

A P P E N D I X E S

MATERIAL SUBMITTED FOR THE RECORD

APPENDIX A

Memorandum

U.S. DEPARTMENT OF JUSTICE
 Immigration and Naturalization Service
 Central Region



Subject	Date
FY 96 & FY 97 Military Support Assistance	April 8, 1996

To	From
Michael D. Connell Chief Patrol Agent BPSCCOAC El Paso, Texas	Office of the Chief Patrol Agent Marfa, Texas

Reference your memorandum dated March 28, 1996, titled "Southwest Border Drug Strategy/Campaign Plan."

FY 96 Ongoing Missions**Department of Defense**

Location	Time Period	Type of Mission
MAR/MRS	May 11-22	Equestrian Patrol
MAR/MRS	May 15-17	Medical Training
MAR/MRS	June 17-Sep 1	SCAMP
MAR/SNN	June 5-June 19	LPPOP
MAR/VHT	July 7-July 22	LPPOP

SPECIAL NOTE: There is currently a request for engineering support pending to improve some of the roads and drags that we utilize for signcutting and also to built an obstacle course which will be used by City, County, State and Federal Law Enforcement Agencies in this area.

Texas National Guard

MAR/MRS	May 6-May 20	LP/OP
MAR/MRS	May 20-May 26	LP/OP
MAR/APT	July 8-July 14	LP/OP
MAR/APT	July 22-July 28	LP/OP
MAR/SNN	August 5 - August 11	LP/OP
MAR/SNN	August 26 - September 1	LP/OP
MAR PRS	September 23-September 29	LP/OP

EY 97 TENTATIVE MISSION REQUESTS

Department of Defense

MAR/SNN	✓ 411-97	January - March	SCAMP
MAR/SBT	✓ 412-97	March (2 wks)	LP/OP
MAR/ALP	✓ 413-97	April - June	SCAMP
MAR/VHT	✓ 414-97	May (2 wks)	LP/OP
MAR/PRS	✓ 415-97	July-September	SCAMP
MAR/PRS	✓ 416-97	August (2 wks)	LP/OP
MAR/MRS	✓ 417-97	September (2 wks)	LP/OP

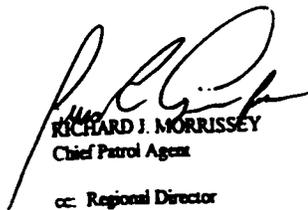
5481

} Request
- 5K
- Senior

Texas National Guard

SPECIAL NOTE: Aerial Reconnaissance by the UC-26B requested of all Marfa Sector river border area of operations during the month of February.

MAR/SNN	March (2 wks)	LP/OP
(To include OH-58 Helicopter with FLIR capabilities in conjunction with this LP/OP in SNN)		
MAR/MRS	May (2 wks)	LP/OP
MAR/PRS	July (2 wks)	LP/OP
MAR/VHT	September (2 wks)	LP/OP


 RICHARD J. MORRISSEY
 Chief Patrol Agent

cc: Regional Director
 Central Regional Border Patrol



117
Operation Allian
P.O. Box 8051
El Paso, Texas 79968-8051
915-540-6130 voice
915-540-6198 fax

411-41 SENDOR
412-47 LP/OP
413-47 SENDOR
414-47 LP/OP
415-47 SENDOR
416-47 LP/OP
417-47 LP/OP

411 - 417 of
see last page

May 13, 1996

OAC# 25.3.481.0596
RE: LP/OP's

BG Benjamin S. Griffin
Commanding General
Joint Task Force-Six
Biggs Army Airfield
El Paso, Texas 79916

Dear General Griffin:

The U.S. Border Patrol, Marfa, Texas requests the assistance of the Department of Defense in acquiring the following support:

LP/OP's Support. (Please refer to the attached memorandum dated April 8, 1996 for additional information).

This assistance is in direct support of drug interdiction activities along the Southwest border. POC for this request will be Chief Patrol Agent, Richard J. Morrissey at (915) 729-4353.

The attached request for military support has been reviewed by Operation Alliance for coordination purposes and is being forwarded for action. Operation Alliance does not assume responsibility for operational expenses or modifications subsequently applied to this request.

Thank you, in advance, for your attention to this law enforcement request for military support.

Sincerely,

Gil Quintana
787 Mike Connell
Coordinator
Military Support Group

Attachment

APPENDIX B

1. Radio Log Color Codes:

A. The following is the list of color coded Call Signs in use on 20 May 1997.

- 1: HQBtry, JT414-97A Tactical Operational Center, Marfa, TX – Red
 - 500 LCpl Steen (Radio Operator)
 - 501 Sgt Dick (Forward TOC)
 - 510 Capt McDaniel (Mission Commander)
 - 515 GySgt Fitzgerald (Logistics)
 - 516 2dLt Diaz (Communications)
 - 518 2dLt Felcyn (Mission XO)
 - 521 Sgt Dewbre (Intel)
 - 521 Vehicle 1 (Tape 3 only)
 - 599 Medivac Team
- 2: Marine Teams – Black
 - 511 Hole 1 (Tape 3 only)
 - 512 Hole 2 (Tape 3 only)
 - 513 Hole 3, Cpl Banuelos/Cpl Torrez/LCpl Wieler
 - 514 Hole 2 (Tape 3 only)
- 3: U. S. Border Patrol Dispatch Headquarters, Marfa, TX – Blue
 - 900 Station Call Sign
 - 909 Sensor Traffic
- 4: U. S. Border Patrol Dispatch Headquarters, Presidio, TX - Purple
 - 904 Station Call Sign
- 5: U. S. Border Patrol Officers – Dark Yellow
 - 002 Jerry Agan
 - 003 Rudy Rodriguez
 - 005 David Castanada
 - 006 Joseph Harris
 - 034 Chris Daniels
 - 401 David McCutchen
 - 408 Stanley Myers
 - 411 Jerry Succa
 - 414 James Kramer
 - 416 Martin Cosio

417 Angel Lopez
420 Johnny Urias
422 Ronald Garcia

6: Local and State Law Enforcement Officers – Green
148 Officer Gilbert Spencer, Permian Basin Drug Task Force
501 Deputy A. R. Taylor, Presidio County Sheriff Office
503 Deputy Oscar Gallergos, Presidio County Sheriff Office
623 Deputy Loren Bennett (Tape 3 only)

7: U. S. Border Patrol Dispatch Headquarters, Alpine, TX – Pink
906 Station Call Sign

8: Unknown Voices – Gray

Revised on 15 Dec. 97


Bradford Ryan Lee
LCpl USMC

LEGEND OF TAPE**2. COMMENTS:**

- A. There are portions of the tape with multiple overlapping transmissions and radio static. At those points it is difficult to accurately identify voices and call signs.
- B. When speaking, the individuals used call signs instead of names. Whenever a call sign is used, where the speaker could be identified, their name is provided. Most radio calls begin with the speaker identifying themselves with their call sign, then using the call sign of the person they wish to communicate with.
- C. This transcription is the result of significant effort by a number for agencies and individuals. The U.S. Border Patrol, District Headquarters, Marfa, Texas, made the tape recording of the transmission. The USBP produced the first version of the transcript. U.S. Army transcribers at JTF-6 who used filtering equipment to produce a more detailed version of the transmissions produced a second version. The Federal Bureau of Investigation Laboratory in Washington, D.C. enhanced the original USBP tape for increased audio clarity. Numerous participants in Mission JT414-97A and the USBP dispatcher in Marfa, Texas also listened to this tape and identified themselves and others.

3. ABBREVIATIONS:

U/M:	UNKNOWN MALE OR CALL SIGN
VOICE NOT RECORDED:	VOICE IS NOT HEARD ON TAPE
OPEN RADIO STATIC:	MORE THAN NORMAL PAUSE BETWEEN TRAFFIC
UNCLEAR:	ONE TO TWO WORDS ARE UNCLEAR, MUFFLED OR GARBLED
U/I:	THREE WORDS AND ABOVE ARE UNCLEAR, MUFFLED OR GARBLED

[START OF TAPE 1 SIDE A]

[CONVERSATION IN PROGRESS]

H500 (LCpl Steen): H513 (Cpl Banuelos)... H500 (LCpl Steen) Go ahead. [OPEN RADIO STATIC]

1805:38 H513 (Cpl Banuelos): [UNCLEAR] we are at the O.P. We have an armed individual, about two hundred (200) meters from us. [PAUSE] [OPEN RADIO STATIC] 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. [OPEN RADIO STATIC]

1805:57 H500 (LCpl Steen): Ahhh... You should remain in your, position um... and try not to be seen but you should know what to do. [OPEN RADIO STATIC]

1807:05 H513 (Cpl Banuelos): [VOICE NOT RECORDED] H513 (Cpl Banuelos) we're taking fire. [OPEN RADIO STATIC]

1807:12 900 (Marfa Dispatch): 904 (Presidio Dispatch) unit... 904 (Presidio Dispatch) unit. [OPEN RADIO STATIC]

1807:16 904 (Presidio Dispatch): 900 (Marfa Dispatch) is somebody taking fire? Over. [OPEN RADIO STATIC]

1807:24 900 (Marfa Dispatch): 904 (Presidio Dispatch) unit... 900 (Marfa Dispatch). [OPEN RADIO STATIC]

1807:31 904 (Presidio Dispatch): 900 (Marfa Dispatch) go ahead for 904 (Presidio Dispatch). [OPEN RADIO STATIC]

1807:33 900 (Marfa Dispatch): Just be advised that position three (3). H513 (Cpl Banuelos) advises, that, they're taking fire from a man with a rifle at position three (3). [OPEN RADIO STATIC]

1808:14 904 (Presidio Dispatch): 10-4 [PAUSE] [OPEN RADIO STATIC] I will give you a landline. [OPEN RADIO STATIC]

1808:21 900 (Marfa Dispatch): 10-4, please assist position three. [OPEN RADIO STATIC]

1808:36 H501 (Sgt Dick): H500 (LCpl Steen)... H501 (Sgt Dick) *[OPEN RADIO STATIC]*

1808:43 H500 (LCpl Steen): H500 (LCpl Steen) *[OPEN RADIO STATIC]*

H513 (Cpl Banuelos): *[UI (MUFFLED WORDS)]* this is H513 (Cpl Banuelos).

1808:50 904 (Presidio Dispatch): Uh... I'm gonna go ahead and grab my stuff, just in case they... try to return down there, okay? *[OPEN RADIO STATIC] [U 1 (MUFFLED WORDS)]* ...out here. ...I think they walked on me that time, I'm gonna go ahead and get my stuff, all uh... ready to go, just in case, all right? *[PAUSE]*

1809:11 H501 (Sgt Dick): H513 (Cpl Banuelos), H501 (Sgt Dick) *[OPEN RADIO STATIC]*

1809:18 H513 (Cpl Banuelos): 430, we got an individual spotted at the old fort, going into the rear... of the building. *[OPEN RADIO STATIC]*

1809:43 H500 (LCpl Steen): H513 (Cpl Banuelos)... H500 (LCpl Steen) *[PAUSE] [OPEN RADIO STATIC] [UNCLEAR]*

H513 (Cpl Banuelos): Roger, this is 513 (Cpl Banuelos)

H500 (LCpl Steen): Are you still taking fire?

1810:02 H513 (Cpl Banuelos): We're gonna pull back to abhh... tactical position... to try to come to abhh... from our... right flank. Do you got a bead? *[OPEN RADIO STATIC]* ...right now he's stationary, but he... he kind of knows the general vicinity where two (2) of my men are. He doesn't have a visual on me. *[OPEN RADIO STATIC]*

1810:28 H501 (Sgt Dick) What... what side of the river is he on?

1810:43 H513 (Cpl Banuelos): U.S. side. Next to the old fort. He's right at the old fort. *[PAUSE] [OPEN RADIO STATIC]* ..H513 (Cpl Banuelos).

H500 (LCpl Steen): This is H500 (LCpl Steen), H513 (Cpl Banuelos). *[OPEN RADIO STATIC]*

1811:19 H513 (Cpl Banuelos): As soon as he (readies/raises) that rifle back down range, we're taking him. [OPEN RADIO STATIC]

1811:24 H500 (LCpl Steen): Roger... ahhh... fire back. [OPEN RADIO STATIC]

1811:54 420 (Johnny Urias): [UNCLEAR] 900 this is 420 (Johnny Urias). [OPEN RADIO STATIC]

1812:11 900 (Marfa Dispatch): 420 (Johnny Urias) go ahead. [OPEN RADIO STATIC]

420 (Johnny Urias): Please be advised that [U 1 (MUFFLED WORDS)] [SIGNAL BREAKS UP]

900 (Marfa Dispatch): [UNCLEAR] you're coming in 10-1 (DISTORTED).

1812:26 420 (Johnny Urias): 10-4, could you please advise, ahhh... local Presidio S.O. (Sheriff Office) and other law enforcement agencies around the Presidio area, to go assist, in Redford? [OPEN RADIO STATIC]

1812:39 900 (Marfa Dispatch): 10-4 the location is in Redford is that correct? [OPEN RADIO STATIC]

1812:46 H521 (Sgt Dewbre): H513 (Cpl Banuelos) this is H521 (Sgt Dewbre). [OPEN RADIO STATIC]

1812:53 420 (Johnny Urias): 10-4 Ma'am, Redford.

900 (Marfa Dispatch): 10-4 will advise. [OPEN RADIO STATIC]

1813:14 H513 (Cpl Banuelos): 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, uh...

1813:22 148 (Gilbert Spencer): 900 (Marfa Dispatch)... 148 (Gilbert Spencer) in the clear. [OPEN RADIO STATIC]

900 (Marfa Dispatch): 148 (Gilbert Spencer).

148 (Gilbert Spencer): 10-4, can you give me the unit, uh... number of the... in, in Redford? [OPEN RADIO STATIC]

900 (Marfa Dispatch): It'll be 420 (Johnny Urias), 408 (Stanley Myers), and 411 (Jerry Succa). *[OPEN RADIO STATIC]*

420 (Johnny Urias): 148 (Gilbert Spencer)... 420 (Johnny Urias). *[OPEN RADIO STATIC]*

148 (Gilbert Spencer): 408 (Stanley Myers) go ahead. *[OPEN RADIO STATIC]*

420 (Johnny Urias): 10-4 ahhh... I'm enroute, right now. Where exactly are you at? *[OPEN RADIO STATIC]*

1814:25 H521 (Sgt Dewbre): H513 (Cpl Banuelos) this is H521 (Sgt Dewbre) *[PAUSE]*

H513 (Cpl Banuelos): H513 (Cpl Banuelos).

H521 (Sgt Dewbre): Just give us an update.

1814:42 H513 (Cpl Banuelos): 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...

H521 (Sgt Dewbre): 10-4.

H513 (Cpl Banuelos): He knows we're out here, he's looking for us.

1815:13 H521 (Sgt Dewbre): 10-4, you're to follow the ROE (Rules of Engagement) *[OPEN RADIO STATIC]*

900 (Marfa Dispatch): 420 (Johnny Urias) be advised, that H503 (Oscar Gallego) is enroute and 148 (Gilbert Spencer).

420 (Johnny Urias): 10-4, thank you.

1816:19 148 (Gilbert Spencer): 420 (Johnny Urias), 148 (Gilbert Spencer) in the clear, on your frequency.

420 (Johnny Urias): *[U/I (MUFFLED WORDS)]*

148 (Gilbert Spencer): 10-4, What do you...? What do you have?

1816:47 420 (Johnny Urias): 148 (Gilbert Spencer), ahhh... we're ahhh... left the office, we're 10-13, towards Redford.

148 (Gilbert Spencer): 10-4, what am I looking for, when I get there?

1816:54 420 (Johnny Urias): The only indication we have is shots fired, out that way. *[OPEN RADIO STATIC]*

148 (Gilbert Spencer): 10-4. *[OPEN RADIO STATIC]*

1817:15 420 (Johnny Urias): 10-4, 420 (Johnny Urias), be advised that the only information that we have at this time is ahhh... position number 3... has ahhh... been compromised at *[UNCLEAR]* *[OPEN RADIO STATIC]* There's been shots fired, we're enroute right now.

148 (Gilbert Spencer): 10-4, as I get closer, will they be able to copy me on... in the clear?

420 (Johnny Urias): *[OPEN RADIO STATIC]* *[U I (MUFFLED WORDS)]* ...in the clear. Repeater *[UNCLEAR]*.

1817:57 148 (Gilbert Spencer): 10-4 that's the frequency that I have only it's Chinati repeater, I'll advise as I get there. *[OPEN RADIO STATIC]*

1818:19 H521 (Sgt Dewbre): H513 (Cpl Banuelos) this is H521 (Sgt Dewbre). *[PAUSE]* H513 (Cpl Banuelos) this is H521 (Sgt Dewbre). *[PAUSE]*

420 (Johnny Urias): 420 (Johnny Urias)... correction, H513 (Cpl Banuelos) this is 420 (Johnny Urias). *[PAUSE]*

H513 (Cpl Banuelos): Proceed 420 (Johnny Urias).

1819:13 420 (Johnny Urias): H513 (Cpl Banuelos) this is 420 (Johnny Urias) ahhh... we're currently enroute 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, ahhh... with hole number three. We're turning around though. *[SIRENS HEARD IN THE BACKGROUND]*

1819:37 H513 (Cpl Banuelos): The Polvo crossing. You know, where that is?

420 (Johnny Urias): We're enroute, we know where that's at.

1819:54 H513 (Cpl Banuelos): 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 ahhh... 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...

1820:05 420 (Johnny Urias): 10-4, I understand, he's armed ahhh... how many of them are there? Is he a solo? What is he armed with?

1820:19 H513 (Cpl Banuelos): ...individual. He's armed with a rifle a 22.

420 (Johnny Urias): 10-4, thank you.

003 (Rudy Rodriguez): Double O-3 (Rudy Rodriguez)... [PAUSE] 900 (Marfa Dispatch)... Double O-3 (Rudy Rodriguez).

900 (Marfa Dispatch): Double O-3 (Rudy Rodriguez) go ahead.

1820:49 003 (Rudy Rodriguez): Make sure that Presidio County is on board on this.

900 (Marfa Dispatch): 10-4, H503 (Oscar Gallego) is enroute, 148 (Gilbert Spencer) also, 420 (Johnny Urias). I'm trying to locate 404 (Mario Vargas) but he's here in Marfa, at a game and the S.O. (Sheriff Office) will be looking for him for me. [PAUSE] Units from Presidio will be 408 (Stanley Myers), 411 (Jerry Succa), and 420 (Johnny Urias).

U/M (UNKNOWN VOICES): 900 (Marfa Dispatch) be advised that... the team is enroute.

900 (Marfa Dispatch): 10-4. [OPEN RADIO STATIC]

148 (Gilbert Spencer): 900 (Marfa Dispatch) this is 148 (Gilbert Spencer).

900 (Marfa Dispatch): 148 (Gilbert Spencer) go ahead.

1821:53 148 (Gilbert Spencer): 10-4. What unit is already at the scene, and who do I know... need to go exactly. I'm approximate... I'm about 5 minutes or less from there?

900 (Marfa Dispatch): 10-4, Stand-by, I don't believe I have anyone at the scene yet... Stand-by... Break. 920... 900 (Marfa Dispatch). Correction 420 (Johnny Urias)... 900 (Marfa Dispatch).

420 (Johnny Urias): This is 420 (Johnny Urias).

900 (Marfa Dispatch): [MULTIPLE UNITS] [VOICES OVERLAP] 148 (Gilbert Spencer)...

148 (Gilbert Spencer): I'm at the crossing. [UNCLEAR] crossing.

420 (Johnny Urias): Well we're approximately 12 miles from Redford yet.

1822:37 900 (Marfa Dispatch): 10-4, break... 148 (Gilbert Spencer)... 900 (Marfa Dispatch), 420 (Johnny Urias) advises they're about 12 miles from Redford. Stand-by and I'll get an exact location on landline. Stand-by. [PAUSE]

1823:52 034 (Chris Daniels): Double O-3 (Rudy Rodriguez), 034 (Chris Daniels) local.

900 (Marfa Dispatch): [UNCLEAR] 034 (Chris Daniels) go ahead.

034 (Chris Daniels): 10-4, I'm trying to raise Double O-3 (Rudy Rodriguez).

900 (Marfa Dispatch): 10-4, try Chinati please.

034 (Chris Daniels): Double O-3 (Rudy Rodriguez)... 034 (Chris Daniels). [PAUSE]

003 (Rudy Rodriguez): Double O-3 (Rudy Rodriguez)...

1824:07 034 (Chris Daniels): 034 (Chris Daniels)... did you reckon, maybe we ought to send some assistance from up north?

003 (Rudy Rodriguez): Go ahead until this situation is ahhh... settled.

034 (Chris Daniels): Was that an affirmative, Rudy?

003 (Rudy Rodriguez): Affirmative, that's affirmative, until this situation is settled.

034 (Chris Daniels): It'll be myself 034 (Chris Daniels), and 041 (Ernest Carrillo)...

1824:37 900 (Marfa Dispatch): 148 (Gilbert Spencer)... 900 (Marfa Dispatch).

148 (Gilbert Spencer): Unit calling SECTOR... this is 10-4 here, this 148 (Gilbert Spencer). Can you advise ALPHA-1502 (Julie Kahrs)... that assistance is needed around the Redford area. That there are shots fired, and we need her assistance.

900 (Marfa Dispatch): 148 (Gilbert Spencer), 900 (Marfa Dispatch)

420 (Johnny Urias): [U/I (MUFFLED WORDS)] will do... Break. Six-ALPHA-1502 (Julie Kahrs)... 1502 (Julie Kahrs) SECTOR.

900 (Marfa Dispatch): 420 (Johnny Urias)... 900 (Marfa Dispatch)...

420 (Johnny Urias): SECTOR. I believe uh... 1502 (Julie Kahrs) would be at her residence, if you can be able to put a page in or land line her...

1825:14 900 (Marfa Dispatch): 420 (Johnny Arias), 900 (Marfa Dispatch) the 1020 will be at the Polvo crossing. Polvo crossing, 1,000 meters southeast, is where H513 (Cpl Banuelos) is. The man will be at the abandoned church, about 200 meters from the team. [OPEN RADIO STATIC]

1825:34 420 (Johnny Urias): 900 (Marfa Dispatch). Thank you. Break. 411 (Jerry Succa), 420 (Johnny Urias). Were you clear with that traffic? [OPEN RADIO STATIC] The individual with the arm... [TRANSMISSION BREAKS UP] at the... vicinity of the church... repeat abandoned church in Redford. [OPEN RADIO STATIC]

411 (Jerry Succa): We're clear. [OPEN RADIO STATIC]

420 (Johnny Urias): 148 (Gilbert Spencer), Are you clear? [OPEN RADIO STATIC]

148 (Gilbert Spencer): 420 (Johnny Urias)... 148 (Gilbert Spencer). [OPEN RADIO STATIC]

U/M (UNKNOWN VOICES): [U1 (MUFFLED WORDS)] [OPEN RADIO STATIC]

148 (Gilbert Spencer): 900 (Marfa Dispatch)... 148 (Gilbert Spencer).
[OPEN RADIO STATIC]

900 (Marfa Dispatch): 148 (Gilbert Spencer)... 900 (Marfa Dispatch).
[LOUD TONE]

1826:52 148 (Gilbert Spencer): 10-4. I'm in Redford could you advise that I'm 12 miles east or would you say it was at the Polvo Crossing.

U/M (UNKNOWN VOICES): ...1502 (Julie Kahrs) call SECTOR. 1502 (Julie Kahrs) call SECTOR.

1827:00 900 (Marfa Dispatch): ...420 (Johnny Urias) was the one enroute 12 miles, but the exact location, according to H513 (Cpl Banuelos) would be at Polvo Crossing, 1,000 meters Southeast. It's where H513 (Cpl Banuelos) is located. The man with the rifle is at the abandoned church 200 meters from the team.
[OPEN RADIO STATIC]

148 (Gilbert Spencer): 10-4. I'll uh... Break. 413 (Troy Lennon)... 148 (Gilbert Spencer).

1827:34 H513 (Cpl Torrez): This is H513 (Cpl Torrez). We have a man down.

521 (Sgt Dewbre): Did I hear you H513 (Cpl Torrez)? You say you have a man down, friendly or enemy? Over.

1827:42 H513 (Cpl Torrez): The man... the man pointed his weapon down range and our Marines took him out. [OPEN RADIO STATIC]

521 (Sgt Dewbre): 10-4. [PAUSE]

003 (Rudy Rodriguez): [VOICE NOT RECORDED] Double O-3 (Rudy Rodriguez). [OPEN RADIO STATIC]

148 (Gilbert Spencer): 900 did you copy that? [OPEN RADIO STATIC]

U/M (UNKNOWN VOICES) [U1 (MUFFLED WORDS)] [OPEN RADIO STATIC]

148 (Gilbert Spencer): 513 (Cpl Torrez), 148 (Gilbert Spencer).

900 (Marfa Dispatch): That's negative, stand-by. Place your radio on Chinati please. *[OPEN RADIO STATIC]*

U/M (UNKNOWN VOICES): *[U 1 (MUFFLED WORDS)]* go ahead.
[PAUSE]

148 (Gilbert Spencer): *[VOICE NOT RECORDED]* 513 (Cpl Torrez)... 148 (Gilbert Spencer). *[OPEN RADIO STATIC]*

1828:44 900 (Marfa Dispatch): Double O-3 (Rudy Rodriguez)... 900 (Marfa Dispatch). *[OPEN RADIO STATIC]*

1829:29 411 (Jerry Succa): 900 (Marfa Dispatch), 411 (Jerry Succa). Give us the current status. *[OPEN RADIO STATIC]*

900 (Marfa Dispatch): 420 (Johnny Urias)... 900 (Marfa Dispatch). *[OPEN RADIO STATIC]*

411 (Jerry Succa): ...411 (Jerry Succa) Can you do a current status? Which man is down?

1829:51 900 (Marfa Dispatch): Be advised from H513 (Cpl Torrez) would be the man with the rifle, the man with the rifle. *[OPEN RADIO STATIC]*

411 (Jerry Succa): *[UNCLEAR]* *[OPEN RADIO STATIC]*

148 (Gilbert Spencer): 900 (Marfa Dispatch)... 148 (Gilbert Spencer). *[OPEN RADIO STATIC]*

900 (Marfa Dispatch): 148 (Gilbert Spencer), go ahead. *[OPEN RADIO STATIC]*

148 (Gilbert Spencer): 900 (Marfa Dispatch) is it clear for H503 (Oscar Gallego) and myself to roll in to, uh... Polvo Crossing? *[OPEN RADIO STATIC]*

900 (Marfa Dispatch): 10-4. Was advised from H513 (Cpl Torrez) that a man was down and we possibly the man with the rifle is down.

1830:35 H521 (Sgt Dewbre): H513 (Cpl Torrez) this is H521 (Sgt Dewbre) go...

900 (Marfa Dispatch): Double O-2 (Jerry Agan)... 900 (Marfa Dispatch).

002 (Jerry Agan): 900 (Marfa Dispatch).

1830:55 900 (Marfa Dispatch): Be advised from H513 (Cpl Torrez), that the man is down, the man with the rifle is down.

H521 (Sgt Dewbre): H513 (Cpl Torrez) this is H521 (Sgt Dewbre), over.

003 (Rudy Rodriquez): 900 (Marfa Dispatch) this is Double O-3 (Rudy Rodriquez).

900 (Marfa Dispatch): Double O-3 (Rudy Rodriquez)... 900 (Mara Dispatch), go ahead.

003 (Rudy Rodriquez): Double O-2 (Jerry Agan) is at his residence.

900 (Marfa Dispatch): 10-4, he's... will be on the radio checking.

002 (Jerry Agan): We're gonna use the military C P (Command Post) for a minute?

900 (Marfa Dispatch): 10-4. Double O-2 (Jerry Agan) is at the military C P for a minute. [PAUSE]

1832:02 H521 (Sgt Dewbre): H513 (LCpl Wieler) this is H521 (Sgt Dewbre). [PAUSE] H513 (LCpl Wieler) this is H521 (Sgt Dewbre), over.

H513 (LCpl Wieler): H513 (LCpl Wieler).

1832:23 H521 (Sgt Dewbre): Roger, is the man still down? Over. [PAUSE] H513 (LCpl Wieler) this is H521 (Sgt Dewbre). I say again, is the suspect still down? Over.

1832:45 H513 (LCpl Wieler): Ahhh...he's down...

1832:51 H521 (Sgt Dewbre): Ahhh... say again?

1832:59 H513 (LCpl Wieler): ...in the house.

H521 (Sgt Dewbre): He's moved into the house?

H513 (LCpl Wieler): At the fort.

1833:07 H521 (Sgt Dewbre): 10-4. Be advised H513 (LCpl Wieler) the Border Patrol Units are enroute.

H513 (LCpl Wieler): Say again.

1833:29 H521 (Sgt Dewbre): The Border Patrol should be in the area. Over.

H513 (LCpl Wieler): We're at the far end, ahhh... we don't know how far they are, but ahhh... I hear the sirens.

1833:37 H521 (Sgt Dewbre): Ah, 10-4 that's them coming in. If you get an opportunity to signal or talk them into your site, in person, make sure you do that. How copy?
[PAUSE] Did you copy my last, H513 (LCpl Wieler)?

U/M (UNKNOWN VOICES): [U1 (MUFFLED WORDS)] subject involved? [LOUD TONE] [OPEN RADIO STATIC]

U/M (UNKNOWN VOICES): [UNCLEAR] 1502 (Julie Kahrs) call SECTOR... 1502 (Julie Kahrs) call SECTOR. 10-4... 138, SECTOR. [PAUSE] [U1 (MUFFLED WORDS)] ...99.

411 (Jerry Succa): 411 (Jerry Succa)...

U/M (UNKNOWN VOICES): 9...

1835:37 H513 (LCpl Wieler): H521 (Sgt Dewbre)... H513 (LCpl Wieler).

H521 (Sgt Dewbre): This is H521 (Sgt Dewbre).

1835:44 H513 (LCpl Wieler): The suspect... at a wall. [OPEN RADIO STATIC]

1835:52 H521 (Sgt Dewbre): The suspect has moved towards the wall? [PAUSE] H513 (LCpl Wieler) this is H521 (Sgt Dewbre) I say again, the man has moved towards a wall? How copy?

1836:11 H513 (LCpl Wieler): Right now we have his weapon. I have his weapon in my hand.

H521 (Sgt Dewbre): H513 (LCpl Wieler) this is H521 (Sgt Dewbre).
[MULTIPLE UNITS] [VOICES OVERLAP]

148 (Gilbert Spencer): SECTOR, 10-4, this is 148 (Gilbert Spencer)

1836:32 H521 (Sgt Dewbre): 513 (LCpl Wieler), this is 521 (Sgt Dewbre), is the man down, wounded? Over.

U/M (UNKNOWN VOICES): 10-4, 148 (Gilbert Spencer). SECTOR.

148 (Gilbert Spencer): 10-4 SECTOR, I'm gonna be at the scene right now, ahhh...where uh... Do you have any contact with A1502 (Julie Kahrs). [MULTIPLE UNITS] [VOICES OVERLAP]

1836:44 H521 (Sgt Dewbre): H513 (LCpl Wieler) this is H521 (Sgt Dewbre).

U/M (UNKNOWN VOICES): Negative, she has not called into SECTOR. Unable to contact at this time.

148 (Gilbert Spencer): 10-4, I've got ahhh... Border Patrol back-up units now, and a deputy unit here. Is ahhh... did you make any contact with her advise her, that... too respond to this area? We're gonna be out of our vehicles, ahhh... trying to enclose on the person that is doing the shooting.

1837:05 H521 (Sgt Dewbre): H513 (LCpl Wieler) this is H521 (Sgt Dewbre). Over.

U/M (UNKNOWN VOICES): I've got wounded in the Redford area, 10-4.

H521 (Sgt Dewbre): Is the suspect wounded? Over.

148 (Gilbert Spencer): 10-4, advise him that it'll be the Polvo crossing, Polvo Crossing.

H521 (Sgt Dewbre): Say again H513 (LCpl Wieler).

H513 (LCpl Wieler): He's moving.

H521 (Sgt Dewbre): 10-4, He's still moving.

148 (Gilbert Spencer): I'll be out of my vehicle now.

1837:26 H521 (Sgt Dewbre): I understand possibly... is he...is he actually wounded or you, you got him in ahhh... a holding position, over.

1837:38 H513 (LCpl Wieler): In a well... he's not... he is breathing [PAUSE]
Visuals got one he's on his back, laying near the wall.

H521 (Sgt Dewbre): 10-4 back up should be in at any time, about 10 mikes.

1838:02 H513 (LCpl Wieler): 10 mikes. [PAUSE] [OPEN RADIO STATIC]

1838:28 U/M (UNKNOWN VOICES): 10-4, do you read? [PAUSE]

H513 (LCpl Wieler): H513 (LCpl Wieler)...

H521 (Sgt Dewbre): This is H521 (Sgt Dewbre).

H513 (LCpl Wieler): 521 (Sgt Dewbre), H513 (LCpl Wieler).

1839:05 408 (Stanley Myers): H513 (LCpl Wieler) this is 408 (Stanley Myers) can you give me your position?

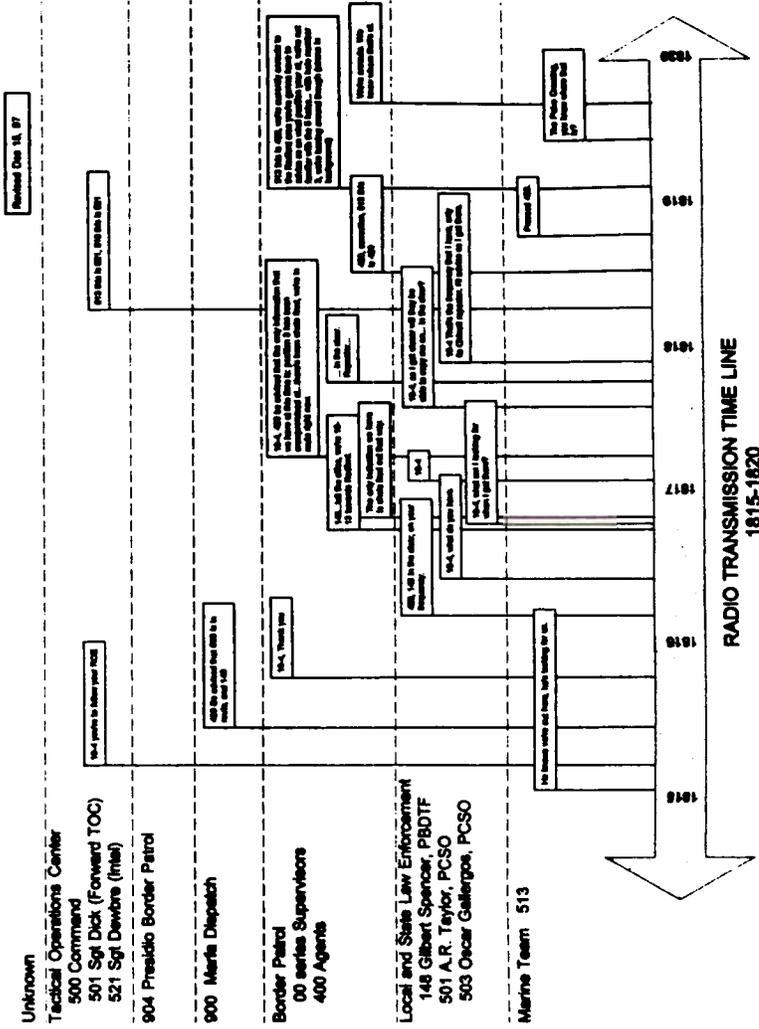
[END OF CONVERSATION]

Revised on 15 Dec, 1997

Radio Transmission Time Line

From 1805 through 1900


Bradford Ryan Lee
Capt USMC

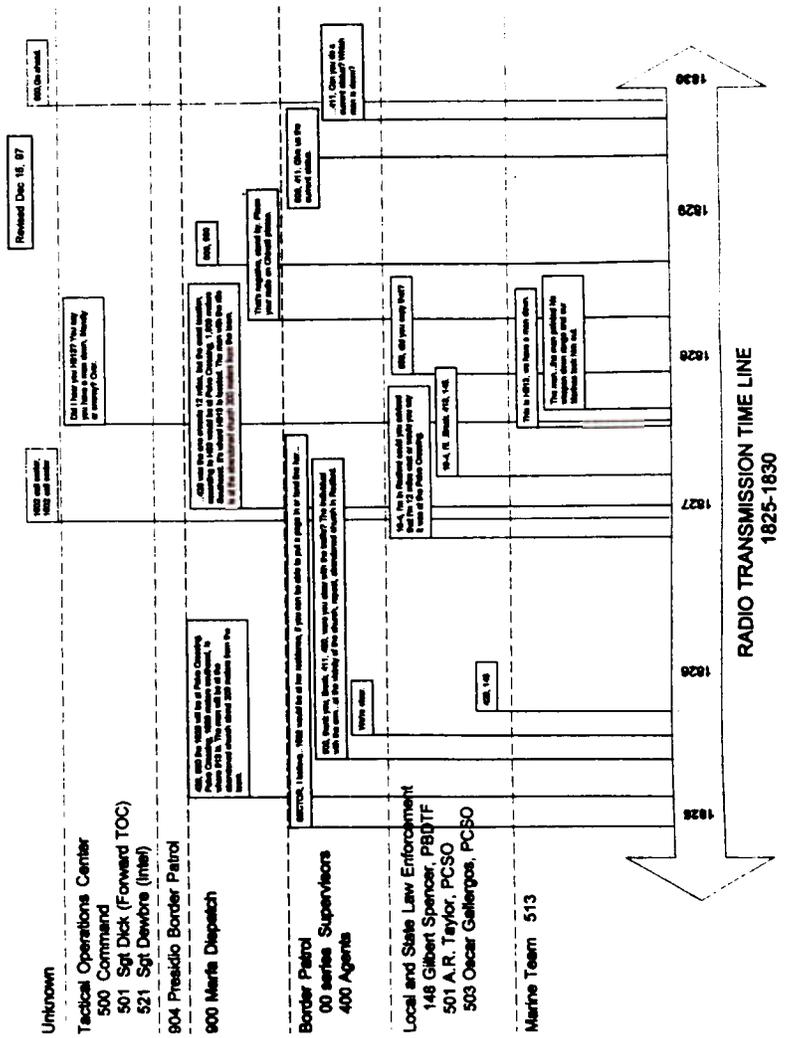


Revised Dec 18, 87

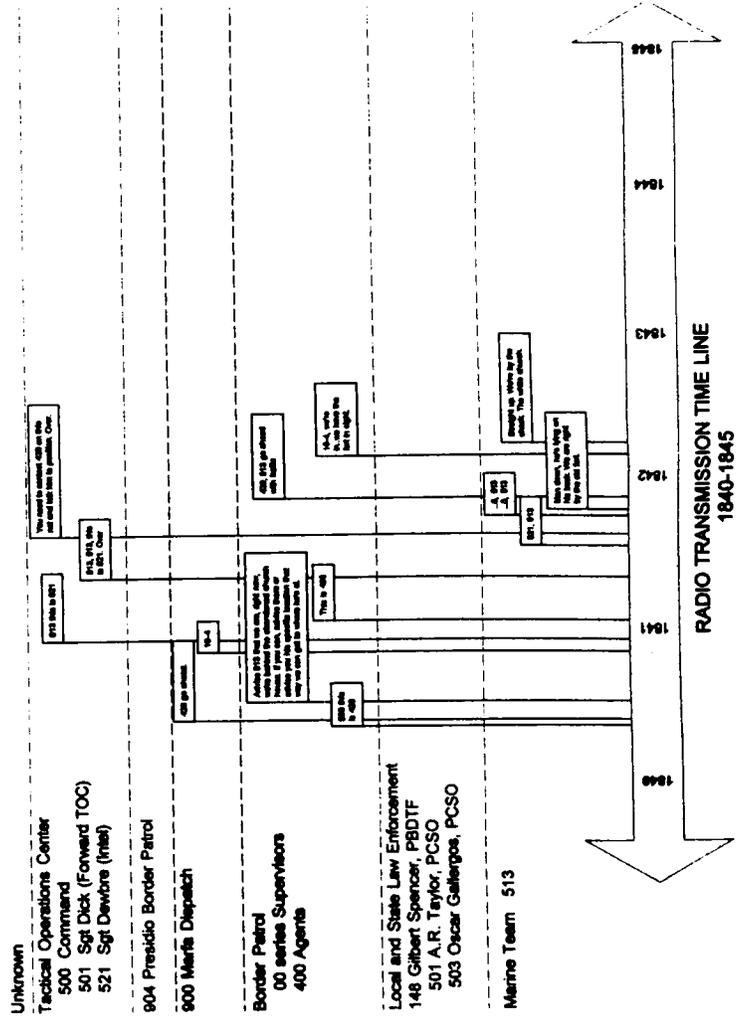
904-1 points to Marie Dispatch

904-1, 904-2, 904-3, 904-4, 904-5, 904-6, 904-7, 904-8, 904-9, 904-10, 904-11, 904-12, 904-13, 904-14, 904-15, 904-16, 904-17, 904-18, 904-19, 904-20, 904-21, 904-22, 904-23, 904-24, 904-25, 904-26, 904-27, 904-28, 904-29, 904-30, 904-31, 904-32, 904-33, 904-34, 904-35, 904-36, 904-37, 904-38, 904-39, 904-40, 904-41, 904-42, 904-43, 904-44, 904-45, 904-46, 904-47, 904-48, 904-49, 904-50, 904-51, 904-52, 904-53, 904-54, 904-55, 904-56, 904-57, 904-58, 904-59, 904-60, 904-61, 904-62, 904-63, 904-64, 904-65, 904-66, 904-67, 904-68, 904-69, 904-70, 904-71, 904-72, 904-73, 904-74, 904-75, 904-76, 904-77, 904-78, 904-79, 904-80, 904-81, 904-82, 904-83, 904-84, 904-85, 904-86, 904-87, 904-88, 904-89, 904-90, 904-91, 904-92, 904-93, 904-94, 904-95, 904-96, 904-97, 904-98, 904-99, 904-100

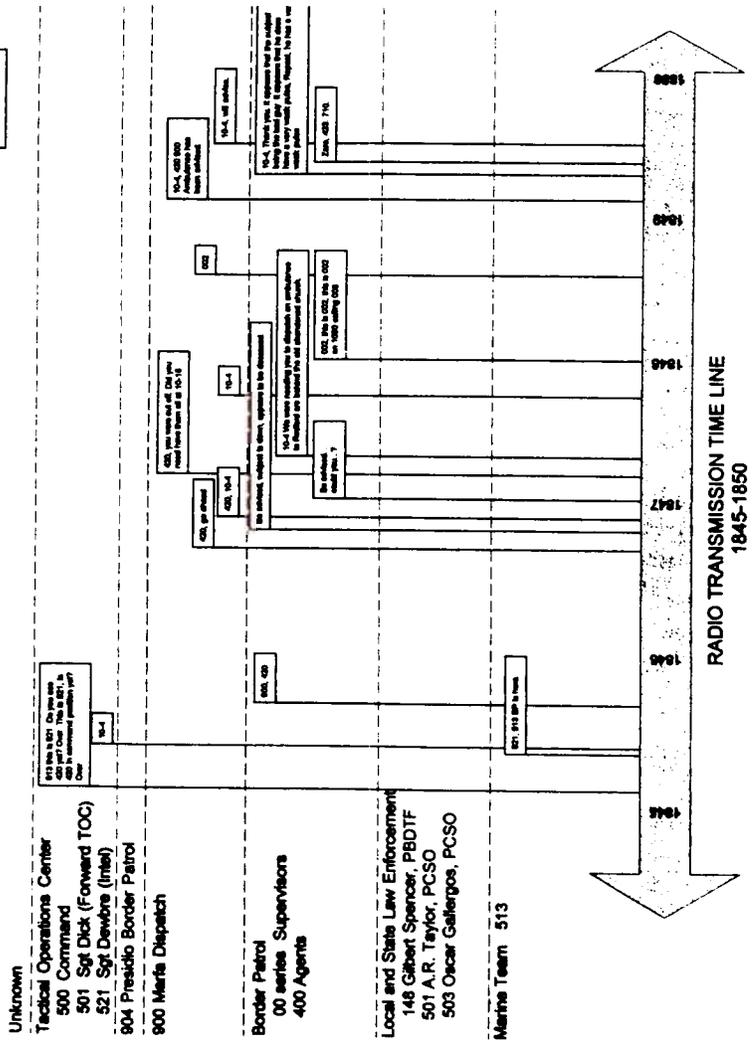
RADIO TRANSMISSION TIME LINE
1815-1820

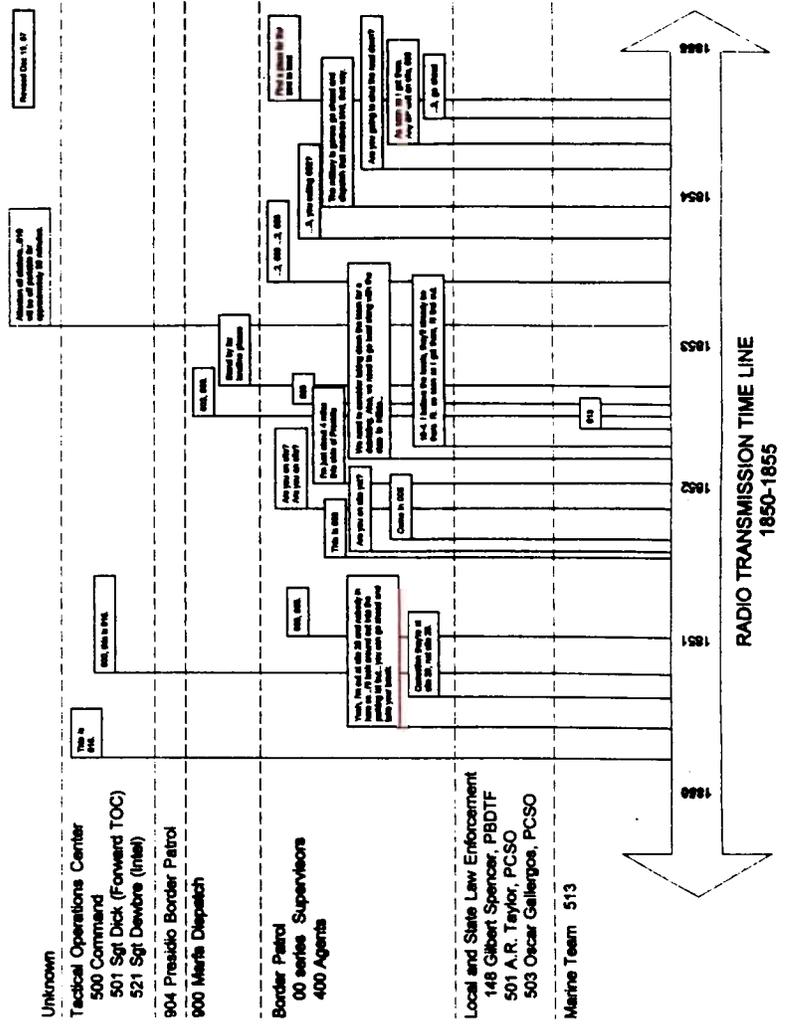


Revised Date: 11-87



Forward Date: 10, 87





APPENDIX C

Memorandum



MAR 50/15.9

Subject Information Requested by Texas Rangers	Date May 29, 1997
To Chief Patrol Agent Marfa Sector Marfa, Texas	From James A DeMatteo Presidio Station Presidio, Texas

THROUGH OFFICIAL CHANNELS

On May 28, 1997 during the 3:00 PM through 11:00 PM shift, I was contacted in person by a Presidio County Sheriff's Deputy, Oscar Gallegos. He informed me that Dave Duncan, a Texas Ranger wanted to speak with me at Oasis Hotel in room 406. I went there to speak with Mister Duncan. He wanted to know about a brief encounter that I had with an individual in Redford, Texas. I told him briefly what had transpired. He said that he might need a statement. He contacted me the following day May 29, 1997. He told me that he would need a statement from me. He said that I could speak with my supervisors first, or whatever I decided to do. I spoke with Mario Vargas.

Tomorrow May 30th I will provide a statement to The Rangers. It will contain the information as follows. Sometime during the end of February 1997 during the 3PM to 11PM shift myself and my Trainee, Johnny Urias, were in the Redford area. We were patrolling in the Polvo Crossing area, in the vicinity of the area where the boat lands. While leaving the boat crossing, we heard three popping sounds coming from our left. We were not sure what was making the noise, or exactly where it was coming from. We continued to leave the area. We turned right, traveling away from where the sounds came from.

We arrived at the top of a hill on a road leading from an old church to FM 170. I turned the vehicle around to see what, if anything was happening. I saw two vehicles driving toward the crossing. I proceeded down the hill towards the old church. I turned right and proceeded towards FM 170. When I arrived at FM 170 I parked my vehicle facing west toward Presidio. I was speaking to another agent by radio. At that time, I noticed two vehicles arriving from my left rear. They stopped about twenty feet from me.

I then proceeded west on FM 170. The two vehicles traveled behind me. One flashed his lights at me. I turned left into a cleared area, now facing the two vehicles. A tall, thin male exited from the drivers side of the first vehicle. He approached me and began saying the following, or words to the same effect.

17174

"I'm sorry that I was shooting, I thought someone was doing something to my goats, I didn't know you were back there." I told him that it isn't smart to be shooting at night in that area, or words to that effect. This was the extent of our contact and conversation. I didn't believe that there was any need to go any further with the matter.

After the shooting incident on May 20th, 1997. I saw this individual's photograph in the newspaper. He was shot by a United States Marine. I recognized him as the same individual that I had spoken with on that night in February 1997.


James A. DeMatteo
Border Patrol Agent

Memorandum



Subject: Information Requested by Texas Ranger Duncan	Date: May 29, 1997
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To: Chief Patrol Agent
Marfa Sector
Marfa, Texas

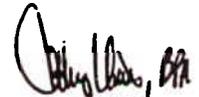
From: Johnny Urias
Presidio Station
Presidio, Texas

THROUGH OFFICIAL CHANNELS

This memo is in reference to information that Texas Ranger Duncan was requesting.

In the latter month of February, Border Patrol Agent Jim Dematteo and myself Border Patrol Agent Johnny Urias were enroute to Radford, Texas in order to look around the Polvo crossing area. Upon our arrival to the crossing, we had gotten off of our vehicle in order to take a look around. After being there at the crossing approximately 15 or 20 minutes, we decided to leave the Polvo crossing area. At this time I did hear, what seemed to me to be a "firecracker" kind of pop at a distance. As we were leaving the above mentioned area, we drove towards an old looking church on a hill, which is located northeast of the Polvo crossing area. At this time, my partner and I drove towards FM road 170. Once we arrived on 170, we stopped. At that time, I noticed two vehicles, trucks, driving towards our vehicle flashing their headlights. Being that the vehicles were driving towards us from our rear side, we decided to drive down the road and face the vehicle in a different direction. Once we had positioned our vehicle where it was facing FM 170, I witnessed a young man getting off of his truck walking towards us while the other driver to the other truck had parked behind the young man's truck. I noticed that there were approximately two to three people in the second truck. Once the young man arrived, he said something to the effect that he "was sorry that he was shooting around the area. He thought he had seen someone trying to steal his goats so he shot to try to scare them off". He also stated that he did not realize that we were in the area, otherwise he would not have shot his weapon."

At this time, BPA Dematteo and Myself did advise the young man to be careful and to use more discretion when shooting his weapon, especially at night. That was the extent of our conversation.


Johnny Urias
Border Patrol Agent

~
~

APPENDIX D

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS
For use of this form, see AR 15-6, the proponent agency is DTJAG.
 IF MORE SPACE IS REQUIRED BY FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

SECTION I - APPOINTMENT

Appointed by Commanding General, Hqs U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas 79916-0058
(Appointing authority)

on 20 May 97 (Attach Inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-13, AR 15-6.)
(Date)

SECTION II - SESSIONS

The (investigating officer) (board) commenced at Marfa, Texas at 1130
(Place) (Time)

on 21 May 97 (If a formal board met for more than one session, check here . Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absence, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-6a, AR 15-6.)

The (investigating officer) (board) finished gathering/hearing evidence at 1200 on 29 May 97
(Time) (Date)

and completed findings and recommendations at 1600 on 29 May 97
(Time) (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES		YES	NO	NA ¹
1. Inclosures (para 3-13, AR 15-6)				
Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)				
a. The letter of appointment or a summary of oral appointment data?	X			X
b. Copy of notes to respondent, if any? (See item 9, below)				X
c. Other correspondence with respondent or counsel, if any?				X
d. All other written communications to or from the appointing authority?				X
e. Privacy Act Statements (Covered, if statement provided orally)?				X
f. Explanations by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?				X
g. References to or copies of a formal board not included on page 1 of this report?				X
h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?	X			

FOOTNOTES: ¹ Explain all negative answers on an attached sheet.
² Use of the NA column constitutes a positive representation that the circumstances described in the question did not occur in the investigation or board.

DA FORM 1574, MAR 83

EDITION OF NOV 77 IS OBSOLETE.

Page 1 of 2 DTJAG/PC V1.00 00005126

2 Exhibits (para 3-16, AR 15-6)		YES	NO	NA ²
a.	Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	X		
	Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	X		
c.	Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	X		
d.	Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and in the possession of the original evidence indicant?	X		
e.	Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?	X		
f.	In each written stipulation attached as an exhibit and in each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?	X		
g.	If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit (para 3-16d, AR 15-6)?			X
3	Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?			X
B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)				
4	At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5-3a, AR 15-6)?			
5	Was a quorum present at every session of the board (para 5-2b, AR 15-6)?			
6	Was each absence of any member properly excused (para 5-2c, AR 15-6)?			
7	Were members, witnesses, reporter, and interpreter sworn, if required (para 3-1, AR 15-6)?			
8	If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (para 5-3d, AR 15-6)?			
C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)				
9	Notice to respondent (para 5-5, AR 15-6):			
a.	Is the method and date of delivery to the respondent indicated on each letter of notification?			
b.	Was the date of delivery at least five working days prior to the first session of the board?			
c.	Does each letter of notification indicate -			
	(1) the date, hour, and place of the first session of the board concerning that respondent?			
	(2) the matter to be investigated, including specific allegations against the respondent, if any?			
	(3) the respondent's rights with regard to counsel?			
	(4) the name and address of each witness expected to be called by the recorder?			
	(5) the respondent's rights to be present, present evidence, and call witnesses?			
d.	Was the respondent provided a copy of all unclassified documents in the case file?			
e.	If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?			
10	If any respondent was designated after the proceedings began (or otherwise was absent during part of the proceedings):			
a.	Was he properly notified (para 5-3, AR 15-6)?			
b.	Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-4c, AR 15-6)?			
11	Counsel (para 5-4, AR 15-6):			
a.	Was each respondent represented by counsel?			
	Name and business address of counsel:			
	(If counsel is a lawyer, check here <input type="checkbox"/>)			
b.	Was respondent's counsel present at all open sessions of the board relating to that respondent?			
c.	If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-4b, AR 15-6)?			
12	If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
a.	Was the challenge properly denied and by the appropriate officer?			
b.	Did each member successfully challenged cease to participate in the proceedings?			
13	Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
a.	Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?			
b.	Examine and object to the introduction of real and documentary evidence, including witness statements?			
c.	Object to the testimony of witnesses and cross-examine witnesses other than his own?			
d.	Call witnesses and otherwise introduce evidence?			
e.	Testify as a witness?			
f.	Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?			
	If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?			
	Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?			

FOOTNOTES: 1 Explain all negative answers on an attached sheet.
 2 Use of the NA column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or hearing.

SECTION IV - FINDINGS page 3-10, AR 15-6

The investigating officer (saw), having carefully considered the evidence, finds:

1. Approximately 1827 hours (MDT) on 20 May 1997 in the vicinity of EC78895606 (southwest of Redford, Texas), while in the course of counterdrug mission IT414-97 (Exhibits A,B,C,D,M). In response to the threat of deadly force against Lance Corporal Bannet, Corporal Bannet fired one round from his M-16A2 rifle at Mr. Esquivel Hernandez of Redford, Texas, striking him approximately six inches below his right armpit (Exhibit O). Subsequently, Mr. Hernandez was pronounced dead at the scene by the Justice of the Peace. The events leading to the shooting began at 1800 hours while the four-man team comprising Corporal Bannet, Lance Corporal Blood, Corporal Torres and Lance Corporal Wierler, all members of Headquarters Battery, 5th Battalion, 11th Marines of 1st Marine Division, located at Camp Pendleton, California, were enroute to their listening/observation post (LP/OP), and stopped for a security halt to observe a horse and rider on the Mexican side of the Rio Grande River. The team next observed to their front, at approximately 200 meters on the U.S. side of the Rio Grande River, an individual carrying a rifle. The individual fired two shots at the team (Exhibit Q), then proceeded to move east as if to flank the team. After notifying his tactical operations center (TOC) and the U.S. Border Patrol (USBP), the supported drug law enforcement agency (DLEA), Corporal Bannet, the team leader, moved the team approximately 90 meters to the east in order to maintain visual contact with the individual. At a distance of approximately 125 meters, Corporal Bannet observed the individual raise his weapon and aim in the direction of Lance Corporal Blood, whereupon Corporal Bannet fired. Subsequently, the USBP arrived to secure the scene. A medical evacuation helicopter from the 36th Medical Detachment arrived on the scene, but Mr. Hernandez was unresponsive to treatment (Exhibits A,B,G,H,I,O).
2. The Joint Chiefs of Staff (JCS) Standing Rules of Engagement (ROE), which were in effect for this mission, were followed (Exhibit E). The JCS ROE allow Department of Defense (DOD) personnel to use deadly force in order to defend themselves or others present. The ROE were communicated to mission personnel during a briefing by Captain Gense, 1st Marine Division, Legal, on 16 April 1997, at Camp Pendleton, California. The Marines received another ROE briefing on 13 May 1997 by Captain Spencer, JTF-6, at Marfa, Texas, prior to the start of the mission (Exhibit F). Each team member was in possession of the ROE card provided by JTF-6 (Exhibit E).
3. The USBP neither met its agreed response time of 15 minutes to an incident, nor arrived in time to prevent the lethal exchange between Corporal Bannet and Mr. Hernandez (Exhibit A,J,K,T). The team reported the sighting of Mr. Hernandez at 1807 hours. The USBP arrived on the scene at 1845 hours. One factor that contributed to the extended USBP response time was the movement by the team to its LP/OP site before night, which was a change to the mission concept of operations that Captain McDaniel, the Mission Commander, had briefed to the USBP.
4. The Mission Commander and USBP discussed link-up and USBP response plans, but they did not rehearse these plans before the mission began. The single linkup signal coordinated between the mission and the USBP was communications via siber radio as a far recognition signal. They did not coordinate a near recognition signal.
5. The team was operating on private land in accordance with a USBP coordinated landuse agreement (Exhibit N). The USBP Mission Commander and Captain Spencer, the JTF-6 Mission Operations Officer, on what they thought the boundaries of the land use agreement were, but they did not convey the correct boundaries of this property. Apparently, unknown to the USBP, the land use agreement was owned by three, not two, members of a family, but permission for landuse had been gained from only two of the three members (Exhibit N).
6. The JTF-6, unit and USBP intelligence estimates of the mission operational area did not provide information on activity that might have heightened the Mission Commander's awareness of potential force protection risks. Specifically, the Mission Commander was unaware of areas commonly used by local inhabitants, of recreational shooting that occurred in the area, and of the fact that Polvo Crossing is a Class B port of entry from Mexico into the U.S.

Section IV - Findings continued on page five:

SECTION V - RECOMMENDATIONS page 3-11, AR 15-6

In view of the above findings, the investigating officer (saw) recommends:

1. The JCS ROE briefing process is effective. Recommend a roster of unit personnel receiving the ROE briefing be included in the mission folder for verification purposes.
2. The Mission Commander must coordinate changes to the mission concept of operations with the supported law enforcement agency and JTF-6 in order to ensure synchronization of the DLEA response plan. Recommend JTF-6 define the term "response time" as a term-of-reference for joint law enforcement and military use.
3. The DLEA response and DLEA/unit link-up procedures must be rehearsed with the supported law enforcement agency and validated by JTF-6 before mission start. Recognition signals must be planned as part of the linkup procedure to reduce the risk of fratricide. Recommend the standard for this procedure be included in the JTF-6 Counterdug SOP.
4. JTF-6, the supported law enforcement agency and the Mission Commander must know and validate the boundaries as defined in the land use agreement. These boundaries must be posted on operations maps and known by all mission personnel.
5. The IPB process must be synchronized and continuous among JTF-6, the unit and DLEA throughout mission execution. The intelligence estimate of the operational area must include specific activity as it affects force protection and the commander's risk assessment. Before mission start the supported law enforcement agency should verify and update activity with the landowner when coordinating the landuse agreement.
6. Recommend the use of unit liaison officers to the supported DLEA station to enhance communications and coordination. Recommend the standards for these procedures be included in the JTF-6 Counterdug SOP.
7. Unit predeployment training must include situational training exercises developed by JTF-6. Recommend JTF-6 verify the completion of this training during the operations order by the Mission Commander.
8. During mission planning the Mission Commander and his team leaders must plan and wargame the use of operational control measures (e.g., alternate positions and withdrawal routes) as they affect force protection. Recommend JTF-6 validate the use of operational control measures during the unit operations order and include standard control measures in the JTF-6 Counterdug SOP.
9. Recommend the unit and supported law enforcement agency use coordinated reference points and control measures posted on sector sketches for each LP/OP. Recommend the standards for these procedures be included in the JTF-6 Counterdug SOP.

Section IV- Findings continued:

7. The unit did not have a liaison officer at the Presidio Station of the USBP in order to enhance communications and coordination with itself and the USBP. The Mission Commander coordinated with the Presidio Station daily by telephone. The unit had the a TOC located at the USBP Sector Headquarters in Marfa, Texas, but this was not an integrated unit/USBP TOC.
8. During their predeployment training, the unit did not do situational training exercises that would have provided the Marines the opportunity to apply the ROE in a variety of scenarios (Exhibits A, M).
9. The Mission Commander reported the incident and its results to JTF-6 in accordance with JTF-6 reporting procedures (Exhibit J).

SECTION VI - AUTHENTICATION (para 2-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VII, indicate the reason in the space where his signature should appear.)

(Recorder)

Kennie M. Cory Jr.
KENNIE M. CORY JR., LTC, USA
(Investigating Officer) (President)

(Member)

(Member)

(Member)

(Member)

SECTION VII - SECURITY REPORT (para 2-12, AR 15-6)

To the extent indicated in _____, the undersigned do(es) not concur in the findings and recommendations of the board. (In the inclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclosure.)

(Member)

(Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

The findings and recommendations of the (investigating officer) (board) are (approved) (disapproved) (approved with following exceptions/substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)

John Costello
JOHN COSTELLO, MG, USA
12 Jan 72

FCJT-J3

MEMORANDUM FOR Commander, USAADC & Fort Bliss, ATTN: ATZC-CG,
Fort Bliss, TX 79916-6816

SUBJECT: Addendum to AR 15-6 Investigation of JT414-97 Shooting Incident

1. Reference, ATZC-JA memo, dated 27 June 1997, Clarification of AR 15-6 Investigative Report (Enclosure 1)
2. Purpose. The following addendum is provided to clarify the findings and recommendations from the AR 15-6 investigation of the JT414-97 shooting incident by answering the FORSCOM RFIs. This addendum is provided to clarify and does not change the findings and recommendations of the AR 15-6 investigation of the JT414-97 shooting incident. This information is based on the on-site debrief and walk through of the incident between the investigating officer and the Marine team members and the information available at the time of the investigation. Exhibit EE outlines the mission planning life cycle for counterdrug operations under JTF-6 control. This exhibit cross walks the mission planning cycle with the planning processes used for mission JT414-97.
3. Issues to be clarified.
 - a. Rules of Engagement (ROE) and related matters:
 - (1) What courses of action were considered/adopted/rejected "to make every effort to avoid confrontation and armed conflict with civilians" (ROE card) during the time between Mr. Hernandez firing the two shots and Cpl Banuelos' shot? During this time, what "other measures" (ROE card) were considered/adopted/rejected as a reasonable alternative to the use of deadly force? Realistically, what "other measures" were available to the Marines?
 - (a) Corporal Torrez believed the suspect fired a small (possibly .22) caliber rifle based on the weapon's sound and his military experience. Two of his team (Cpl Wieler and Cpl Torrez) reported rounds passing between them which indicated they were receiving accurate fire. He perceived a definite threat to his team.
 - (b) CPL Banuelos quickly evaluated his available courses of action as his team had just been fired upon and they were in the open with an armed individual trying to flank them. In determining the best course of action, the team leader felt protection of the team was the determining factor. Under the ROE

FCJT-J3

SUBJECT: Addendum to AR 15-6 Investigation of JT414-97 Shooting Incident

and consistent with his training, the team leader would have been justified in immediately returning fire against the suspect. However, he determined other alternatives were available, and an immediate recourse to deadly force was not required.

(c) A second alternative was to secure a defensive position and await the law enforcement response element. The team's position in the open did not provide enough cover and concealment to secure the position and to provide the team adequate force protection.

(d) The third alternative was to break contact and withdraw from the area. The restrictive terrain to the west along the river and the steep depression to the team's rear did not allow the team to withdraw and maintain visual contact with the armed individual who had just fired upon the team. Most importantly the team leader, Corporal Banuelos, thought the suspect was moving to outflank the team to the east. Therefore, he assesses that maintaining visual contact with the armed individual is paramount to protecting the force.

(e) As a fourth alternative, the team leader felt if he could reposition the team to the high ground to the east, he could provide force protection by securing the high ground which would preclude the team from being out flanked. Additionally, he could maintain visual observation of the suspect. CPL Banuelos hoped to protect the team from being outflanked and await the law enforcement response element.

(f) Therefore, as Cpl Banuelos assessed that he had to move to a more secure position by getting out of the open to protect the force, Cpl Banuelos chose the fourth alternative. This movement was appropriate within the intent of the ROE by not using deadly force when another measure (e.g., moving to keep the suspect under observation until the LEA arrived) would be reasonably effective in enabling him to protect his team. The team leader's actions were appropriate based on the situation and were within the intent of the JCS Standing Rules of Engagement. The intent of the team's movement to the high ground was not to pursue or confront the armed individual. The team leader merely sought force protection. There were no other realistic measures available to the Marines.

(g) He moved the team approximately 90 meters to the east to secure the high ground. Once on the high ground, the team leader lost sight of the suspect and decided to move forward to regain visual observation. The team leader considered withdrawing before moving forward, but at this point he did not know where the

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suspect was. He felt visual observation provided force protection. The team leader moved the team forward approximately 25 meters until he observed the suspect to his front at a distance of 125 meters. At this point the team leader consolidated the team members on line and directed LCpl Blood to reposition to the east. The team members were on line approximately 10 meters apart, forming a 20 meter front with the team leader in the middle. His intent was to continue observing the suspect. While LCpl Blood was repositioning in a crouched position, Corporal Banuelos observed the individual raise his weapon and aim in the direction of LCpl Blood, whereupon Corporal Banuelos fired in defense of LCpl Blood. LCpl Blood did not see the armed individual raise his weapon to fire while repositioning. When LCpl Blood heard the shot fired by Cpl Banuelos, he moved for cover, observing the individual fall. (AR 15-6, Exhibit D, sketch of the incident, Exhibit H, statement LCpl Blood) Based on fact that LCpl Blood observed the armed individual fall, the investigating officer can only assume that the armed individual had line of sight of LCpl Blood. During the on-site walk through lines of sight were reviewed based on the approximate positions of the Marines. The investigating officer cannot verify with any certainty the lines of sight, as the team members, except Cpl Banuelos, did not know exactly where they were on the ground. The other Marines did not observe the individual raise his weapon to fire based on their approximate position on the ground or actions at the time.

(h) The team leader had trouble communicating with his team members because of the high winds. Based on the distance between the team and the suspect, the severe weather, and the immediate threat to his team member, the team leader felt it useless to identify themselves as Marines before he fired. (AR 15-6, Exhibits B, G, H, I, Marines statements; Exhibit K, USBP Radio Log; Exhibit D, sketch of incident area).

(2) Describe in further detail the movements of both the Marines and Mr. Hernandez immediately after Mr. Hernandez fired the two shots. What was the purpose behind the movements of the Marines after Mr. Hernandez fired the two shots? See (1) above. The team leader felt if he could reposition the team to the high ground to the east and maintain visual observation of the suspect he could protect the team from being flanked and await the law enforcement response element. (AR 15-6, Exhibit B; Cpl Banuelos statement; Exhibit D, sketch of incident area).

(3) Regarding the hand drawn maps of the incident, who made the annotations on them? On what evidence were the annotations based and on what data were the maps based? The hand drawn maps

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and annotations were based on the investigating officer's on-site debrief and walk through of the incident with the mission commander and the marine team members. The investigating officer confirmed locations with a GPS and paced the distances between points. The annotations were based on the discussion/interviews on site with the team members and cross referencing other evidence provided (i.e. USBP radio log, JTF-6 log, statements).

(4) Why did the Marines feel it important to maintain visual contact with Mr. Hernandez? The team leader thought Mr. Hernandez was moving to flank the team to the east. To ensure force protection, the team leader wanted to confirm and maintain visual observation of Mr. Hernandez until the law enforcement response element arrived. Keeping the suspect under observation would allow the team to react to the suspect's movements. It also would preclude the suspect from surprising the team by moving to a position where the suspect could more effectively fire on the team before the response force could arrive. (AR 15-6, Exhibit B: Cpl Banuelos statement; Exhibit D, sketch of incident area).

(5) What is the terrain and vegetation like at the scene? (Photographs may be helpful.) What impact, if any, did the terrain and vegetation have on the Marines' actions. What is your own assessment of any impact of the terrain and vegetation on the Marines' actions? Also, address the prior three questions in this subparagraph as to the light and weather conditions (instead of the terrain and vegetation) at the time.

(a) LP/OP 3 was located approximately three quarters of a mile south of Redford, a town of approximately 100 single family residences. Two isolated residences were located approximately 1,500 feet north of the LP/OP position. Approximately 600 feet north-east of the LP/OP position there are several abandoned and badly deteriorated structures. Due to the nature of the terrain, the LP/OP could neither observe any of the occupied residences nor be observed from any of the occupied residences. There was an east to west ridge line of higher elevation than the LP/OP position that blocked their line of sight.

(b) The terrain in the vicinity of LP/OP 3 is characterized by low rolling hills cut by numerous small, dry arroyos. The primary hill overlooks cultivated Mexican fields to the southwest and west. These fields parallel the Rio Grande for approximately 6 miles to the north and 7 miles to the south. Cover and concealment along the ridge lines in the area is scarce near the LP/OP position.

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(c) Concealment consists primarily of creosote bushes generally less than two feet high, low lying cacti, with a rare tree or creosote bush over three feet high. The density of vegetation along the ridge lines is approximately one creosote bush every 24 to 60 feet. Along the ridge line, a standing individual could be seen from 900 to 1500 feet away in almost any direction. Cover consists of small rocks on the reverse slopes of the hillside as it falls away toward the river and the arroyo to the north and east.

(d) Along the river, in the vicinity of the hide site, salt cedar trees with 6" to 8" trunks provide some cover from small arms fire. Concealment is limited near the LP/OP, although sparse stands of sagebrush and cactus provide concealment for individuals lying prone. This sparse vegetation provides no concealment from overhead observation. Within the hide site, trees and cane offer extremely good concealment from direct and overhead observation. The main avenue of approach from Mexico is the El Polvo (Redford) crossing which originates in the El Mulatto Arroyo, approaching Redford from the west.

(e) Numerous footpaths originate in the Mexican villages of El Viborero, Palomas, and Loma Juarez and follow fence lines that intersect the Rio Grande both north and south of Redford. On the U.S. side, four vehicle/foot trails lead away from the Rio Grande toward the populated area of Redford. These trails also connect with the Redford loop road that exits Farm to Market Road 170 north and south of Redford. The El Polvo low-water crossing due west of Redford is key terrain. Finding number six of the original AR 15-6 investigation stated that Polvo Crossing, which is in the vicinity of LP/OP #3, was a Class B port of entry from Mexico into the U.S. Since the submission of the original AR 15-6, JTF-6 has learned that Polvo Crossing is not a Class B port-of-entry. Instead, the Polvo crossing is an unofficial POE, but not a legal one. (Exhibit GG, MFR, Major Burmeister) Vehicles and pedestrians usually cross the river here. The adjacent ridges on the US side, just south of Redford can also be considered Key Terrain since they provide observation of the crossing point and the immediate area. (Exhibit T, pictures; Exhibit CC, incident video).

(f) The team's position in the open provided insufficient cover and concealment to protect them from rifle fire. The restrictive terrain to the west along the river and the steep depression to the team's rear did not allow the team to withdraw without losing visual contact. The team leader, Corporal Banuelos, thought the suspect was moving to outflank the team to the east. The team leader felt if he could reposition the team to

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the high ground to the east and maintain visual observation of the suspect that he could protect the team from being flanked and await the law enforcement response element.

(g) Initially at 1800 hours, light/visibility conditions were favorable with Ending Evening Nautical Twilight (EENT) not occurring until 2043 that evening. (AR 15-6, Exhibit M, Unit Operations Order) These light conditions exposed the team with little cover and concealment enroute to and at the LP/OP position. Over the course of the next hour and a half, weather conditions progressively deteriorated as a severe storm with high winds blew into the immediate area. The wind's noise reduced the ability of the team members to communicate among themselves. (AR 15-6, Exhibits B,G,H,I, Marines statements)

(6) Besides the ROE card, what specific ROE training did these Marines receive (content, format)? (Copies of the lesson plans, slides, etc. may be helpful.)

(a) The unit receives two, multimedia briefs covering the Posse Comitatus Act, ROE and Intelligence Oversight matters. This includes a video training tape and discussions on various facets of the ROE led by a qualified JAG, either from a JTF-6 JAG officer or another JAG officer specifically trained by the JTF-6 Legal Office to give the training.

(b) These briefings are reinforced through printed documents, pre-mission training, and subsequently throughout the stages of the mission process.

(c) The first briefing is to the mission command team at the Initial Planning Conference (IPC). Major Burmeister gave this briefing. The briefing lasted one hour, fifteen minutes. It involved lecture and discussion, using slides and a video. Exhibits U and V are the outline of the briefing and the slides at the time of this mission's IPC. Exhibit DD is a copy of the video.

(d) Supporting material includes a packet of over 20 situational training exercises (STXs) (Exhibit W). The STXs further illustrate and explain the ROE. The STXs place teams and personnel in possible problem situations and require them to solve those problems using the ROE, which require use of the minimum force necessary. Exhibit X is an additional ROE fact sheet given to the command team at the IPC.

(e) The second briefing is for the members of the unit itself. This briefing covers the same material, but often lasts

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longer because of extra discussion. For the 5/11 Marines, USMC Captain Michael Gante, the Operational Law Officer, Legal Services Support Section, 1st FSSG, Camp Pendleton, California provided this brief on 15 April 1997. Capt Gante had been trained by the JTF-6 SJA and had previously given numerous ROE classes. Approximately 50 Marines were in attendance at this class. There were a number of officers and NCOs, but the majority were in the grades of E-1 to E-5. Cpl Banuelos and his team members were all in attendance. The briefing covered ROE and emphasized the following: the use of minimum force, do not use deadly force if other defensive measures would be effective, the prohibition against using warning shots. The discussion of deadly force covered the escalation of force and how deadly force was to be the last possible resort after lesser degrees of self-defense had been exhausted. Captain Gante believes all the Marines had a good understanding of non-deadly versus deadly force (Exhibit Y)

(f) Using the previously provided STXs, units conduct practical exercises. These practical exercises give personnel practice in applying the ROE in various situations. Though STX field training was not formally required previously to the Redford shooting, almost all units perform these practical exercises both in a classroom and a field setting. The unit involved at Redford reviewed the STXs only in the classroom. JTF-6 now formally requires field training with the STXs both at home station and specifically in the mission area with the LEA during the rehearsal for the operation.

(7) Were these Marines evaluated on their understanding of the ROE training? If so, how and by whom? What was the extent of their understanding of applicable ROE?

(a) At mission start-up, a JTF-6 Operations Officer is on the ground helping the unit effect final coordination and pre-mission training. This includes validation of ROE training, further mission rehearsals, and unit back briefs to the Operations Officer.

(b) USAF Captain Matt Spencer, JTF-6, was the Operations Officer during mission startup of JT414-97A. On 13 May 1997, he again briefed the unit, to include ROE and STXs and validated selected Marines' understanding of the ROE and STXs. Capt Spencer gave a mission brief to all mission personnel at the assembly area in Marfa. Cpl Banuelos and his team members were all in attendance. He covered ROE, Posse Comitatus, US persons info, intelligence oversight, safety, public affairs, communications, and the situational training exercise scenarios. The scenarios incorporated all of the above items. During the training Marines

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were asked how they would react and what type of responses were appropriate. A class attendance roster was not obtained; however, we have verbally verified all of Team 3's personnel had received ROE training. JTF-6 now requires documentation for all ROE training.

(c) Capt Spencer's decision that the unit was properly prepared was based upon their mission brief and the Marines' understanding of the ROE, Posse Comitatus, intelligence oversight, and the situational scenarios. The Marines understood their and the LEA's responsibilities and duties. Capt Spencer also verified that communication networks were established, the medevac helicopter was in place and ready to respond, and there were no outstanding problems that would prevent a safely conducted mission. (Exhibit 2, MFR by Capt Spencer, JTF-6 Operations Officer)

(8) Paragraph D.2 of the OPCORD authorizes detention IAW with the ROE. Did the Marines understand this paragraph, along with the ROE's use of deadly force, to authorize them to detain Mr. Hernandez and shoot to kill him when he again became a threat?

(a) The ROE prohibits the use of deadly force except to defend against an immediate threat of death or serious bodily injury. Deadly force is not authorized to detain someone. The ROE also prohibit pursuit of armed individuals, except to defend or retrieve personnel. Thus under the ROE, the Marines would not attempt to follow Mr. Hernandez, as an armed individual, for the purpose of effecting a detention.

(b) The Marines did not follow or pursue Mr. Hernandez. They just happen to move on a parallel course in an effort to secure the high ground while keeping Mr. Hernandez in sight so that he could not flank the team as he appeared to be attempting. "Pursuit" is attempting to follow in trail or following with the intent to close with and capture. Here, the team merely was attempting to maintain its distance from the suspect and keep him under observation until the LEA arrived. The LEA would then take control of the situation and apprehend the suspect.

(9) Clarify the need for warning shots, if any, under the ROE and ROE Card. Were warning shots prohibited, or authorized but impractical under the circumstances? The ROE and ROE training specifically prohibit warning shots. The supported LEAs generally do not fire warning shots either. In fact, US Border Patrol policy strictly prohibits warning shots for fear of collateral damage or escalation of the situation.

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(10) How, if at all, did the USBP failure to respond affect the decisions of the Marines? The USBP response team was a contributing factor in Cpl Banuelos' decision making process, but I can not speculate what the team would have done differently if they had known the LEA would not arrive as coordinated. The USBP's failure to respond within 15 minutes, as agreed to in the concept of operations, contributed to the deteriorating situation. The team leader made decisions with the expectations that the LEA would arrive 15 minutes after they were called (AR 15-6, Exhibit M, para III(B)(3)). The term "response time" was not equally understood by DoD or the LEA. The LEA understood the requirement to respond, but felt this would be sufficed by vehicle patrols on the road in the vicinity of the LP/OPs. Moreover, the LEAs contend that the concept of operations only required them to respond during the hours of darkness when the teams were physically occupying the LP/OPs. However, this was not the concept agreed to during the OPORD brief by the Marine unit at JTF-6 with the LEA present (Exhibit HH). This concept was agreed upon in a memorandum of understanding with the LEA (Exhibit EE, Enclosure 9). Nor was it the concept coordinated on the ground by Capt Spencer, the JTF-6 mission operations officer, at the mission startup with the LEAs (Exhibit II). The military were confident the response force would be available 24 hours a day as the teams were deployed along the border all day long... vulnerable either in hide sites or LP/OP positions.

(11) What physical opportunity did the Marines have to engage the suspect with deadly force before the fatal shot was fired? The team members could have engaged the armed individual at any point during their twenty minute movement if they had assessed the armed individual was again threatening the team. The fact that they did not fire during the 20 minute movement demonstrates that the team's intent was to observe the suspect rather than engage him. (AR 15-6, Exhibit D, Map and Sketch of Incident).

(12) What evidence provides the factual basis for Entry 23 in the JTF-6 Log stating that the suspect was attempting to flank the team? The team reported at 1810 that the suspect was attempting to flank the team. This radio communication with the team is documented in the USBP radio log. The mission commander relayed this information to JTF-6, which is recorded in the JTF-6 log as Entry 23 (1800 Mountain Time) (AR 15-6 Exhibits J, #).

(13) What, if anything, did USBP communicate to the team before or during insertion about the local situation or possible civilians in the area? Were the Marines on this team aware of the possible presence of recreational shooters? Did the Marines

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manning the LP/OP know of the Feb 97 USBP shooting incident and did they know the LEA's characterization of Redford?

(a) The J2 prepared an IPB of the battlefield for the mission. It was an excellent product (Exhibit EE, Encl 7). It mentions recreational shooting (plinking) and occasions of plinking which were briefed to the unit leadership. The specifics of the AO are to be presented by the LEA. Historically, this has been done verbally. Although the LEA provided detailed information about the AO, they did not mention critical elements of "friendly" information such as plinking and the herding of goats. Further, the LEA did not inform the unit or JTF-6 that Hernandez had fired at two USBP Agents in this area earlier in the year because he thought someone was "messing with his goats." (Exhibits AA and BB, Statements of USBP Agents, Exhibit FF, MFR, Capt McDaniel)

(b) On 19 February 1997, the mission commander, Capt McDaniel, and unit representatives attended the Initial Planning Conference (IPC) at JTF-6 (AR 15-6, Exhibit A, Mission Commanders Summary). Prior to the IPC, Captain McDaniel and his planning staff received a J2 intelligence briefing given by SSgt Mackes. During this briefing the unit received information on: force protection; an orientation to the area of operation; geography; major lines of communication; climate; hazards; civil/political/economic situation; general and specific threat activity; transportation methods; avenues of approach; and intelligence reporting procedures. Key elements of the intelligence briefing included information gained from USBP agents (during a 15-19 October 1996 intelligence collection visit) that indicated approximately 75% of the population of Redford was involved in drug smuggling and most of the residents possessed fire arms. Additionally, SSgt Mackes briefed the unit representatives on the DTO threat profile that included the possibility that DTOs would employ armed, horse mounted or dismounted scouts to conduct reconnaissance for LEA presence and that the presence of scouts may indicate that a drug smuggling event was about to take place (Exhibit EE para. 1.F.2, Exhibit EE Encl 6). A copy of the JTF-6 intelligence estimate was given to the unit (Exhibit EE, Encl 7). Captain McDaniel, the mission commander, briefed this intelligence information to his team leaders as part of the unit operation order during mission planning (Exhibit FF, MFR, Capt McDaniel). Cpl Banuelos was present for this briefing.

(c) The situation at 1800 hours, as it presented itself to Cpl Banuelos, met the drug trafficking organization (DTO) profile presented by the J2. The horsemen and a dismounted person with rifle met the DTO profile for reconnaissance activity on a smuggling route. Therefore, at about 1800 hours on 20 May, Cpl

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Banuelos saw himself in a potentially dangerous situation. The additional information from the LEA might have moderated the criticality of the situation in which he thought himself to be. Once fired upon, Cpl Banuelos reacted based on his training and IAW the JCS rules of engagement.

b. Medical care issues.

(1) When the Marines saw Mr. Hernandez fall after Cpl Banuelos' shot, what did they think happened to him? The team observed Mr Hernandez fall after Cpl Banuelos shot. Cpl Torrez, the assistant team leader, reported that the team "took him out" to the unit TOC, not Cpl Banuelos, the team leader. During the on-site walk through Cpl Banuelos stated that even though he saw the individual fall he wanted the team to proceed with caution based on his training and the fact he was not sure the individual was shot. The team leader thought that the individual may have just reacted to the shot being fired by slipping and falling.

(2) What was the time lapse between CPL Banuelos' shot and the Marines' arrival at his location? What explains this time lapse? The team took approximately eight minutes to move the 125 meters to secure the scene. The team moved with caution because they were not positive that Mr. Hernandez was shot. As they approached the Marines repeatedly shouted, "U.S. Marines." The Marines were close enough to be heard over the wind and were not concerned about giving away their position.

(3) Once at Mr. Hernandez's location, did the Marines apply medical treatment measures? Why or why not? Mr. Hernandez had fallen backwards into a old well or chimney foundation. Based on his body position, the team leader thought he could have a neck or back injury and decided not to move him. The team leader could not determine if he had been shot. The team was not qualified to treat neck or back injuries. The team was aware that the individual was breathing and could observe hand movement, but he did not respond to verbal commands. If the Marines took the individual's pulse is not known to the investigating officer. The team did not report this information to the TOC and the USBP nor did the TOC and USBP request an update on the situation.

(4) What was the time lapse between the Marines' arrival at Mr. Hernandez's location and health care professionals arriving on the scene? What explains this time lapse? The team secured the scene at 1835. The border patrol arrived at 1845 and took control of the scene. The LEA at that time removed Mr. Hernandez from the well foundation. Normal border patrol procedure requires the scene to be secured and on site confirmation of emergency

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treatment required prior to dispatching an ambulance. At 1849 the border patrol dispatcher confirmed an ambulance was en route. Based on the scene being secure and the response time of the ambulance, the mission commander in coordination with the border patrol launched the mission medevac aircraft. The medevac aircraft arrived at 1906 at which time the army medic evaluated Mr. Hernandez. Mr. Hernandez was unresponsive to treatment. The mission commander did not activate his Army medevac to the scene earlier because the site was unsecured. However he alerted the aircrew to prepare for movement when he gave the word. The mission commander activated the Army medevac when the mission commander and border patrol agents realized the time required for the ground ambulance to respond.

c. Apparent discrepancies.

(1) The various statements of the Marines and the Entry 74 in the JTF-6 Log (201800-210700 May 97) appear inconsistent regarding whether the Marines identified themselves and issued a halt order before CPL Banuelos fired his shot. What is the correct version? Why the inconsistency? The team never issued a verbal warning before the team leader shot Mr. Hernandez. This is based on the on-site debrief and walk through of the incident between the investigating officer, mission commander and the Marine team members and cross referencing the statements of the Marines. The team leader did not issue a verbal warning as LCpl Blood thought and indicated in his statement. The JTF-6 Log entry was incorrect based on initial information from the unit TOC.

(2) The Marines' statements indicate that they first moved parallel with Mr. Hernandez and then advanced toward Mr. Hernandez. Entry 74 in the Log and the SIR both indicate that the Marines moved away from Mr. Hernandez, who followed the Marines. Which version is correct? What explains the inconsistency? Entry 74 in the JTF-6 log and the SIR are incorrect based on erroneous initial reports received from the unit. The team leader felt if he could reposition the team to the high ground to the east and maintain visual observation of the suspect he could protect the team from being flanked and await the law enforcement response element. Once on the high ground the team leader lost sight of the suspect and decided to move forward to regain visual observation. The team leader considered withdrawing before moving forward but at this point did not know where the suspect was. Cpl Banuelos thought the suspect might still be attempting to flank his team. The team leader moved forward approximately 25 meters until he observed the suspect to his front at a distance of 125 meters. At this point the team leader consolidated the team members on line in order to observe the suspect.

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(3) Investigating officer should explain handwritten entry in margin of USBP radio log transcript (AR 15-6, Exhibit K) at 18:13, "Follow your ROE." Why wasn't this typed in original log? Who made this annotation? AR 15-6, Exhibit K is the USBP transcript of the USBP recorded radio net during the incident. Reviewing the USBP audio tapes of the incident, the investigating officer noted the transcript did not reflect this call from the unit TOC to the LP/OP, telling them to "follow your ROE".

(4) Finding number six of the original AR 15-6 investigation stated that Polvo Crossing, which is in the vicinity of LP/OP #3, was a Class B port of entry from Mexico into the U.S.? Since the submission of the original AR 15-6, JTF-6 has learned that Polvo Crossing is not a Class B port of entry. Even though referred to as such by locals (including local USBP personnel) Polvo Crossing is not a Class B Port of Entry (POE), but is an unofficial, locally used, crossing that is not a legal POE (Exhibit GG, MFR, Major Burmeister)

d. Command issues.

(1) On what first-hand sources did the Mission Commander base his 23 May chronological summary? (If copies exist of any material which formed this basis, please attach those materials.) The Mission Commander based his chronological summary on the mission planning timeline for his mission and the on-site debrief and walk through of the incident between the investigating officer, mission commander and the Marine team members and cross referencing the statements of the Marines and the border patrol radio log.

(2) Clarify whether situation training exercises (STXs) occurred? If so, what transpired during the STX? If supporting documents exist for the STX, please obtain them. JTF-6 presents numerous potential ROE situations with the video tape. JTF-6 did not formally require field STXs prior to the Redford incident. Almost all units performed these practical exercises both in a classroom and a field setting. The unit involved at Redford reviewed the STXs only in the classroom. JTF-6 now formally requires field training with the STXs both at home station and in the mission area.

(3) Clarify what, if any, contact and/or communication occurred between the Marines involved in the shooting incident and the Border patrol at the time of their initial manning of their observation post. The team conducted normal communication checks

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with the LEA/unit and received operational and intelligence updates from their mission commander prior to their initial manning of their LP/OP. The investigating officer does not have any knowledge of the team conducting direct coordination at their level with the LEA prior to manning their position.

(4) What, if any, differences existed in this mission from a "normal" Border Patrol law enforcement mission? Why were the Marines in a covert status at their observation post? Do Border Patrol agents ever camouflage their OP positions? Normal border patrol missions are conducted by vehicle roving patrols and by the border patrol tactical unit (BORTAC). BORTAC does conduct military profile type missions such as LP/OP operations along the border. BORTAC does camouflage their LP/OP positions during these type operations. Military LP/OPs are concealed, manned observation sites that are usually occupied by three to six people to watch for suspicious activity and report it to an LEA. Normally, two to ten LP/OP positions are manned in an area simultaneously. The military unit provides its own command, control, communications, logistics and administrative support. The size of the unit providing the support will vary from 12-150 people (team/platoon to company size). LP/OPs can be manned 24 hours a day. Border LP/OPs watch for the illegal movement of drugs across the border via manpack, pack animal or vehicles. Airfield LP/OPs can detect drug smuggling aircraft landing or air dropping contraband in remote clandestine airstrips. LP/OPs can also be positioned to observe movement along routes leading to domestic marijuana production areas.

2 Encls


 RENNIE M. CORY JR.
 LTC, U.S. ARMY

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 FORSCOM
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