

(98))

- 573. At about the time this group was returning from the walk through, the Assistant Mission Commander, Second Lieutenant Mark R. Felcyn, arrived after having been directed by Capt McDaniel to travel from Marfa to the shooting scene with Jerry Agan, the USBP Marfa Sector Chief Patrol Agent (Acting) (CPA(A)). He believes he arrived around 2000. Second Lieutenant Felcyn quickly spoke to the Marines who indicated they had just finished a walk through. (Encls (31), (66))
- 574. At approximately 2015, Chief Deputy Taylor briefly questioned the four Marines of Team 7 collectively to obtain an initial description of the events of the shooting incident. (Encl (104))
- 575. At 2018, Chief Deputy Taylor directed that Cpl Banuelos' weapon and three magazines of ammunition be confiscated by Deputy Gallegos. (Encls (31), (66), (92), (104))
- 576. Cpl Banuelos was willing to relinquish the weapon but would not do so until he received permission from a superior of ficer and was provided a receipt for it. (Encls (31), (66), (68), (75), (97), (98), (99))
- 577. Second Lieutenant Felcyn contacted Capt McDaniel and received permission to turn the rifle over after obtaining a receipt. (Encls (30), (31))
- 578. Second Lieutenant Felcyn recalled Chief Deputy Taylor as initially asking for all the weapons from the Marines. Second Lieutenant Felcyn negotiated turning over only Banuelos' rifle and ammunition because it was the only one that had been fired. (Encl (3 1))
- 579. Cpl Banuelos gave the weapon to Deputy Gallegos, and Chief Deputy Taylor provided a receipt for the weapon while Deputy Gallegos took the weapon and placed it in his patrol car trunk. (Encls (66), (92), (97))
- 580. Second Lieutenant Felcyn then asked Cpl Banuelos for a quick synopsis of what had occurred. Present when he received this report were Chief Deputy Taylor and ACPA Castaneda. (Encl (31))
- 581. At 2030 Mr. Hernandez was officially pronounced dead by the Presidio County Justice of the Peace, Mr. Dan Bodine. (Encls (97), (103))
- 582. At approximately 2030, Sheriff Dominguez and Chief Deputy Taylor asked LCpl Blood to show them the area where Mr. Hernandez had been standing when Mr. Hernandez shot at the Marines, and the spot was marked with crime scene investigation tape. (Encls (95), (99), (104))

- 583. LCpl Blood recalled being asked by two policemen to take them to the spot from which Mr. Hernandez fired his rifle. Blood walked out to the location of the LP/OP and motioned the policemen into the position where he first observed Mr. Hernandez. (Encl (21))
- 584. While LCpl Blood was doing this, Team 7 was retrieving its equipment from the hide site. SPA(A) Succa and Agent Martinez assisted in retrieving the equipment belonging to the Marines of Team 7. Agent Martinez remembered all the equipment being located in the hide site. He did not see any equipment at the LP/OP area. (Encls (31), (71),(75))
- 585. While Officer Spencer and certain Border Patrol Agents discussed the incident, it started to rain and the Marines and LEA personnel moved inside the various cars at the scene. (Encls (98), (99))
- 586. Chief Deputy Taylor advised Sheriff Dominguez that statements needed to be taken from the Marines of Team 7. (Encl (99))
- 587. Chief Deputy Taylor informed 2ndLt Felcyn that statements from the Marines were desired. Chief Deputy Taylor indicated that the Marines were not suspected of a crime but the statements were necessary to capture the events of the shooting before the memories of the Marines faded. Second Lieutenant Felcyn felt uncomfortable authorizing the taking of statements and radioed the TOC to discuss with Capt McDaniel whether the Marines should provide statements. (Encl (31))
- 588. Capt McDaniel instructed 2ndLt Felcyn to inform the Marines that they were not required to make statements but they were permitted to do so if they wished. (Encl (31))
- 589. At the time it was determined that statements would be taken, the Marines were waiting together in a Border Patrol vehicle. (Encl (99))
- 590. The Marines were then placed in separate vehicles in order to provide their statements. (Encls (75), (99))
- 591. Officer Spencer took a statement from Cpl Banuelos at the request of Chief Deputy Taylor. (Encls (6), (98))
- 592. Officer Spencer stated that he did not interrogate Cpl Banuelos, but simply asked Cpl Banuelos to write out his own statement in his own words. (Encl (98))
- 593. Officer Spencer recalled Cpl Banuelos remarking that his Lieutenant had informed him that it was OK to give a statement if he wanted to do so. (Encls (95),

(98))

- 594. Deputy Gallegos took a statement from Cpl Torrez and advised him of his rights, but did not get a signed acknowledgment from Cpl Torrez because he used a card to read the rights rather than having Cpl Torrez initial and sign a preprinted form. (Encl (97))
- 595. Cpl Torrez indicated that he would voluntarily provide a statement. Deputy Gallegos did not question Cpl Torrez, but rather asked Cpl Torrez to write out his own statement about the events of the shooting. (Encl (97))
- 596. Cpl Torrez does not remember talking with 2ndLt Felcyn that evening about his rights with respect to providing a statement. He simply got into a vehicle with a town sheriff, whose name he cannot recall, and provided his statement. The officer read him his rights and "gave me a pen and paper and his briefcase to write on and said, here, go ahead." He does not recall the officer asking him any questions. He does recall that there was a judge in the vehicle while he was writing his statement. (Encl (15))
- 597. Chief Deputy Taylor sought to interview LCpl Wieler and take his statement, but when he initially read LCpl Wieler his rights, LCpl Wieler asked to speak to 2ndLt Felcyn. (Encl (99))
- 598. After having a private conversation with LCpl Wieler, 2nd Lt Felcyn informed LCpl Wieler in the presence of Chief Deputy Taylor that it was "entirely up to you to give a statement. I am not going to tell you what to do. It's entirely your call." (Encl (99)
- 599. At approximately 2120, Chief Deputy Taylor re-advised LCpl Wieler of his rights, interviewed him and had LCpl Wieler provide a written statement to him. (Encls (99), (104))
- 600. During the interview of LCpl Wieler, Chief Deputy Taylor claimed he made it a point to determine whether LCpl Wieler saw Mr. Hernandez raise the weapon before Cpl Banuelos shot him. (Encl (99))
- 601. Chief Deputy Taylor said that LCpl Wieler told him that he could not see if Mr. Hernandez raised his rifle because his vision was blocked by the brush. (Encl (99))
- 602. LCpl Wieler has no memory of Sheriff Taylor asking him any questions at all. Sheriff Taylor simply asked him to write out his statement, which he did. LCpl Wieler also has no memory of speaking with 2ndLt Felcyn about his rights

- regarding a statement that evening. (Encl (28))
- 603. LCpl Blood provided his statement that night to Officer Dan Arrietta. (Encl (17))
- 604. Sometime during the evening, Chief Deputy Taylor also expressed concern to 2ndLt Felcyn about locating any shell casings from the Hernandez rifle at the site previously identified by LCpl Blood. Chief Deputy Taylor, Deputy Gallegos and 2ndLt Felcyn then proceeded to look for the casings with flashlights and Chief Deputy Taylor located two casings that were marked with evidence flags. (Encl (28))
- 605. At some earlier point in the evening, Sheriff Dominguez requested the assistance of the Texas Rangers in investigating the shooting incident. (Encls (95))
- 606. Ranger David Duncan recalled arriving at the shooting site after nightfall at approximately 2130. It was raining heavily at the time. (Encl (96))
- 607. Ranger Duncan initially encountered Gilbert Spencer and a Marine Lieutenant. He did not get the Lieutenant's name at the time. He claimed that "he requested the name from the Border Patrol and it still has not been provided to him." (Encl (96))
- 608. Ranger Duncan told Sheriff Dominguez that he "was in no hurry since he understood the FBI was coming to the shooting scene." He recalled someone asking him if the Marines could go and he requested that they stay until he returned to the scene. (Encl (96)
- 609. Shortly after he arrived at the scene, Ranger Duncan left with Sheriff Dominguez to drive to a pay phone to attempt to contact the local District Attorney and the FBI. (Encls (95), (96))
- 610. Upon returning to the scene of the shooting, Ranger Duncan discovered the Marines of Team 7 had left and he was upset with this development even though he was informed that the Marines had provided statements prior to departing. (Encl (96))
- 611. Second Lieutenant Felcyn recalled an agreement being made with Ranger Duncan, Chief Deputy Taylor and himself that the Marines could leave and return the next day. After exchanging telephone numbers, this was done. (Encl (31))
- 612. Second Lieutenant Felcyn left the scene with the four Marines (with SSgt Lillefloren as their driver) to return to Marfa. He did not discuss the incident further

with the Marines as he felt they had their own stress to deal with. (Encl (31))

- 613. Upon arriving at Marfa, CPA(A) Agan suggested to Capt McDaniel that the Border Patrol provide Team 7 with hotel lodgings for the evening. CPA(A) Agan also offered to provide professional counseling to the Marines, who were paired together in the hotel rooms. (Encls (30), (31), (66))
- 614. CPA(A) Agan requested that the Marines provide him with copies of any statements they made regarding the incident. Capt McDaniel then had the Marines execute additional written statements regarding the shooting incident for USBP use. (Encls (5), (13), (19), (25), (30), (250))
- 615. LCpl Blood recalled SSgt Lillefloren telling the Marines that they needed to provide another statement. They were at the hotel, all in one room, and SSgt Lillefloren brought a six pack of beer to them while they wrote up their individual statements. (Encl (21))
- 616. LCpl Blood stated that the Marines didn't really discuss their statements with each other although he remembers asking whether Cpl Banuelos had yelled out "Marines" before he shot. He asked this because he thought he had heard him yell something that evening but could not make it out. He thought LCpl Wieler answered yes so he put it in his statement. He later learned he had misunderstood, so he corrected his later statements. (Encl (21))
- 617. Cpl Torrez recalled that he and the other Marines were taken to a hotel room in Marfa. There they were again asked to provide another statement. Cpl Torrez said that the Marines did not attempt to discuss the incident in any way as they sat in the same room and prepared their statements. (Encl (15))
- 618. Cpl Torrez shared a room with Cpl Banuelos that evening. He denied that they discussed the incident. He said what they talked about was "we were like, wow, that's kind of crazy that your training comes back to you from SOI or whatever. Like, you start doing things, you don't know where it comes from . . . it was crazy because everything just came back to you, the movement, hand signals and stuff, things like that." He stated that Cpl Banuelos never explained at that time why he felt he had to shoot Mr. Hernandez. (Encl (15))
- 619. From the time of the shooting report until 0100, Capt McDaniel described himself as being busy providing information to higher headquarters, both to JTF-6, 1stMarDiv and 5/11. He said he secured around 0300 that morning and got up at approximately 0500. (Encl (30))
- 620. Capt McDaniel was told by JTF-6 to plan to meet Lieutenant Colonel Rennie

- Cory, USA, at about 1100 on the morning of 21 May 97. LTC Cory had been appointed by the Commanding General, Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss, to conduct a JTF-6 investigation into the shooting. Capt McDaniel prepared the Marines to be ready to return to the scene, and he believes they slept from about 0200 to 0600. (Encl (30))
- 621. On 21 May 97, the autopsy on Mr. Hernandez was performed by Randall E. Frost M.D. at the Bexar County Forensic Science Center in San Antonio, Texas. The autopsy report was signed and issued by the Chief Medical Examiner Vincent J. M. Dimaio M.D. on 23 May 97 and lists the manner of death in the case of Mr. Hernandez as Homicide. (Encls (195), (212), (213))
- 622. On 21 May 97, Ranger Duncan returned to the scene of the shooting. He was accompanied by Ranger Jerry Villalobos, Sheriff Dominguez, Chief Deputy Taylor, Officer Spencer, Texas Highway Troopers Mike Campbell and Richard Jacobs and FBI Agents Jane Kelly, Steve Gohrick, Steve French and Kyle Bonath. (Encl (96))
- 623. Ranger Duncan waited at the shooting scene for the Marines of Team 7. The Marines of Team 7, Capt McDaniel and 2ndLt Felcyn arrived between 1200-1300 with LTC Cory. (Encl (96))
- 624. Capt McDaniel understood that the law enforcement officers were there in part to provide protection for the Marines from the community's anger. (Encl (30))
- 625. LTC Cory invited the law enforcement officers to participate in his walk through with the Marines but they declined. (Encl (54))
- 626. Ranger Duncan observed from a distance while the Marines and LTC Cory conducted a walk through explanation of the area and reconstructed the chronology of the shooting with LTC Cory. The walk through took approximately two hours and concluded at about 1500. (Encls (30), (96), (212), (213))
- 627. While at the scene, Ranger Duncan took possession of additional shell casings discovered in the area where the Marines indicated Mr. Hernandez fired at them. (Encls (57), (96), (102))
- 628. LTC Cory was accompanied on the walk through by Maj Hester, Capt McDaniel, 2ndLt Felcyn and the four Marines of Team 7. (Encls (31), (54))
- 629. LTC Cory had the Marines walk to the various locations where events had occurred on the prior night and describe to him what was said and done at various points in the development of the incident. He did not make any written notes of

what he was told. (Encl (54)).

- 630. LTC Cory recalled being told by the Marines that they moved from the high ground, leaving Cpl Torrez in an over watch position, because of a concern that Hernandez might attempt to flank their position. (Encl (54))
- 631. Capt McDaniel recalled Cpl Banuelos saying that he wasn't trying to get closer but rather simply trying to preserve visual contact which he lost during his (Cpl Banuelos') movements. Cpl Banuelos felt that he couldn't feel safe without knowing where the man was. (Encl (30))
- 632. Capt McDaniel described Cpl Banuelos as being very calm, cool and collected throughout his explanation of what happened. "His decision cycle seemed very clear . . . every decision that he made seemed reasonable . . . He was simply doing what he was trained to do . . . although we can discuss the wisdom of every decision that he made, he made those decisions based on force protection as his biggest concern." (Encl (30))
- 633. LTC Cory said the Marines described their movements toward Hernandez as being tactical, using available concealment while they advanced. At the time of the shooting, the Marines were on line and some 10-15 meters apart from each other. No warnings were called out and Cory does not recall the wind being cited as a factor in not giving a warning. LTC Cory noted that verbal warnings are not required and are situationally dependent. (Encl (54))
- 634. LTC Cory specifically recalled LCpl Wieler stating that he could not see Hernandez from his position. Cory got into the position Wieler identified as his and confirmed that one would not be able to see Hernandez from that location. LCpl Blood said that he was moving and therefore did not see Hernandez. Only Cpl Banuelos saw Hernandez and Cory does not recall if Cpl Banuelos said that Hernandez had shouldered his weapon or simply raised it up. The issue of shooting right handed or left handed was not identified at this time. (Encl (54))
- 635. While LCpl Wieler recalled the walk through with LTC Cory, he has no recall of LTC Cory asking him whether he could see Mr. Hernandez. (Encl (28))
- 636. Cpl Torrez recalled the walk through with LTC Cory. They repeated the movements they had made the prior evening. He does not recall any discussion about the rules of engagement nor any questions directed to Cpl Banuelos about why he adopted the scheme of maneuver he followed. (Encl (15))
- 637. Cpl Torrez said that he thought about what he had learned in class and knew that "we were not supposed to pursue anything. I thought about it and we're not

pursuing because we're not going after him." Cpl Torrez believed that they had to protect their right flank and since "we were told in our briefs before that they had NVG's and weapons and things like that . . . just like us. So better safe than sorry." (Encl (15))

- 638. Cpl Torrez indicated that these were his private thoughts and insisted there was no discussion with Cpl Banuelos or any other of the Marines about what they should and could do before the shooting took place. (Encl (15))
- 639. Ranger Duncan, the FBI Agents, the Marines and LTC Cory then left the shooting scene for the Presidio Customs station so that the Rangers and FBI could conduct interviews with Team 7. The group arrived at the Customs station at approximately 1530. (Encl (30))
- 640. The Texas Rangers and FBI took several hours to prepare for the interviews. They commenced interviewing the Marines individually at approximately 1800. This process took several hours. Cpl Banuelos was the last Marine of Team 7 to be questioned. (Encl (30))
- 641. Cpl Torrez remembered that after the walk through with LTC Cory that the Marines were taken to Presidio where they waited "hours" to be interviewed. They had only two MREs (meals ready to eat) to eat the entire day. He does not know why there was such a long wait for the interviews to begin. (Encl (15))
- 642. Ranger Villalobos interviewed LCpl Blood and LCpl Wieler. He did not note until later the inconsistency between LCpl Weiler's statement to him (i.e. that he saw Hernandez aim his weapon at LCpl Blood) and the earlier written statement given by LCpl Wieler to Deputy Taylor indicating that he could not see anything because of the brush. (Encl (100))
- 643. Ranger Villalobos included all the substantive information about the shooting incident that either LCpl Blood or LCpl Wieler provided during their interviews in the sworn statements that they signed. (Encl (100))
- 644. Cpl Torrez was interviewed by Texas Ranger Duncan and Special Agent Jane Kelly of the FBI. He noted that both got upset when he used any kind of military language. He estimated that the interview lasted about two hours and that he had to make changes in what Ranger Duncan had typed because it contained incorrect information. (Encl (15))
- 645. During the time that Capt McDaniel was there, he described the Marines as coming out of the questioning none the worse for the experience. He didn't speak to them at length since he was engaged in another room with LTC Cory

responding to JTF-6 questions. (Encl (30)

- 646. At about 2 I 00 Ranger Duncan came out and LTC Cory and Capt McDaniel spoke with him. Ranger Duncan then spoke with Brigadier General James J. Lovelace, Jr., USA, the Commanding General of JTF-6 by phone and told him "There were some differences in the accounts the Marines had concerning what occurred. That was actually good in the sense that it showed that there was no collusion . . . the only thing right then that caused him concern was the angle of the wound . . . based on the assumption that he was a right-handed shooter." (Encl (30))
- 647. Ranger Duncan began the interview of Cpl Banuelos at about 2130. LTC Cory wanted to return to Marfa at about 2200 and Capt McDaniel accompanied him bringing the other three Marines back as well in LTC Cory's vehicle. He left 2ndLt Felcyn to wait for Cpl Banuelos. (Encl (30))
- 648. Ranger Duncan participated in the interview of Cpls Banuelos. The other participants in the interview of Cpl Banuelos were Ranger Villalobos and FBl Agents Jane Kelly and Steve Gorhick. (Encls (7), (13), (96))
- 649. During the interviews of Cpls Banuelos and Torrez, Ranger Duncan admittedly became upset by their continued use of military terminology after he requested that they refrain from doing so. He interpreted their continued use of military terms as displaying an uncooperative attitude. (Encl (96))
- 650. Second Lieutenant Felcyn checked at around 2330 on the status of Cpl Banuelos' interview. He was told Cpl Banuelos was still being interviewed but should be done in some 15 minutes. The interview actually concluded between 2400 and 0030. (Encl (31))
- 651. Second Lieutenant Felcyn asked the law enforcement personnel "if they were going to need any more information tomorrow. They responded no and we left." (Encl (31))
- 652. Cpl Banuelos related to 2ndLt Felcyn, in Felcyn's words, that "he was less than pleased with the treatment he had been given by the individuals who were interviewing him." Cpl Banuelos described it as a "tag team approach, somewhat trying to wear him down. They were trying to get something out of him that they felt was there." (Encl (31))
- 653. One of the tactics that distressed Cpl Banuelos greatly, but was obvious to him, was when the "three male interviewers would leave the female Federal Bureau of Investigation Agent behind, at which point she would resort to small talk

- ... [then] immediately follow-up with a very direct question. He didn't say what kind of questions they were. These questions were intense and meant to get at something. Most of the questions she asked, he said, aggravated him." (Encl (31))
- 654. Second Lieutenant Felcyn observed that Cpl Banuelos "felt like he was on trial, and it was his opinion that he had done nothing wrong . . . He also felt there was no reason for the depth that they went into." On the ride back, 2ndLt Felcyn described Cpl Banuelos as being "quiet, mentally exhausted." (Encl (31))
- 655. On the morning of 22 May 97, the USBP provided a psychiatrist to talk to the Marines of Team 7 collectively to help them handle any emotional stress that they might have resulting from the shooting. (Encl (30))
- 656. Cpl Torrez said that the first time he heard Cpl Banuelos explain why he shot Mr. Hernandez was when they were interviewed collectively by a psychologist. He said that Cpl Banuelos simply said that "we reacted in a military way, we moved tactically, things like that. He said that -- he did say that Hernandez was aiming in on Blood and that's why he did it. That's the first time I heard that, was when we were with the psychologist." (Encl (15))
- 657. Also on 22 May 97, BG Lovelace flew into the Marfa airport and was briefed by Capt McDaniel and Cpl Banuelos regarding the incident. Part of the briefing was given in the medivac helicopter as it flew over the shooting location. Because of the reported anger in the community, it was not believed safe to walk the ground. (Encl (30))
- 658. After the briefing of BG Lovelace, the majority of the Marines on the mission flew back to Camp Pendleton that afternoon on a C-130. (Encl (30))
- 659. Capt McDaniel, several other Marines, and the Marines of Team 7 initially remained behind. SSgt Macias and the Team 7 Marines drove to Ft Bliss later on Thursday evening, 22 May 97. (Encl (30))
- 660. On 22 May 97, the final daily situation report from Capt McDaniel summarizes the response time by the Border Patrol as 30 minutes during the final event and an average of 15 minutes for all other responses. Instances of no response at all are not noted. (Encl (126))
- 661. On 23 May 97, LTC Cory told Capt McDaniel that Team 7 could also retrograde. The remaining Marines and Capt McDaniel returned to Fort Bliss, arriving at 1530 or 1600. On the following day, 24 May 97, Capt McDaniel and Team 7 returned to Camp Pendleton. (Encl (30))

- 662. Ranger Duncan was angry when he learned the Marines had left since he believed the Marines would remain at JTF-6 until Tuesday, 27 May 97, and he felt LTC Cory was aware of his desire to do a video reenactment of the shooting with the Marines. (Encl (96))
- 663. Ranger Duncan never specifically requested that the Marines be held in Texas for future participation in his investigation, but he assumed they would remain. (Encl (96))
- 664. Ultimately Ranger Duncan had the Bexar County Forensic Science Center process some fifty five (55) fired .22 caliber cartridge cases obtained from the scene of the shooting, one of which was in the rifle itself. Four (4) of the cartridge cases were found to have been fired by Mr. Hernandez' rifle. (Encls (96), (105))
- 665. Ranger Duncan does not believe it is possible to determine when the shells were expended from Mr. Hernandez' rifle. He noted that the oxidation on the shell casings fired from Mr. Hernandez' rifle was such that he personally did not believe they were fired the day of the shooting, but rather some days earlier. (Encl (96))
- 666. Ranger Duncan opined that the only reliable evidence indicating Mr. Hernandez fired his weapon is the shell casing recovered inside the rifle. As a consequence, he believes it's possible Mr. Hernandez fired at the Marines only once. (Encl (96))
- 667. On 28 May 97, LTC Cory returned to the site of the shooting to record video footage of the site for his investigation. LTC Cory denied having a video camera with him on the 21 May 97 walk through. He believes that those who "saw" a video camera confused it either with the digital camera or with the "plugger" a military device for measuring distances both of which he brought with him on 21 May 97. (Encls (54), (115))
- 668. On 29 May 97, LTC Cory completed his AR 15-6 investigation, which included findings and recommendations that were provided to the appointing authority. (Encl (212))
- 669. On 12 Jun 97, the CG, Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss approved LTC Cory's AR 15-6 report. (Encl (212))
- 670. On 20 Jun 97, the CG, JTF-6 endorsed LTC Cory's AR 15-6 report of investigation and forwarded it to U.S. Army Forces Command, recommending approval of the report. (Encl (212))

- 671. On 27 Jun 97, however, the appointing authority directed LTC Cory to provide additional information. This was done, and on 11 Jul 97, the CG, JTF-6 forwarded LTC Cory's addendum to the AR 15-6 report. (Encl (213))
- 672. The AR 15-6 report and its addendum included a finding that the Marines of Team 7 had acted in compliance with the SROE during the shooting incident. (Encls (212), (213))

ADDITIONAL MATERIAL FINDINGS OF FACT

Texas State Grand Jury Proceedings

- 673. Mr. Albert Valadez, District Attorney for the 83rd Judicial District of the State of Texas, presented the case of the shooting death of Mr. Hernandez to a state grand jury to determine whether Cpl Banuelos should face criminal charges. (Encls (101), (200), (239))
- 674. The Marines of Team 7 requested that the Department of Justice (DoJ) authorize and fund legal representation by civilian counsel to assist them in preparation for their testimony in front of the Texas State Grand Jury. The requests were based on the fact that the Marines had been serving in their official capacities as officers of the federal government when the shooting occurred. The Marines were assisted by detailed military defense in submitting the requests to DoJ. (Encls (8), (14), (20), (26))
- 675. The Marines of Team 7 were ultimately assigned both civilian attorneys and military defense counsel. Cpl Banuelos was represented by Mr. Jack Zimmerman and Captain Frank Crivelli, the civilian and military counsel respectively. Cpl Torrez was represented by Mr. Mike Gross and Major Kurt Permito. LCpl Wieler was represented by Mr. Dan Hagood and Captain Joseph Smith. LCpl Blood was represented by Mr. Gerald Crow and Captain Kimberly Wylie. (Encls (8), (14), (20), (26), (205), (239))
- 676. The Texas State Grand Jury heard the testimony of Cpl Torrez, LCpl Wieler and LCpl Blood and the presentation of evidence by Mr. Valadez on 30 Jul and 14 Aug 97. (Encls (101), (216), (239), (241))
- 677. Cpl Torrez, LCpl Wieler and LCpl Blood were given transactional immunity by the Marine Corps in exchange for their testimony at the Texas state grand jury. (Encls (200), (201), (241))
- 678. Mr. Valadez asked the grand jury to consider indictment for any criminal

charge that may have been supported by the evidence. (Encls (101), (241))

679. On 14 Aug 97, the Texas State Grand Jury returned a "no bill," indicating that it had determined insufficient evidence existed to file criminal charges against Cpl Banuelos in the shooting death of Mr. Hernandez. (Encls (101), (202), (239), (241))

Department of Justice Civil Rights Investigation

- 680. After the Texas State Grand Jury proceedings concluded, the Civil Rights Division, Criminal Section of DoJ activated an investigation to determine if Cpl Banuelos had violated any provisions of federal civil rights criminal statutes when he shot Mr. Hernandez. (Encls (202), (239), (241))
- 681. Mr. Barry Kowalski was assigned to conduct the investigation. (Encls (202), (204), (239), (241))
- 682. Mr. Kowalski and the Investigating Officer, while running independent investigations, coordinated their efforts to the maximum extent possible. (Encls (54), (172), (203), (204), (205), (207), (241))
- 683. One area of coordinated effort was the attempt to jointly interview the Marines of Team 7 (exclusive of Cpl Banuelos). Mr. Kowalski took the lead to obtain the necessary federal and state immunity agreements. However, counsel for the Marines were not, initially, persuaded that the immunity agreements were sufficiently protective of their clients' interests and would not consent to voluntary interviews. (Encl (241))
- 684. As a consequence, Mr. Kowalski ultimately decided to use a Federal Grand Jury to obtain their testimony. (Encl (239))
- 685. The federal investigative grand jury in Pecos, Texas met on 12-13 Nov 97, 10-11 Dec 97, and 8 Jan 98. (Encls (208), (209), (239))
- 686. In an apparent reaction to Mr. Kowalski's decision to use the grand jury process, counsel for the three Marines ultimately consented to their clients being interviewed at different times and under slightly differing arrangements. (Encls (15), (21), (27), (28), (29))
- 687. The DoJ declined an interview of Cpl Banuelos, proffered by civilian counsel in January 1998, when agreement could not be reached on the terms and conditions of the interview. The DoJ concern is principally that they not create any impediment to any potential future state prosecution under state statutes defining specific offenses with differing requirements of proof. The Investigating officer

recommended that the convening authority not grant the immunity required by defense counsel in order to obtain a Marine Corps-only interview of Cpl Banuelos. (Encl (200))

688. As of this date, the Federal Grand Jury investigation has not issued an indictment. (Encl (238))

JTF-6 and Operation Alliance Authority

- 689. Since 1990 the Joint Staff has carried out a National Military Counternarcotics Strategy that has been included in each fiscal year's Program Objective Memorandum and attached to the National Defense Authorization Act. (Encl (217))
- 690. This authorization funds the effort of DoD to support the U.S. National Drug Control Strategy and permits the DoD to <u>not</u> seek reimbursement when providing specifically enumerated categories of support to civilian LEAs approved by Congress. [Emphasis added] (Encls (217), (219))
- 691. DoD may provide general assistance in support of "Federal, State and local civilian law enforcement officials" in four general areas: 1) the providing of "any information (that may be relevant) collected during the normal course of military training or operations;" 2) the provision of "any equipment (including associated supplies or spare parts), base facility or research facility;" 3) making available DoD personnel "to train Federal, State and local law enforcement officials in the operation and maintenance of equipment" and to provide relevant "expert advice;" and 4) the provision of personnel to maintain and operate equipment. [Emphasis added] (Encl (217))
- 692. There are two significant restrictions on the support that DoD may provide to U.S. civilian LEAs: 1) DoD personnel may not conduct or fund any activity which includes or permits "direct participation . . . in a search seizure, arrest, or other similar activity" and; 2) DoD may not provide any support which will adversely affect military preparedness. [Emphasis added] (Encl (221))
- 693. The cost of DoD support to civilian LEAs must be reimbursed unless: 1) the support is provided in the normal course of military training or; 2) the support results in a benefit to DoD which is "substantially equivalent" to that which would otherwise be obtained from training or operations. (Encl (217))
- 694. In a memo dated 26 Jan 95, the Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support directed the services and the Director of the Joint Staff to ensure that, when military units provide support to law enforcement

- agencies, "support must be tied to unit mission essential task lists." [Emphasis added] (Encl (225))
- 695. LEA requests for support fall into four broad categories: operational; engineering; general support; and intelligence analysts support. (Encls (69), (245))
- 696. Operation Alliance is a multi-agency, joint-coordination center organized since 1986 to "halt the flow of illegal drugs, firearms, and other contraband across Mexico's northern border." Participants in Operation Alliance include the following federal agencies: Drug Enforcement Administration, Federal Bureau of Investigation, USBP, U.S. Customs Service, U.S. Forest Service, U.S. Immigration and Naturalization Service, U.S. Marshal's Office, the El Paso Intelligence Center, Bureau of Alcohol, Tobacco and Firearms, Internal Revenue Service, U.S. Coast Guard, and U.S. Park Service. (Encl (245))
- 697. Operation Alliance coordinates the requests for DoD operational support from LEAs within the continental United States (CONUS). It performs this function from its coordination center located adjacent to JTF-6 headquarters at Biggs Army Airfield, Fort Bliss, Texas. (Encls (69), (245))
- 698. JTF-6 evaluates the requests for support for their potential training value to a designated unit. A legal review is conducted to verify the counterdrug nexus of the request and whether the requested support will comply with DoD regulations and federal law. (Encls (69), (215), (245))
- 699. The supported LEA coordinates Land Use Agreements between JTF-6 and the landowner of the site location for the mission. (Encls (69), (245))

JTF-6 Training Management and Oversight

- 700. CPT Spencer, of the J-3 section of JTF-6, served as the Mission Operations Officer for Mission JT414-97A. He described JTF-6's role and responsibility as providing mission planning. He said that, as a JTF-6 mission operations officer, he "assume(s) responsibility of the mission once the OPORD (Operation Order) has been executed and signed." CPT Spencer explained that as a JTF-6 mission operations officer "(a)nytime that I find there is a safety violation or a legal issue, I have the authority from the Commander of JTF-6 to bring the mission to a stop." (Encl (60))
- 701. MAJ Hester, who was assigned to the J-3 Section of JTF-6, indicated that JTF-6's primary role is to introduce "the unit earmarked to conduct the mission to the LEA so that they can begin coordination . . . to make sure the plan meets the requirements and policies of a JTF-6 mission. Oversight is provided through the

J-3 section prior to the mission . . . To ensure compliance with JTF-6 policies, the OPORD is briefed by the Mission Commander to the J-3 section." (Encl (57))

702. MAJ Hester noted that the "Marines plan and execute the mission. At the IPC they receive the policies and regulations attendant to a JTF-6 mission." MAJ Hester noted that the JTF-6 Policies and Regulations are in the IPC handout given to the Mission Commander. He said that it is the same checklist that the J-3 reviews for a mission startup. It "has changed since Redford, it went from two pages to about four." (Encl (57))

703. MAJ Hester stated that in May 1997, JTF-6 did not outline training standards. He noted that "the Mission Commander is given very broad discretion in making his own training plan. JTF-6 does require the Battery's Battalion Commander to provide oversight to ensure the training is at MCCRES standards. However, performance of a MCCRES is not required to conduct a counterdrug mission." (Encl (57))

704. LTC Scott was Chief of the Southwest Division, J-3/J-5, JTF-6, during Mission JT414-97A in May 1997. LTC Scott indicated, "The J-3 provides the Mission commander with a preparation checklist which identifies the tasks requiring unit proficiency. They are . . . required to train for the mission to the same standards found in the Marine Corps MCCRES in the subject area they will employ when performing the mission." (Encl (56))

705. LTC Scott indicated that "Normally what we want them to do is to identify the MCCRES tasks that are similar or that they have to execute in a wartime scenario by virtue of their MOS and then we go through and help them identify the differences

between wartime and training environment . . . they must know the differences in the ROE and have the basic skills required to perform the mission." (Encl (56))

706. LTC Scott also noted that "In the past the (JTF-6) training SOP just identified a mission statement and we provided examples of the specified, implied and essential tasks to the Mission Commander. The tasks were really not documented in the SOP. Now (post-Mission JT414-97A incident), we have a training guidance chapter in the JTF-6 Counterdrug SOP that actually specifies the minimum training tasks required." (Encl (56))

707. LTC Scott said that JTF-6 validates training "in two ways. First . . . when the unit presents their Confirmation Brief at JTF-6. This brief follows those given to the

unit's Battalion, Regiment and Division Commanders . . . the Mission Commander identifies their pre-mission training program and compares it to the standards required of the tasks identified for the mission. The second . . . occurs during the initial phase of the mission . . . Our operator requires them to go through actual rehearsals of different mission scenarios in which they have to demonstrate that they have a working knowledge of the tasks required. They rehearse without actually doing a field exercise . . . what we call a rock drill." (Encl (56))

708. When asked about specific training that JTF-6 required, Lieutenant Colonel Robert Longino, USMC, the Deputy J-3, JTF-6, replied, "There is a Mission Commander's checklist." In May, 1997 JTF-6 did not have written training requirements for "standard LP/OP counterdrug missions," and LtCol Longino noted, "Now it is, but then, May 1997, I do not believe it was. The new counterdrug SOP has a detailed checklist of collective tasks that a unit doing LP/OP must be able to do." (Encl (55))

709. LtCol Longino noted, however, that while Marine units are not required to do a Marine Corps Combat Readiness Evaluation (MCCRE) prior to arriving, they ". . must train to their requirements under the MCCRES." (Encl (55))

Unit Mission Training

710. To compare the unit pre-mission training conducted by HQBtry, 5/11, for mission JT414-97A with the unit pre-mission training conducted by Marine Corps for similar JTF-6 missions, this JAGMAN investigation team conducted a survey of 22 prior JTF-6 missions that occurred during the three year period of 1995-97. Confirmation briefs and other documents pertaining to unit mission training for these missions were obtained from I MEF, II MEF, and Marine Forces Reserve (MARFORRES). (Encl (129))

711. Using a questionnaire developed by the JAGMAN team, phone interviews were conducted with 21 Marine officers who had served as JTF-6 mission commanders. Using this same questionnaire, Capt McDaniel, the Mission Commander of JT414-97A, was also interviewed. The results of this survey have been summarized in a matrix for ease of review. The use of interviews and the review of file copies of pre-mission materials yielded results that were not possible to corroborate except for mission JT414-97A. During the phone interviews, answers to the questionnaire were dependent on accurate recall and articulation by the respondents. (Encl (253))

712. The survey sample of previous JTF-6 mission commanders from I MEF, II MEF, and MARFORRES indicated that, while the amount of dedicated preparation time varied widely between units, pre-mission training plans had marked

similarities:

- a) all mission commanders sought to design training plans that addressed individual and collective skills and progressed from classroom instruction to practical application;
- b) all units conducted training in the required JTF-6 topics;
- c) all units conducted collective training to improve team tactical proficiency;
- d) all active duty units planned a pre-deployment field exercise as a realistic dress rehearsal for the mission;
- e) due to time constraints associated with annual training, reserve units routinely conducted the majority of their pre-mission training in a concentrated block after deployment but before the start of the mission;
- f) virtually all units successfully completed their pre-mission training plan. (Encl 129))
- 713. Of the twenty-three missions surveyed, 18 were LP/OP missions similar to JT414-97A, four were ground reconnaissance missions. All mission commanders indicated that they had conducted dedicated mission training with their units. The time allocated for this training ranged from three days to four weeks, with the median unit pre-mission training time being three weeks. (Encl (129))
- 714. Nineteen of the mission commanders reported conducting a field training exercise (FTX) as part of their dedicated training. In this FTX period of their training, the unit executed individual and collective tasks anticipated in the upcoming JTF-6 mission. Field training periods ranged from two days to one week, with most being about two days. During this period the mission commanders conducted situational training exercises involving role players who caused the mission participants to make decisions involving application of the rules of engagement. (Encl (129))
- 715. Of the four missions surveyed that did not conduct an FTX, two were Marine Corps Reserve units that used their time in the mission staging area to conduct rehearsals and immediate action drills; one had the mission canceled before planned FTX training was conducted; and the fourth was mission JT414-97A. (Encl (129))
- 716. As a consequence of his experience, Capt McDaniel now believes, "Units

have to be allowed to train, they have to be given enough opportunity to train . . . in several ways, by chopping a unit, pulling them to the side and making them exempt from any inspections that might occur . . . there needs to be an organizational change where, when a unit is identified as doing a mission, they should be taken out of certain aspects of other training. Chop that part of the unit out to do the appropriate amount of mission specific training at least three weeks prior to the mission." (Encl (30))

717. Capt McDaniel's view is not shared by his Regimental Commander, Col Weber, who has stated that "as long as I'm Regimental Commander, should the JTF-6 preparation become that formalized, we are not going to play. We simply can't. We don't have the daily, steady-state, time, cohesion, or manning to prepare to that level. We would not be volunteering for any JTF-6 mission if this were the case." (Encl (46))

FMFM-O1 Unit Training Management Guide

718. The Fleet Marine Force Manual (FMFM) O-1, Unit Training Management Guide, was canceled in June 1996 and superseded by MCRP 3-Oa and MCRP 3-Ob in November of 1996. However, FMFM 0-1 was the training guidance referred to a the time of mission JT414-97A as the MCRP had not been promulgated to the FMF. The forward of FMFM 0-1 states its purpose is to, "assist unit commanders and their staff in the preparation of unit training programs. It provides a background on the philosophy, principles, and policies of the Marine Corps Training Management System and is intended for use by battalions or squadron level units and above. It also provides guidance on how to support and evaluate training plans." (Encl (233))

719. Paragraph 1002e of FMFM 0-1 notes:

"A properly conducted mission analysis is essential in obtaining maximum benefit from training. Mission analysis provides a careful assessment of the operational mission, distills specific and implied tasks, and develops a mission-essential task list (METL). In other words, units do not train for Marine Corps Combat Readiness Evaluation System (MCCRES) tasks that are not dictated by their combat missions. The unit combat mission is the basis for the development of tasks and the specific standards to which each task must be executed. Units are taught these tasks according to prescribed collective and individual training standards set forth in MCCRES and individual training standard system (ITSS)." (Encl

(233))

720. Paragraph 2002b of FMFM 0-1 states, in pertinent part:

- "(4) Major subordinate commanders in the divisions, aircraft wings, and force service support groups are responsible to provide trained Marines and Marine units to subordinate MAGTF commands: MEUs, MEBs, and MEFs. In carrying out this responsibility, they are the principle advocates of the training management system. They should ensure that their subordinate commanders understand and support their command training guidance, METL, priorities, and training strategy. They are resource advocates in support of their subordinate commanders' training plans to the force and installation commanders . . .
- (5) Battalion, squadron, and separate company commanders are the principle training managers. Based on mission guidance from higher headquarters, and upon available training resources, they are responsible for developing a training program designed to prepare their units to successfully meet or surpass the standards of performance required to accomplish tables of organization (T/Os)

and/or operational missions. They must be given the authority to conduct or waive training as they see fit. They are responsible for training of their unit, and they must be allowed to exercise their judgment to accomplish the mission.

- (6) Company level commanders implement the training by preparing training plans designed to make optimum use of available training resources and to prepare their units perform successfully T/O and/or operational missions. Their responsibilities include providing specific instructions for subordinate trainers to assist them in preparing and conducting training." (Encl 233))
- 721. Paragraph 3002 of FMFM 0-1 notes, "Battalion and company training is best planned and conducted by the leadership at that level . . . [but] . . . [c]ommanders of higher headquarters provide guidance, approve plans, allocate resources, and inspect or evaluate when necessary to ensure that subordinate programs comply with command guidance." (Encl 233))
- 722. Paragraph 5003a of FMFM 0-1 states, "There are two primary inputs to METL development: combat plans and external taskings . . . External taskings are additional training tasks that indirectly relate to an organization's combat mission." (Encl 233))

- 723. Paragraph 5003c(6) of FMFM 0-1 states, "All organizations from force to battalion/squadron level prepare METLs. Command groups and staff elements at each level develop METLs to address mission-essential tasks in their areas of responsibility. Each organization's METL is approved by the next higher commander in the chain of command." (Encl 233))
- 724. Paragraph 5003d of FMFM 0-1 states that the Mission Performance Standards (MPS) found within the MCCRES are the standards used to assess unit proficiency. (Encl 233))
- 725. Paragraph 6008d(2) of FMFM 0-1 states, "To ensure the tactical proficiency of . . . combat support units, senior commanders and planners should adjust support schedules to provide prime time for training in these units." Prime time for training is defined as "when specific blocks of time are set aside exclusively for training . . . The most careful consideration must be given to creating an environment which frees subordinate units from unnecessary interruptions in planned training." (Encl (233))

USBP Response Time to Shooting

- 726. A Memorandum of Understanding for JT414-97A, dated 24 Apr 97, was signed on behalf of the Marine Corps by the Mission Commander (Capt McDaniel), JTF-6 (LTC Scott), Operation Alliance (signature unclear) and the USBP (Larry Caver). (Encl (143))
- 727. The document purports to "set[s] forth the responsibilities of the four organizations in connection with the operation and control of elements of JT#414-97A. In reality, however, it only addresses "The procedures to be followed by the military involved in JT#414-97A are set forth in the Operations Order briefed on 24 Apr 97, attached hereto, and made a part hereof for all purposes." [Emphasis added] (Encl (143))
- 728. The OPORD provided, in pertinent part in paragraph III.B.3., "The teams will maintain a vigilant watch of their assigned sector throughout the hours of darkness . . . Teams may elect to move to a hide site during the day . . . The Border Patrol will have agents close enough to our holes to respond in short order (15 minutes or less)." (Encl (141))
- 729. PAIC McCutchen does not doubt that he said the response would be about 15 minutes during operational hours. He defined operational hours as from dusk to dawn the time when the LP/OP's were to be manned. He does not recall ever being told that one of the holes would be operated 24 hours a day and emphatically stated that he would not have approved such a plan. He said that

they simply did not have enough personnel to provide such coverage. (Encl (72))

- 730. The OPORD Summary prepared by JTF-6 personnel following the Confirmation Brief for Mission JT414-97 states, in pertinent part, "USBP response will be forward deployed to provide a 15 minute response to the holes." (Encl (142))
- 731. LTC Scott indicated that JTF-6 policy is to validate LEA emergency and non-emergency linkup procedures. He said, "We require that they rehearse so we can evaluate the time lines to determine whether or not they are realistic. Additionally, we can evaluate the LEA's response plan and the medevac plan to ensure they are responsive to our needs." (Encl (56))
- 732. CPT Spencer of JTF-6 stated that for Mission JT414-97A, "We then confirmed the USBP response time with Mario Vargas, the acting PAIC (Patrol Agent In Charge) at Presidio Station (which was 15 minutes). Then we accompanied Mario prior to mission commencement to all the LP/OP sites." PAIC(A) Vargas, however, does not recall CPT Spencer confirming the 15-minute response time, and PAIC(A) Vargas indicated that he accompanied mission personnel to the location of Holes 1 and 2 only. PAIC(A) Vargas indicated that he did not visit the site of Holes 3 and 4. (Encls (60), (250))
- 733. CPT Spencer noted that the USBP response time for Mission JT414-97A was never tested or drilled. He said that the USBP response in the event of an emergency was to be "with emergency lights and sirens." They did not have a standby response team for this purpose. CPT Spencer did not know of any exceptions to the 15-minute response time requirement. (Encl (60))
- 734. PAIC McCutchen agreed that there was no rehearsal of the response time for this mission but he did not think there needed to be any. He had handled other missions previously and was confident in the time it would take to get to the holes once the agents were in place during the operational hours. He cannot recall when the last mission was conducted in his sector before Mission JT414-97A but believes it was done by the Texas Army National Guard. (Encl (72))
- 735. MAJ Hester of JTF-6 stated that the 15-minute response time was agreed upon at the OPORD brief, but he noted, "If the U.S. Border Patrol were mobile at the time of a request for assistance, the response time could have been faster or slower, depending on the vehicle's location. The Mission Commander would have known it could take a couple of minutes longer based upon this factor." He further stated that the reaction time "was not rehearsed or drilled." He knew of no planned exceptions to the response time. (Encl (57))

- 736. MAJ Hester understood that the Marines of Mission JT414-97A "were going to move only at night." With respect to JTF-6 policy regarding daytime moves by teams from the hide site to the LP/OPs, MAJ Hester indicated, "Basically, they were to move to the LP/OP under cover of darkness." (Encl (57))
- 737. LTC Scott noted, however, that "as a situation changed, the team leaders were allowed the flexibility to make their own decisions regarding movement." (Encl (56))
- 738. LTC Scott also stated, "At the OPORD brief, and coordinated during the site visit, the USBP agreed to respond to an emergency within 15 minutes. The understanding was that this meant to the scene of the emergency. I understood the response agreement to be 24 hours a day, with no exceptions." LTC Scott further noted, "We did not receive confirmation from CPT Spencer, but assumed the response validation had occurred. Such validation is a requirement as per Mission Commander's checklist." (Encl (56))
- 739. PAIC(A) Vargas stated in an interview that he understood he was to provide a 15-minute response to the Marines only during the hours of darkness. (Encl (79))
- 740. Capt McDaniel understood from his earlier dealings with PAIC McCutchen that there would be agents positioned on either ends of the holes along Route 170. He noted that this understanding was apparently not communicated to PAIC(A) Vargas and he cannot say that he specifically discussed this issue during his meetings with him. (Encl (30))
- 741. PAIC McCutchen said his plan would have been for agents to be positioned on both ends of Route 170 had he remained at Presidio. He was transferred on 11 Apr 97. At that time the responsibility became Mario Vargas' as the Acting Patrol Agent in Charge (PAIC(A)). (Encls (30), (72))
- 742. As a consequence of the Hernandez shooting incident, JTF-6 conducted a comprehensive review of JTF-6 ground missions. Improvements in operational procedures have been initiated in eight areas, to include "rigorous rehearsals in DLEA response and DLEA/unit link-up procedures . . . validated by JTF-6 . . prior to mission start-up." (Encl (252))

Rules of Engagement

743. The Department of Defense defines the term, rules of engagement, as: "Directives issued by competent military authority which delineate the circumstances and limitations under which United States forces will initiate and/or

continue combat engagement with other forces encountered." (Encl (228))

- 744. For Mission JT414-97A, the Chairman of the Joints Chiefs of Staff Instruction 3121.01, Standing Rules of Engagement for US Forces, (SROE) was provided as the rules of engagement by the 7 May 97 FORCOM execute order that referenced the JTF-6 Concept for Counterdrug Mission JT414-97A message of 19 Feb 97. (Encls (133), (138), (179))
- 745. The SROE is a controlled document that contains an unclassified portion, Enclosure A, authorized for distribution to ". . . commanders at all levels to be used as fundamental guidance for training and directing their forces" and is intended to be used in "operations other than war, during the transition from peacetime to armed conflict or war, and during armed conflict in the absence of superseding guidance." (Encl (226))
- 746. Enclosure A of the SROE was not provided to the Marines participating in Mission JT414-97A, although it was referred to during their period of instruction by Capt Gante. (Encls (182), (212))
- 747. Enclosure A of the SROE does not distinguish the use of deadly force by US military forces conducting counterdrug operations within the United States from its general policies on self-defense and the use of force. (Encl (179))
- 748. The SROE defines individual self-defense as a subset of unit self-defense. (Encls (179), (226))
- 749. The SROE describes measures in self-defense as follows:
- "a. <u>Means of Self-Defense.</u> All necessary means available and all appropriate actions may be used in self-defense. The following guidelines apply for unit or national self-defense.
- (1) Attempt to Control Without the Use of Force. The use of force is normally a measure of last resort. When time and circumstances permit, the potentially hostile force should be warned and given the opportunity to withdraw or cease threatening actions.
- (2) <u>Use Proportional Force To Control the Situation</u>. When the use of force in self-defense is necessary, the nature duration and scope of the engagement should not exceed that which is required to decisively counter the hostile act or hostile intent and to ensure the continued safety of US forces or other protected personnel or property.

- (3) Attack to Disable or Destroy. An attack to disable or destroy a hostile force is authorized when such action is the only prudent means by which a hostile act or hostile intent can be prevented or terminated. When such conditions exist, engagement is authorized only until the hostile force no longer poses an imminent threat." (Encl (226))
- 750. Pursuit is addressed in Enclosure A of the SROE as follows:
- "Immediate Pursuit of Hostile Foreign Forces. In self-defense, US forces may pursue and engage a hostile force that has committed a hostile act or demonstrated hostile intent and that remains an imminent threat." (Encl (226))
- 751. The SROE defines a "hostile force" as "any force or terrorist unit (civilian, paramilitary, or military), with or without national designation, that has committed a hostile act, demonstrated hostile intent, or has been declared hostile." (Encl (226))

Fourth Amendment Standard on Use of Deadly Force

- 752. Persons within the United States are protected from use of deadly force by government officials and the U.S. military by the prohibition of the Fourth Amendment of the U.S. Constitution against unreasonable search and seizure by government officials. (Encls (189), (190))
- 753. The standard for determining whether the use of deadly force by government officials is consistent with the protections afforded by the Fourth Amendment is one of "objective reasonableness . . . at the moment" deadly force was employed. If a government official discharging his or her duties within the United States "reasonably believes that an individual poses a threat of serious bodily harm . . . to the officer or others . . . " then resort to deadly force is authorized. The question to be answered is whether the ". . . actions (of the government officials) are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." (Encls (189), (190), (191))

Other Policies, Orders. and ROE Concerning the Use of Deadly Force

754. On 17 Oct 95, the Attorney General of the United States approved a uniform deadly force policy for the various investigative agencies of DoJ. This new policy, titled Resolution 14, was published to ensure standardization of the constitutional restrictions on the use of deadly force identified by the U.S. Supreme Court. Resolution 14 identifies the standard for the permissible use of deadly force to be as follows: "Law enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of

death or serious physical injury to the officer or to another person." (Encl (186))

755. The FBI produced an instructional outline that implements the standards found in the DoJ policy. The policy text of this instructional outline identifies two circumstances when FBI Agents may use deadly force. "A. Defense of Life - Agents may use deadly force only when necessary, that is, when the Agents have probable cause to believe that the subject of such force poses an imminent danger of death or serious physical injury to the Agents or other persons. B. Fleeing Subject - Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe: (1) the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death, and (2) the subject's escape would pose an imminent danger of death or serious physical injury to the Agents or other persons." (Encl (187))

756. In circumstances where ROE have not been issued, the current DoD Directive concerning the use of deadly force and carrying of firearms applies the Fourth Amendment standard of a reasonable belief in imminent danger of death or serious bodily harm before a resort to deadly force is made when acting in self-defense or defense of others. This directive also permits the use of deadly force in five other situations: assets involving national security; assets not involving national security but inherently dangerous to others; serious offenses against persons; arrest or apprehension and; escapes. (Encl (222))

757. The parallel Marine Corps Order concerning the arming of security and law enforcement personnel and the use of deadly force adds a sixth situation to the five contained in the DoD Directive and that is "lawful order." (Encl (231))

758. The Arizona National Guard participates in a state Joint Counter-Narcotics Task Force (JCNTF) that is conducted under separate authority than JTF-6. Instead of using the CJCSI 3121.01, <u>Standing Rules of Engagement</u>, JCNTF personnel rely upon rules of engagement that have been extracted from guidance contained in National Guard Regulation AR 500-2. (Encl (226))

759. The JCNTF rules of engagement define deadly force as, ". . . the force which is likely to cause serious bodily injury or death, and may only be used as a last resort." The JCNTF rules of engagement state that deadly force will only be used when: "(1) All lesser means have been exhausted or are unavailable. (2) Risk of injury to other persons is not increased by the use of deadly force. (3) When deadly force is the minimum force necessary to prevent death or serious injury to other persons." (Encl (226))

Expert Opinion on the Application of the Rules of Engagement

- 760. Colonel Hays Parks, USMCR (Ret), an attorney and an internationally recognized expert on military operational law, conducted a review of materials concerning this shooting incident contained in the JTF-6 AR 15-6 investigation and other materials provided to him by this JAGMAN investigation. (Encl (179))
- 761. As a result of his review of these materials, Col Parks formed an opinion that, "... the decisions taken by Corporal Banuelos on 20 May 1997, including the decision to resort to deadly force, were those of a reasonable man under the circumstances." As such, Col Parks concluded, "... that the actions of Corporal Clemente M. Banuelos, USMC, were consistent with his rules of engagement, training, and judicial standards for the use of deadly force." (Encl (179))
- 762. Col Parks also provided his opinion that the Standing Rules of Engagement ". . . may be legally correct for the purposes for which it is intended, but it is an inappropriate set of terms of reference for military support to domestic law enforcement operations for the following reasons . . . (1) [The SROE], first promulgated in 1979, is a Cold War product written for the primary purpose of protection of a U.S. Navy carrier battle group from a pre-emptive attack by a Soviet Naval battle group or other Soviet forces . . . (2) [The SROE] was not designed for and generally is unsatisfactory for small unit operations." (Encl (179))
- 763. Addressing the subject of ROE cards, Col Parks observed, "There is a certain popularity for ROE cards, highly abbreviated summaries of larger ROE principles. The ROE card issued by JTF-6 personnel, including Marine Team 7, is representative. ROE cards and similar aspects of ROE training represent a military tendency to reduce each aspect of training to the 'bare bones.' However, there is no substitute for effective training and learning . . . ROE cards are also prone to poor drafting and inconsistency. The JTF-6 ROE card may be consistent with [the SROE] and the JTF-6 commander's intent, but it is not an accurate statement of U.S. domestic law relating to the use of deadly force." (Encl (179))
- 764. As a result of his review and his opinions, Col Parks made four specific recommendations for improvements in the ROE or rules relating to the use of deadly force. They are:

"Recommend separate annexes to [the SROE] for individual self defense and, for domestic operations, the use of force/use of deadly force. With the necessary training where mission appropriate, articulation of clear, uniform standards would enhance force protection and the ability of an individual member of the armed forces to perform his or her mission

Recommend that 'rules of engagement' not be used with regard to

military support for domestic law enforcement, or other military aid to civilian authorities

Recommend that existence of the phenomenon of scenario furfillment be incorporated in to ROE planning and implementation through (a) training and (b) procedures for command verification of reported actions, where possible

Recommend the JCS and military services conduct an assessment as to the continued value of ROE cards." (Encl (179))

Medical Care

- 765. Cpl Torrez was the designated Combat Aidsman and first responder (CA-FR) for Team 7. He received the training and the medical equipment required to do a complete patient assessment on Mr. Hernandez. This would include both a primary and secondary survey as described in the Combat Aidsman Course Handbook. (Encls (29), (152))
- 766. An attendance roster maintained by the Senior Medical Department Representative at 5/11 indicates that Cpl Torrez attended the combat aidsman course and completed it on 7 Mar 97. This course emphasized patient assessment and emergency medical care procedures utilizing minimal equipment and lifting and moving of patients if movement is required. (Encls (13), (14), (29), (152), (212))
- 767. Combat lifesaver medical bags were carried by each team assigned to the mission as required by the OPORD. They had been requisitioned on 5 May 97 from the Battalion Surgeon, 5/I I. (Encls (30), (141), (212))
- 768. Cpl Torrez did not bring his medical bag up from the hide site that evening. (Encl (15))
- 769. First aid refresher training and an overview of Medevac procedures were taught during mission work-up training at 29 Palms, California from 22 Feb to 8 Apr 97. LCpl Blood attended this training, but Cpl Torrez and LCpl Wieler did not. (Encls (128), (212), (213))
- 770. The Combat Aidsman Course Handbook describes the two stages of patient assessment as follows:
 - a. The primary survey is done to check for and control life threatening problems. The procedures for the primary survey are performed essentially simultaneously but the ABC's for the first

responder, ..-e A (airway) - check and open the airway to determine unresponsiveness, position the patient and open the airway; B (breathing) - check to see if breathing; C (circulation) - check to determine if there is a pulse and begin CPR if there is no pulse present, and finally D (disability) - determine if the patient is in an altered state of consciousness, or if the patient has the ability to move and feel extremities. Once these ABC's have been completed, MEDEVAC should be requested if, in the opinion of the CA-FR, it is required.

- b. The secondary survey involves a head-to-toe examination of the patient and systematically observing and feeling for wounds and deformities. If the patient is unconscious, the CA-FR checks for Indications of pain, sensation and reflex action. In the secondary survey the head, neck, chest, abdomen, pelvis, upper and lower extremities, back and spine and buttocks are checked If there is concern about a spinal injury, the patient should be "log-rolled" to check for further Injuries. (Encl (152))
- 771. There were two corpsmen assigned to this mission; HM3 Paul Fisher and HM3 Antonio Rigor. One corpsman was positioned at the TOC (Fwd) and the other at the Marfa airfield. These two corpsmen rotated assignments on a regular basis. (Encls (30), (141), (151), (212))
- 772. Capt McDaniel did not dispatch either HM3 Fisher or HM3 Rigor to Redford to assist with medical care because he felt the USBP could respond in a more timely manner. (Encl (30))
- 773. The two hospital corpsmen assigned to this mission were tasked to ensure that all Marines assigned were proficient in combat lifesaving tasks and aware of health dangers in the area of operations. They were also responsible for checking all combat lifesaver bags prior to Team insertions and for arranging transport for individuals requiring a higher level of medical support to the hospital at Alpine, Texas. (Encls (30), (212))

Autopsy Findings

774. The autopsy indicated:

a. An entrance wound on the right anterior-lateral lower chest wall, 54 cm from the top of the head and 18 cm right of the mid line. The wound is ovoid, 4x3 mm, with a prominent red-brown abrasion rim inferiorly, posteriorly, and superiorly, measuring up to 2 mm. No soot or stippling surrounds the wound. There is no

blackening or searing of the wound margins. (Encls (193), (195))

- b. The path of the gunshot wound is right to left, minimally front to back, with minimal downward deviation of the first diverging wound path, and slight downward deviation of the second. (Encls (193), (195))
- c. The wound path passes through the intercostal space into the right hemithorax, perforating the right dome of the diaphram, liver, aorta, inferior vena cava, stomach, spleen and the left dome of the diaphram to enter the left hemithorax. The wound path passes through the lateral seventh rib. (Encls (193), (195))
- d. Shortly after entering the abdominal cavity, the wound path diverges into two separate paths. The second path continues left and slightly downward from the liver, continuing across the mid line, extensively fracturing and transecting the left kidney. (Encls (193), (195))
- e. Mr. Hernandez died as a result of a penetrating gunshot wound of the trunk, causing injuries to numerous internal organs and large blood vessels with subsequent hemorrhaging. (Encls (193), (195))

OPINIONS

Adequacy of Mission Training

1. A threshold question in determining the adequacy of training is whether the initial mission analysis was correct. In this case, the mission analysis was incorrect at every Marine Corps level of command.

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(FoFs (3), (4), (14), (19), (20), 21), (27), (36), (37), (40), (52), (56), (57), (58), (61), (65), (66), (98), (101), (102), (103), (112), (113), (114), (116), (117), (119), (121), (122), (123), (127), (128), (129), (130), (131), (132), (133), (135), (157), (162), (163), (173), (174), (175), (177), (178), (195), (202), (203), (212), (231) (236), (691), (692), (693), (698), (705), (719), (720), (721), (722), (723) (725))
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a. This JTF-6 mission appears to have been viewed at every level of Marine Corps command as more of a training opportunity than a real world deployment. The failure to appreciate the difference had tragic consequences. A deployment can provide training benefits, but a deployment with a real world mission is markedly different from a pure training opportunity. Specifically, failures can occur in training, but failures during missions can be tragic.

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(FoFs (3), (4), (14), (15), (17), (19), (20), (27), (30), (36), (37), (40), (56), (58), (61), (162), (163), (231), (236), (716), (717) (719), (720) (721), (725))
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b. Many factors contribute to this misunderstanding. The legislative language that permits counterdrug missions speaks strongly of the nexus to military training. Legal considerations related to Posse Comitatus, the Anti-Deficiency Act, and political sensitivities combine to create a language barrier to a clear understanding of what these missions entail. They are much more than training opportunities.

c. Any critical analysis of prior missions performed by 1st MarDiv reveals the operational reality of counterdrug missions. Five shootings and one wounding in four years cannot realistically be characterized as a "training opportunity." The mission analysis, at every level, would have benefited from an effective, broadly disseminated institutional "lessons learned" program that placed these mission and their dangers in proper context.

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(FoFs (3), (14), (15), (16), (19), (21), (27), (61), (62), (77), (122), (126))
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d. It would be an abdication of higher command responsibility to thrust to the lowest tactical level the development of a mission analysis for JTF-6 counterdrug missions.

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(FoFs (19), (54), (56), (58), (59), (61), (112), (124), (125), (126), (127), (128), (130), (132), (133), (135), (718), (719), (720), (721), (725))
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2. The training this unit performed in preparation for the JTF-6 mission was inadequate.

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(FoFs (94), (95), (96), (97), (98), (124), (125), (126), (136), (137), (140), (141), (142), (143), (145), (146), (152), (154), (157), (159), (160), (161), (163), (171), (177), (179), (192), (193), (225), (227), (228), (229), (230), (231), (232), (234), (236), (248), (249), (261), (262), (263), (265), (266), (267), (710), (711), (712), (713), (714), (716), (719), (720), (721), (722), (723), (725))
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a. There is, unfortunately, no totally applicable Marine Corps standard against which to measure the preparation of this unit to conduct its JTF-6 mission. The Marine Corps has developed testing standards to be applied to combat skills. The mission of conducting an LP/OP as part of a counterdrug operation contains elements of a combat LP/OP but there are critical differences. It is not believed that a claimed "core competency" to conduct combat LP/OPs translates to a present ability to do counterdrug LP/OP operations.

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(FoFs (3), (19), (27), (35), (36), (37), (70), (84), (94), (95), (96), (98), (116), (123), (124), (125), (126), (127), (129), (131), (132), (135), (136), (173), (177), (178),
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b. In the absence of defined standards, a measurement that seeks to quantify training is arguably unfair and inappropriate. It does not identify the beginning skill levels and does not recognize the quality of the training provided. Nonetheless, human experience suggests that the quantity of training a unit undergoes has some predictive value for the unit's competency to perform. The quantity of training HQBtry, 5/I I, received for mission JT414-97A was the least of all active duty units surveyed. In fact, the term "unit" suggests a cohesiveness of training and shared experiences these Marines simply did not have.

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(FoFs (17), (36), (37), (40), (55), (67), (69), (70) (84), (136), (163), (209), (210), (211), (261), (712), (713), (716) (725))
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c. The assignment of this LP/OP mission to a HQBtry required the early identification, assembly and dedicated training of the mission participants to ensure success. This did not happen. The use of volunteers, from diverse MOS backgrounds, was the product of a flawed mission analysis which did not comprehend the need for a fully trained unit to perform a defined mission.

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(FoFs (4), (29), (36), (37), (55), (126), (136), (137), (138), (139), (140), (141), (142), (143), (144), (145), (146), (148), (152), (153), (154), (175), (231), (242), (245), (246), (712), (716), (720), (725))
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d. The Mission Commander failed to fully develop and complete his pre-mission training plan. While he recognized the need to create training situations that would cause his Marines to utilize the rules of engagement, he did not conduct such training. He should have found a way to accomplish this training at Marfa when unable to do so at Camp Pendleton.

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(FoFs (55), (126), (136), (138), (139), (152), (160), (161), (177), (225), (227), (228), (231), ((234), (236), (247), (254), (261), (262), (264), (265), (267), (710), (712), (715), (716), (719), (720))
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Rules of Engagement Appropriateness and Training

3. The relatively brief rules of engagement training, given to the Marines in a classroom environment, proved inadequate to overcome the more practiced combat response to an armed aggressor. Basic Marine Corps combat training instills an aggressive spirit while teaching combat skills. More is needed to place young fully-armed Marines in a domestic environment to perform non-combat duties. Such missions require substantive training to ensure actions appropriate

for that operational environment.

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(FoFs (4), (94), (95), (96), (103), (148), (149), (151), (152), (153), (162) (179), (180), (181), (182), (183), (184), (185), (186), (187), (190), (191), (192), (193), (194), (195), (242), (264), (265), (266), (273), (274), (275), (276), (277), (278), (288), (341),349), (350), (351), (352), (356), (374), (375), (381), (382), (383), (402), (428), (429), (430), (431), (437), (450), (457), 460), (618), (752), (753), (758,) (759), (762), (763), (764))
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4. The rules of engagement, as written and taught, sought to prepare the Marines to conduct LP/OP counterdrug operations, however, the SROE should be studied to see if they can be improved for use in the United States domestic environment.

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(FoFs (179), (180), (181), (182), (183), (184), (185), (186), (187), (189) (192), (193), (194), (274), (275), (276), (277), (278), (288), (381), (382), (383), (402), (446), (714), (743), (744), (745), (746), (747), (749), (750), (751), (752), (753), (762), (763), (764))
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a. Reference to the rules of engagement as the authority for the use of force within the United States is problematic. The individual Marine is prepared from prior combat training to understand "engagement" as presuming a hostile force. Accordingly, the admonition within the rules of engagement to de-escalate - where possible - becomes counterintuitive.

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(FoFs (179), (181), (182), (187), (188), (275), (288), (349), (350), (351), (352), (375), (381), (382), (750), (751), (752), (753))
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b. Moreover, the use of battlefield operating system terms such as "intelligence preparation of the battlefield," "battlefield geometry," and "hostile forces" communicates to young Marines a situational awareness far removed from the reality of manning an observation post on private property, adjacent to a small community, on United States soil.

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(FoFs (19), (113), (114), (115), (116), (120), (123), (162), (187), (270), (274), (275), (288), (430), (457) (750), (751))
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c. The scholarly opinions of Col W. Hays Parks USMC (Ret.) more fully elucidate the problem areas contained in the current employment of the Standing Rules of Engagement during domestic operations and are incorporated by reference.

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(FoFs (760), (761), (762), (763), (764))
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Senior Command Oversight

5. The command structure of 5th Battalion, 11th Marines (5/11), provided inadequate support to the Mission Commander.

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(FoFs (36), (56), (88), (89), (90), (91), (102), (103), (112), (119), (125), (126), (136), (137), (138), (140), (152), (153), (157), ((159), (160), (175), (225), (226), (227), (228), (231), (234), (236), (237) (718), (719), (720), (721), (722), (723) (725))
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a. There is a disturbing similarity between the inadequacies of preparation in this mission and those of the prior JTF-6 mission involving the death of LCpl Davis. The Battalion Commander's endorsement on the Davis investigative report stated, "[The unit] was not staffed, trained, nor supported in a fashion that allowed them to be successful . . . [it] was faced with a personnel tempo that made the [mission] commander the focal point . . . for all aspects of the mission . . . it became apparent that the battalion staff did not look at the JTF mission as a deployment . . . The staff accomplished little in support of [the unit]." Those words apply accurately to the present investigation.

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(FoFs (40), (55), (56), (102), (103), (112), (119), (126), (136), (137), (138), (140), (152), (153), (157), ((159), (160), (175), (225), (226), (227), (228), (231), (234), (236), (237), (718), (719), (720), (721), (723), (725))
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b. A combination of factors contributed to the inadequate battalion support. There was over reliance on the liaison relationship existing between the JTF-6 Mission P!anner and Division Counterdrug Officer. This caused the battalion to see itself as a mere force provider with little mission oversight responsibility. A 5/I I Mission Essential Task List that would assist in prioritizing training and other events did not exist. As in the Davis case, the Mission Commander was the focal point for all aspects of the mission.

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(FoFs (56), (59), (61), (89), (90), (103), (112), (124), (125), (126), (211), (263), (265)(718), (719), (720), (721), (723), (725))
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c. No real effort made by 5/11 to provide the Mission Commander with dedicated training time. He was not relieved from inspections and other requirements that, arguably, were of lesser importance than proper training for a counterdrug mission. At the very least, this issue should have been framed for higher headquarters adjudication.

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(FoFs (102), (103), (211), (225), (234), (236), (237) (718), (719), (720), (721), (725))
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6. The command structure of 11th Marine Regiment (11th Marines) provided inadequate support to the Mission Commander.

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(FoFs (6), (18), (57), (58), (59), (61), (62) (66), (67), (68), (69), (71), (77), (79), (80), (82), (83), (127), (128), (129), (130), (131), (166), (167), (168), (173), (198), (199), (200), (202), (224), (225), (718), (719), (720), (721), (725))
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a. At 11th Marines there appears to have been an inadequate appreciation of 5/11's high operational tempo and key personnel shortages. The strain placed on the battalion was certainly exacerbated by the medical condition of the Battalion Commander. The Battalion Commander's complaints to the Regimental Commander in April 97 received no response. The noninvolvement of the regiment is particularly troubling. The memorandum accompanying the CG, 1st Marine Division's endorsement of the Davis investigation clearly states that regiments are to play an oversight role in counterdrug missions.

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(FoFs (6), (57), (58), (59), (61), (62), (71), (75), (79), (80), (127), (128), (129), (130), (158), (166), (167), (168), (169), (198), (199), (200), (202), (224), (231), (252), (717) (718), (719), (720), (721), (725))
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b. FMFM 0-1 states, "Each organization's METL is approved by the next higher commander in the operational chain of command." The lack of a METL by 5/11 was not detected by 11th Marines. FMFM 0-1 further states that battalions are responsible to plan and conduct training and that commanders at levels above battalions are responsible to inspect or evaluate training. There is no evidence of any proactive involvement in overseeing the counterdrug training. The complaints of the Battalion Commander, his known serious medical problem, and the fact that a HQBtry was assigned an LP/OP mission in the midst of a high-op tempo period should have combined to provide a warning that training should be closely monitored.

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(FoFs (83), (124), (125), (128), (129), (130), (224), (225), (231), (252), (718), (719), (720), (721), (725))
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c. The admonitions of FMFM 0-1 of the benefits of dedicated training apparently were considered inapplicable to counterdrug missions. The direction of 1st MarDiv that "CD missions do not take priority over division TEEP'd training" undoubtedly contributed to this view. However, 11th Marines should have been more proactive in ensuring that Mission Commanders (and Battalion Commanders) were not left to their own resources to balance competing requirements against the need for dedicated training for counterdrug missions.

7. The command structure of 1st MarDiv provided inadequate support to the Mission Commander.

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(FoFs (4), (5), (14), (15), ((16), (17), (18), (19), (21), (27), (57), (58), (59), (61), (62), (63), (64), (65), (66), (67), (69), (70), (71), (90), (101), (124), (125), (131), (132), (133), (135), (163), (164), (165), (173), (203), (209), (210), (211), (212), (224), (225), (234), (236), (237), (713), (714), (715), (716), (718), (719), (720), (721), (725))
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a. At 1st MarDiv there existed a paucity of guidance and support for JTF-6 missions. The prior division SOP prepared by MajGen Myatt fell into disuse. While the Division counterdrug newsletter initiated by Maj Lehmann was a positive effort, there was no meaningful lessons learned fusion. No member of the division (and its subordinate units) interviewed in the course of this investigation was aware that - when 1st MarDiv Marines deployed for counterdrug missions within the United States - five percent of the time they came under gunfire. JTF-6 missions were even identified as distinct and of a lesser training priority than TEEP'd training. While these missions may have been viewed as voluntary at a higher command level, for the Mission Commander they are far from optional.

b. Although the Confirmation Brief process is a useful supervisory tool, it failed to detect the training deficiencies for Mission JT414-97A. The numbers of earlier missions successfully accomplished does not mean that the pre-deployment training for each and every prior unit was sufficient. Fortunately, most units did not confront substantial challenges to their training while performing JTF-6 missions. Untested, their strengths and weaknesses were not revealed. Their missions became only training experiences rather than operational challenges. It appears, however, that this record of success contributed to a belief that all counterdrug missions were within the basic competency of any Marine unit no matter the MOS composition.

c. As previously noted, because no standard exists to measure the training level of a unit for a counterdrug mission, the evaluation process is subjective. As practiced within 1st MarDiv, the success of the confirmation brief depended upon the

comfort level of the senior officer receiving the brief. The subjective judgment of senior officers is a critical part of any training evaluation. However, subjective judgment, without resort to some objective standards, exposes the command to being incorrectly persuaded of mission competence by a well delivered brief.

d. Some individuals draw distinctions between the LCpl Davis incident and the subject LP/OP mission. These distinctions are too finely drawn. They fail to grasp the essential message of the Davis investigation. The real issue raised in that investigation is not the safety of night insertions and the techniques relating thereto. Rather, a plain reading of the Davis investigation frames the issue of the responsibility of higher headquarters to appreciate and resolve the conflicting demands made on the training and mission preparation time of junior officers and their units.

e. It was essential for 1st MarDiv to determine the proper degree of command oversight and support to be provided to junior officers. There is an inescapable tension between the perceived need by company grade officers for more dedicated training time and the many competing demands to which higher headquarters must respond. The Davis investigation addressed this tension and resolved it by recommending 10 uninterrupted training days be allotted to the mission commander prior to deployment for missions of this type plus an additional 5 days for pre-deployment preparation immediately prior to deployment. These recommendations were specifically approved by the CG, 1st MarDiv who fixed responsibility for this at the Regimental and Battalion level.

f. If it was not the intention of the CG, 1st MarDiv, that these days be provided then he should not have concurred with the subordinate commanders' recommendations. If it was the intention, then it appears more needed to be done since at least one major subordinate commander - the parent command for the unit performing Mission JT414-97A - did not understand this to be the intent of the Commanding General. The CG, 1st MarDiv was poorly served by his general and special staff officers who failed to heed the injunction of the JAG Manual that aggressive follow-up is required to communicate lessons learned from

investigations. No training directives were mod)fied, no formal written training advice was promulgated, and no follow-up inquiries with respect to training were made. All corrective action was left to the initiative of subordinate commands.

(FoFs (62), (63), (64), (65), (66), (67), (71), (75), ((76), (77), (78), (79), (82), (83), (101), (718), (720), (725))

JTF-6 Command Relationships

8. JTF-6 has historically and appropriately relied on the individual Services to train and equip units for assigned missions.

a. At the time of this mission, JTF-6 had not communicated to Marine Corps commands any standards or requirements beyond reference to the service's own MCCRES standards. However, through the Initial Planning Conference and the attendant site visit process, the Mission Commanders (and such members of the parent commands who wished to attend) were exposed to the unique requirements of the counterdrug mission so that an adequate mission analysis could be made.

(FoFs (84), (85), (86),(88), (89), (90), (91), (92), (93), (94), (95), (96), (97), (98), (99), (100), (112) (116), (117), (119), (132), (703), (704), (705), (706), (708), (709))

b. While JTF-6 was required by USACOM to validate the readiness of units

assigned to its tactical control during counterdrug missions, JTF-6 also relied upon the confirmation brief process to determine readiness. In reality, the process depended on the unit's command structure to provide the training guidance and support for proper mission preparation. This process appropriately recognizes the primacy of the service responsibility to train and provide mission qualified forces to the Joint Commander.

9. The command relationships between JTF-6 and assigned Marine Corps units were adequate and did not contribute to the failures of the mission.

Interagency Coordination.

10. The primary responsibility for interagency coordination must lie with JTF-6.

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(FoFs (1), (84), (94), (95), (100), (690), (696), (697), (698), (699), (700) (701))
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a. JTF-6, collocated as it is with Operation Alliance, is the only military agency fully knowledgeable of the law enforcement culture and concerns. Only JTF-6 can logically address the many coordination issues involved with counterdrug operations.

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(FoFs (1), (691), (693), (696), (697), (698), (699))
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b. Mission Commanders, provided from diverse services and geographically distant points, cannot be reasonably expected to understand law enforcement cultures and habits that must be understood to have effective planning and execution. The Mission Commander must be a knowledgeable participant in such planning and should ensure that he and his law enforcement counterpart understand their respective responsibilities, but he should not be the lead agent for the planning and defining of responsibilities. It appears that this conclusion was reached independently by JTF-6 and the necessary remedial actions have been initiated.

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(FoFs (213), (217), (210), (220), (221), (222), (702), (703), (706), (708), (727), (728), (729), (730), (731), (732), (733), (734), (735), (739), (740), (741), (742))
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11. The planning and execution of the law enforcement response in this case was inadequate. The many statements provided by military and USBP personnel reveal no shared understanding of what the USBP emergency response for Mission JT4 1 4-97A was intended to be. A clearly written statement of responsibilities is essential for future operations of this type. The responsibility for this must be shared by the USBP, JTF-6, and the Mission Commander. It appears that JTF-6 has independently reached this conclusion and has implemented corrective action.

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(FoFs (53), (95), (96), (97), (99), (100), (213), (265), (310), (313), (314), (315), (316), (317), (318), (364), (366), (367), (368), (416), (417), (448), (451), (465), (480), (482), (488), (499), (502), (726), (727), (729), (731), (732), (733), (734), (735), (736), (738), (739), (740), (742))
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12. The sharing of intelligence between the USBP and JTF-6 concerning the Febuary 1997 shooting at Polvo Crossing was inadequate.

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(FoFs (104), (105), (106), (107), (108), (109), (110), (111), (115))
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a. The decision of USBP Agent DeMatteo not to formally report the shooting

incident involving Mr. Hernandez denied JTF-6, and ultimately the Marines, access to an essential element of intelligence that may have resulted in a different decision regarding the location of Hole 3.

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(FoFs (104), (105), (106), (107), (108), (109), (110), (111), (112), (113), (114), (115))
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b. Incidents of this type have relevance to evaluating the dangers to Marines from recreational shooters. While the nature of the threat from recreational shooters was briefed generically to the Marines, the lack of any specific knowledge of a local resident, in the vicinity of Polvo Crossing, disposed to fire his rifle indiscriminately denied the Marines a critical EEI (essential element of intelligence) that may have affected their later decisions.

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(FoFs (112), (113), (115), (270), (271), (274), (275), (296), (304), (307), (337), (339), (340), (342))
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Shooting Incident

13. The Mission Commander exercised inadequate command and control from the Tactical Operations Center over Team 7 to de-escalate the shooting incident.

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(FoFs (288), (354), (355), (356), (357), (371), (373), (374), (375), (379), (382), (383), (384), (393), (395), (402), (403), (404), (405), (418), (419), (420))
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a. Evolving Marine Corps doctrine for tactical command and control relies upon the initiative of subordinates, acting on their understanding of the mission and their commander's intent, rather than detailed instructions provided from higher echelons of command. However, this doctrine presumes a cohesive unit trained for the mission. Cpl Banuelos was not leading a cohesive unit and the situation which confronted him was different from anything for which he had been trained.

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(FoFs (4), (36), (37), (55), (56), (102), (116), (118), (119), (120), (121), (136), (137), (138), (139), ((140), (141), (142), (145), (152), (153), (159), (160), (161), (177), (179), (194), (195), (226), (227), (228), (229), (231), (234), (236), (242), (260), (261), (262), (264), (265), (269), (270), (271), (273), (275), (288), (349), (350), (354), (355), (356), (357), (371), (373), (374), (375), (379), (382), (384), (393), (395), (402), (403), (404), (405), (418), (419), (420))
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b. While the Mission Commander lacked the situational awareness that the team leader had, he remained too passive and deferred to Cpl Banuelos' judgment on the ground. He should have made a more aggressive effort to obtain the facts and

control the tactical decision making process. The heavy volume of radio traffic during this 20-minute period mitigates but does not explain the failure to exercise more aggressive command and control.

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(FoFs (121), (182), (186), (264), (270), (275), (288), (355), (356), (357), (371),
(373), (374), (375), (379), (382), (383), (384), (393), (395), (402), (403), (404),
(405), (418), (419), (420))
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14. In light of the training he received for this mission, Cpl Banuelos' tactical decisions were reasonable during the sequence of events that ended with the shooting of Mr. Hernandez.

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(FoFs (36), (37), (55), (118), (119), (120) (121), (136), (139), (140), (141), (142),
(145), (148), (151), (152), (153), (179), (180), (181), (182), (183), (184), (185),
(186), (187), (192), (193), (194), (195), (230), (231), (232), (240), (242), (245),
(247), (248), (261), (262), (264), (265), (269), (270), (271), (273), (274), (275),
(281), (288), (291), (324), (326), (327), (328), (331), (332), (333), (334), (336),
(339), (340), (341), (342), (344), (345), (346), (347), (348), (349), (350), (351),
(352), (357), (371), (372), (374), (375), (376), (377), (379), (381), (382), (388),
(389), (390), ((394), (396), (402), (403), (404), (416), (417), ((418), (419), (421),
(422), (423), (424), (426), (428), (429), (430), (431), (432), (433), (434), (435),
(437), (449), (450), (460), (469), (470), (616), (618), (630), (631), (632), (633),
(637), (638), (656), (744), (747), (748), (749), (750), (751), (752), (753))
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a. BG Lovelace, the CG of JTF-6, correctly points out that one cannot readily put himself in the shoes of the Marines on the ground. Yet it remains necessary to judge their actions. Cpl Banuelos' decision to move all of the members of Team 7 from the hidesite to the LP/OP during daylight hours began a chain of events initiated by Mr. Hernandez. firing at the Marines.

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(FoFs (194), (281), (288), (291), (324), (326), (328), (349), (350), (375), (377),
(429), (431), (669), (673), (679), (680), (688), (749), (752), (753), (761))
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b. Tragically, some of Cpl Banuelos' actions in response to the two rifle shots fired by Mr. Hernandez did not defuse the situation. While awaiting the arrival of the U.S. Border Patrol, he moved himself and two members of his team forward from the high ground towards Mr. Hernandez. He did not inform the Tactical Operation Center (TOC) of this intended movement. He failed to report his hand-off of the SABER radio to Cpl Torrez at about 1820, which prevented both the TOC or the en route LEA officers from providing guidance. He did not identify himself before firing the fatal shot. However, when these actions are considered in light of the training Cpl Banuelos received for this mission, they reasonably fall within the

doctrinally directed behavior of a Marine Corps small unit leader under fire and the right to defend another from the imminent danger of death or serious bodily harm.

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(FoFs (288), (342), (349), (350), (374), (375), (422), (424), (426), (428), (429), (430), (433), (434), (435), (437), (449), (450), (455), (460), (616), (618), (630), (631), (632), (633), (637), (638), (656), (744), (747), (748), (749), (750), (751), (752), (753))
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15. The death of Esequiel Hernandez, Jr. was not the result of a criminal act.

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(FoFs (181), (182), (185), (187), (450), (455), (631), (632), (633), (656), (744), (747), (748), (749), (750), (751), (752), (753))
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a. No evidence obtained or developed in this investigation contradicts Cpl Banuelos' assertion that he shot Mr. Hernandez to protect LCpl Blood.

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(FoFs (450), (451), (453), (454), (455), (618), (631), (632), (656))
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- b. Law enforcement concerns with the shooting principally arose from five aspects of the incident. These concerns were:
- (1) The angle of entry of the fatal bullet wound appeared inconsistent with the report that Mr. Hernandez aimed his rifle in a right-handed fashion in the direction of the Marines.

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(FoFs (321), (646), (774))
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(2) Cpl Banuelos' assertion that Mr. Hernandez was aiming at LCpl Blood raised the question of how he could discern, at a distance of 130 meters, the point of aim of the rifle. The angle of deflection for the claimed point of aim (10-20 meters right of Cpl Banuelos as opposed to himself) is simply too small to perceive.

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(FoFs (528), (529), (582))
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(3) Cpl Banuelos' decision, after having called for U.S. Border Patrol assistance, to move Team 7 from a position of relative safety and to close with Mr. Hernandez - a decision made without any prior effort to identify themselves to Mr. Hernandez as U.S. Marines - appeared unwarranted. The law enforcement view does not credit later suggestions that weather conditions precluded an attempt by the Marines to identify themselves.

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(FoFs (424), (428), (429), (431), (432), (433), (434), (435), (449))
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(4) A re-creation of the incident, using role players and the time sequenced radio log, suggested to law enforcement agents a rate and direction of movement by Mr.

Hernandez that is wholly inconsistent with a rational observation that he was undertaking a flanking movement.

(5) The Marines' later inability to recall much of what transpired appeared surprising as measured against common experience and, in one case, conveniently inconsistent with prior statements.

c. Nonetheless, an analysis of the results of the investigations fails to reveal any evidence - as distinguished from lingering suspicions - that Cpl Banuelos acted for any reason other than protecting his team in a manner consistent with his Marine Corps training.

Medical Care

I 6. The medical care given by the Marines of Team 7 to Mr. Hernandez was substandard as measured by any humanitarian standards.

a. While it is now apparent that the injuries sustained by Mr. Hernandez were so substantial that no medical care would have increased his survival chances, Cpl Torrez, the trained combat aidsman, took no significant action to evaluate and treat his injuries. It appears that Cpl Torrez and his fellow Marines saw their initial responsibilities as ensuring that the area was secure from any other hostile individuals.

b. While the actions of Team 7 support their claimed belief that they remained at risk of physical harm, the failure to take minimal action remains problematic. The fact that not only they, but others, suspected a broken neck does not justify the decision to do nothing. The pre-mission medical training Cpl Torrez received provided clear guidance regarding the appropriate medical steps to be taken for fellow Marines. No training prepared the Marines to recognize a humanitarian duty to render aid. The potential for encountering civilian casualties in counterdrug operations should have been a recognized element for planning and training.

(FoFs (461), (470), (473), (474), (475), (522), (523), (550), (551), (553), (765), (766), (767), (768), (769), (770))

Cooperation with Law Enforcement Agencies

17. The relationship between the local law enforcement officials and the Marine Corps became needlessly acrimonious at the very outset of the matter and would have benefited from 1st MarDiv providing a senior command representative on 21 May 97.

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(FoFs (605), (607), (608), (610), (611), (623), (624), (625), (639), (641), (645), (646), (649), (652), (653), (657), (661), (662), (663))
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18. The coordination between the Department of Justice and this JAGMAN Investigation, pursuant to the Memorandum of Understanding, was outstanding. Within the respective responsibilities of the Marine Corps and the independent DOJ civil rights investigation, many areas of special cooperation and resource sharing were found - to the benefit of both investigations.

(FoFs (680), (682) (683), (687), (688))

RECOMMENDATIONS

Shooting Incident

1. No disciplinary or administrative action should be undertaken against CorporalBanuelos, Corporal Torrez, Corporal Wieler or Lance Corporal Blood as a result of this incident.

Rules of Engagement Appropriateness and Training

2. The Convening Authority should initiate appropriate action to cause a review of the rules governing the use of force by the U.S. military in the domestic United States. The work of Col Parks provides an excellent point of departure for this review.

Adequacy of Mission Training and Senior Command Oversight

- 3. The Convening Authority should undertake appropriate administrative action to address the systemic failures at every level of command responsible for training, support, and the exercise of command and control during Mission JT414-97A.
- 4. If there is a resumption of JTF-6 ground counterdrug operations, the Convening Authority should:

- a. Take appropriate action to have the Marine Corps Combat Development Command design a training syllabus for Marine Corps units participating in domestic counterdrug operations.
- b. Study the utility of having the Marine Corps component commander of USACOM become the single Marine commander responsible for validating mission readiness for all Marine Corps units assigned JTF-6 domestic counterdrug missions.
- c. Cause the Marine Corps Lessons Learned System to become the single fusion source for lessons learned by Marine Corps units from JTF-6 missions.

JTF-6 Command Relationships and Interagency Coordination

5. If there is a resumption of JTF-6 ground counterdrug operations, the Convening Authority should take appropriate action to coordinate with JTF-6 to clearly define respective responsibilities for ensuring law enforcement support for intelligence sharing and emergency response.

Medical Care

6. The Convening Authority should take appropriate action to ensure that Marines likely to come in contact with civilians during the conduct of operations understand the basic humanitarian responsibility to render medical assistance where possible.

[ed. note: Signature appears in the original]

J.T. COYNE

Back to the DPFT focus on the Esequiel Hernandez killing