

1 as well. Going back to focus on certain points, I did provide some  
2 initial records. There was an intake examination by medical  
3 personnel of Mr. Dilawar. My gross examination of the body confirmed  
4 the height and weight of Dilawar which were consistent with that  
5 report in the record which it was only several days prior. I  
6 mentioned photographs taken of the body, a Chad Parcels, who works  
7 with Dr. Ingwersen out of Germany took some of the photographs, and I  
8 also took a number of photographs during the autopsy. I sometimes  
9 take the photographs. I recognize PE 4 for ID. PE 4 for ID is a  
10 photograph that I took while I was performing the autopsy that I was  
11 performing on Mr. Dilawar. It has both his autopsy numbers and the  
12 date and I recognize the physical features of the individual. PE 4  
13 for ID is a fair and accurate representation of what Mr. Dilawar's  
14 legs looked like at the time that the autopsy was done. The  
15 significant part about this photograph is that this is a photograph  
16 of Mr. Dilawar taken from the back, and slightly off center. You can  
17 see the lower part of the buttocks. Again, it was taken slightly to  
18 the right of the individual, taken at an angle. You can see the  
19 lower part of the right hand. So, this is the back and the side of  
20 the right thigh. You can see the small part of the inner aspect on  
21 the back of the left thigh. The photograph ends just above the knee.  
22 We're not seeing the back of the knee region. For comparison, you  
23 can see on his hands and a little bit on the buttocks, sort of a  
24 normal skin coloration of this individual and normal skin  
25 pigmentation. As we come down the thigh, it starts getting much  
26 redder, the coloration of the skin, as it comes down approaching  
27 above the knee on the right thigh it gets purpler. We call this a  
28 contusion or a bruise. Something has caused that skin to change  
29 color, particularly getting down to this purple area that's very  
30 characteristic of a bruise where blood has leaked into the tissue.  
31 What a bruise is is something interacts with the tissue, the body,  
32 and it causes a destruction of the blood vessels, blood leaks into  
33 the tissue, and that's what creates a bruise or contusion. And you  
34 can see on the back of the left thigh, there is also some  
35 discoloration. You can see some reddening of that tissue. You can  
36 see on that inner-aspect of a normal color for comparison. You know,  
37 sort of a normal light-tan, versus the reddening. When I was  
38 describing how the autopsy was conducted, I did say that if there was  
39 something that was abnormal that I would follow-up on that; there was  
40 something about this that caused me to do a follow-up. Because there  
41 was a discoloration on his legs and did not know what caused it,  
42 multiple things can cause a reddening of the skin, heat, sunburn, not  
43 too much other than bruising would cause it to be purple that way,  
44 but when we see injuries like that, we will commonly make incisions  
45 in the skin to actually see what's causing that to make sure it's not

1 a birth defect or, you know, some sort of other things that cause  
2 pigmentation change. So, in this case, we made incisions down the  
3 back of the legs, and then we reflect or peel back the skin to  
4 actually look at the subcutaneous tissue under the skin and the  
5 muscle deep to the leg. When I folded back the skin, it confirmed  
6 that it actually was bruising, contusions, damage to that tissue.  
7 There was hemorrhage or bleeding into the tissue all the way from the  
8 skin's surface to the tissue underneath the skin which is the  
9 subcutaneous tissue all the way through the muscle all the way down  
10 to the level of the bone which is the femur, the large bone in the  
11 thigh.

12  
13 The Civilian Defense Counsel renewed its objection to the  
14 photographs. The Military Judge noted and overruled the objection.  
15

16 **Questions by the Trial Counsel:**

17  
18 PE 5a for ID is a photograph that I took of the back of Mr.  
19 Dilawar. For orientation purposes, this is his buttocks at the top  
20 of the picture. We made incisions in the skin of his buttocks, the  
21 skin opens up, and you can see the normal yellow, fatty tissue. He  
22 did not have any trauma to the buttocks for comparison. When you cut  
23 through the skin, that's what normal tissue would look like, yellow  
24 or muscle. I made an incision starting at the top of the thigh all  
25 the way down to just above the ankle, mid-calf on the right leg.  
26 That skin is then peeled back or what we call reflected to see the  
27 muscle. I've also made some incisions, as you can see, down the calf  
28 through the muscle to look at the tissue. Again, this is normal  
29 adipose tissue. You see the normal white skin and normal yellow fat,  
30 adipose tissue. On his calf, you can see this is normal skeletal  
31 muscle. It looks just like steak. It has a normal pink, firm  
32 consistency. The white is tendon. You can see some yellow, again,  
33 which is normal fatty tissue. Basically, on the left leg from mid-  
34 calf all the way up to just below the buttocks is dark red. It's all  
35 blood in the tissue. This is bleeding that occurred during life. It  
36 doesn't wipe off. For example, this is blood that spilled just  
37 during the autopsy, but all of this dark red that you see in PE 5a  
38 for ID is blood within that tissue. It doesn't wipe off. The  
39 bleeding occurred during the damage of that tissue while the  
40 individual was alive. This is subcutaneous hemorrhage all the way up  
41 here. All through this picture, you can see this muscle was much  
42 darker. There is hemorrhage of the subcutaneous tissue and muscle  
43 just below the buttocks to the level just above the knees of the  
44 muscle. The subcutaneous hemorrhage actually comes down further on  
45 the outer aspects of both legs down below the knees on the outer-

1 aspects of both legs down below the knees on the outer aspect.  
2 There's relative sparing of the calves. You can also note, as you  
3 peer up here on both sides of PE 5a for ID, that there's a slightly  
4 different consistency. It's a little lumpier looking, a little more  
5 irregular. It's not firm and glistening like good skeletal muscle.  
6 This tissue was actually crumbling and actually falling apart. The  
7 tissue had been damaged to a point that it lost all of its integrity  
8 rather than being firm, cohesive muscle, it was literally falling  
9 apart in my hands on both legs on the top part.

10  
11 The Military Judge stated for the record that on the left-hand  
12 side of the photograph, there was a gauze material there is also a  
13 blood spot that the doctor referred to earlier that was spill that  
14 would dry up.

15  
16 **Questions by the Trial Counsel, continued:**

17  
18 That was spilled blood on the gauze as opposed to the other  
19 blood that is inside the legs. He is on top of medical blankets, and  
20 just to show you the difference, that's blood that, when you open a  
21 body and disrupt the vascular structure, blood leaks. That blood  
22 wipes right off though. This blood is all blood that's within that  
23 tissue. You can't wipe that off and make it look like normal tissue  
24 because that tissue is damaged, and that bruising is within the  
25 actual cellular structure of the tissue. As to if I could describe  
26 my gross observations of the extent of the muscle damage, this  
27 picture just shows the rear, and we also reflected the skin all the  
28 way around to see the front of the legs. And he has extensive muscle  
29 destruction from basically the entire aspect of the thighs, from just  
30 below the buttocks to the level of the knees that is essentially  
31 circumferential all the way around the back, the sides, and the  
32 front. There were a few areas of relative sparing on the inner-  
33 aspects of the legs, but in some areas, the hemorrhage actually went  
34 all the way around the legs, and it extended down to the level of the  
35 knees of the muscle on the skin. It actually went deeper or lower  
36 down to like about the mid-calf. PE 5a for ID fairly and accurately  
37 depicts the appearance of Mr. Dilawar's legs once the skin had been  
38 folded back at the time of the autopsy. PE 5b for ID is a picture  
39 that shows the extent of the damage. Again, this was taken from the  
40 rear of Mr. Dilawar from the back aspect, again, slightly to the  
41 right. Again, his buttocks are at the top of the photograph, and his  
42 feet would be down below the screen. You can see the incisions that  
43 I made in his buttocks which shows normal tissue with no blood. This  
44 just shows the incisions that I made down the back of both legs, but  
45 the tissue, I reflected, cut the skin back away, coming around more

1 where we're seeing the lateral or side aspect of the right leg all  
2 the way around, almost to the front in this photograph. Again, we  
3 can see his calf muscles as they're coming up the knees would be at  
4 approximately this level, and we see the calf muscle is a normal  
5 pink. The white is tendon, and you can see normal pink skeletal  
6 muscle. As we come up, it becomes very dark. It's dark red.  
7 There's blood and destruction of that muscle all the way up to like I  
8 said just below his buttocks. On the other leg, we're seeing the  
9 inner-aspect, the back, and slightly inner-aspect of the left leg.  
10 The white is tendon and the pink is normal muscle tissue. The yellow  
11 areas of the picture are fat or adipose tissue. Regarding the darker  
12 areas of muscle, I used the term muscle destruction. That is  
13 different than muscle damage because they are all degrees. When  
14 tissue interacts with an object, or an object hits it, that causes at  
15 the cellular level, cells to rupture, capillaries will rupture. The  
16 individual's blood pressure causes that blood to leak into the  
17 tissue, and that's what causes the bruise that we see where the  
18 little capillaries have leaked. As that tissue is further damaged,  
19 the actual cells are broken down, and there's more and more  
20 destruction and disruption at the cellular level of that tissue.  
21 Basically, there are all degrees. Where it actually started to  
22 crumble apart, it had been damaged to the point that it was pulpified  
23 where something is damaged to the point where it has lost all  
24 structure. And you can see there are some of the areas where it just  
25 does not have that normal cohesive appearance of normal muscle. It's  
26 been damaged to the point where it's breaking apart. As to if the  
27 muscle tissue that is damaged to that degree can have healing occur,  
28 initially, when those little muscle fibers are damaged, their  
29 contents leak out, and that causes problems for the body fluid shifts  
30 as well as potassium that's in the muscle fiber cells leaks out, and  
31 that causes problems for the overall function for the individual.  
32 Fluid is also leaking in, and blood is seeping out. With time,  
33 obviously, muscle can overcome certain injuries, and the body has a  
34 healing mechanism, fluids come in, and white cells come in, and the  
35 healing process occurs, macrophisors and whatnot start cleaning up  
36 the debris. New blood vessels grow in. Scarring will occur, and  
37 normal healing will occur. If the tissue is not damaged badly,  
38 basically, things are cleaned up and it completely recovers. If it's  
39 damaged to a point where individual cells are destroyed, scarring may  
40 occur. Once you get beyond the point where extensive amounts of  
41 tissue are damaged and there is a point where the tissue is damaged  
42 irreversibly, and that tissue cannot regenerate. We get an idea when  
43 we look at tissue grossly whether it's what we call viable or living.  
44 When that person was alive, that tissue was alive, or if that tissue  
45 had already died while the individual was still alive, but at the

1 cellular level, that tissue was not viable. And he had many of these  
2 areas of the muscle that appeared nonviable. I took samples of  
3 tissue at different levels on his legs and looked at it.  
4 microscopically which did confirm that it was what we call necrotic  
5 or completely dead meaning it had been damaged beyond the point where  
6 that muscle would repair or was capable of repairing. In addition,  
7 when muscle was damaged, the many physiologic sequela, as I said  
8 initially, there are a lot of fluid shifts. Potassium is the main  
9 problem that comes out, and also other chemicals in the muscle tissue  
10 leak out which are very damaging, mioglobin particularly is very  
11 damaging to the kidneys. And fluid also comes in and that could  
12 cause the muscles to swell, and it can go into what we call  
13 compartmental syndrome where the tissues or muscles start swelling.  
14 The actual swelling can then cause further damage if surgery is not  
15 performed to release that tension. So, there are many physiologic  
16 sequela of damage to muscular tissue all depending on the extent of  
17 that injury, and how much it's damaged. PE 5c for ID is a photograph  
18 of Mr. Dilawar's legs taken from the front and slightly to the left.  
19 We see hands of the autopsy assistant holding them. This is Mr.  
20 Dilawar's right leg, his knee. This is the left leg, and an incision  
21 has been made to the back, but the skin has been peeled all the way  
22 around. So, we're seeing the front of the thigh and the side, from  
23 the thigh to the knee down the calf and shin. His groin region would  
24 be about at the top of PE 5c for ID. This picture, as well as the  
25 others fairly and accurately reflects the appearance of his leg when  
26 his skin was peeled back. PE 5c for ID shows the extensive  
27 hemorrhage and damage to the tissue from the knee and below and the  
28 side, and it also shows, when you're talking about the circumference  
29 going all around the leg, the damaged tissue extends all the way  
30 around the top of the thigh and extending to the inner-aspect of the  
31 right thigh. And you can see, again, from the skin surface, there's  
32 blood in the edge of the skin, the subcutaneous tissue, as well as  
33 the muscle. You can see again, this is the dusky, red, damaged  
34 muscle, not the bright pink, normal skeletal muscle. I said that I  
35 also examined the muscle tissue microscopically to confirm that it  
36 was necrotic. In general terms, I would say in looking at the leg,  
37 conservatively, I would estimate that at least a quarter or one-  
38 fourth of the muscle was what we could say was visibly dead or  
39 necrotic. Much more, that tissue may well have been irreversibly  
40 damaged had he survived, but what I could look at microscopically and  
41 clearly say this tissue is dead, I would estimate that at least a  
42 quarter of the tissue was dead. Based on the gross and microscopic  
43 observation, I could determine that the injuries that we see on both  
44 legs going around both legs were all recent or acute injuries. There  
45 is no evidence of any healing. Bruises undergo normal color changes

1 with healing, where they go from red to purple to yellow-brown, none  
2 of that is occurring microscopically. We look at the body's response  
3 to damaged tissues. Like I said, White blood cells come in, and the  
4 tissue basically responds to this damage. He had no evidence of  
5 responding to this injury. So, I would describe this as a recent,  
6 temporally to his death. And when I say recent, I can say it was  
7 definitely within 48 hours, and I would favor 24 hours.

8  
9 The Defense Counsel objected to the question, "Now, doctor,  
10 having examined the injuries in this case, is the blunt force trauma  
11 to Mr. Dilawar's leg consistent with the application of knee strikes  
12 to his thigh," for leading and drawing conclusion and lack of  
13 knowledge. The Military Judge overruled the objection on all points.

14  
15 **Questions by the Trial Counsel, continued:**

16  
17 Having examined the injuries in this case, the blunt force  
18 trauma to Mr. Dilawar's legs is consistent with the application of  
19 knee strikes to his thigh. I have stated that a quarter of the  
20 muscle tissue was necrotic and there was muscle damage, as a  
21 pathologist, we study disease of the human body, all types of disease  
22 processes, but as a forensic pathologist, we specialize in disease  
23 processes related to deaths that are not natural, injury patterns,  
24 alternate cause in manner of death. The difference between blunt  
25 force injuries as opposed to other kinds of injuries, when we look at  
26 injuries, objects that interface with the human body and cause  
27 injury, we divide them into different categories. We characterize  
28 some injuries as sharp force injuries, injuries caused by a sharp  
29 object which would include a stab wound or incised wound such as  
30 cutting of the tissue such as by a knife, piece of metal, piece of  
31 shrapnel that causes a cutting injury. A blunt force injury is an  
32 object that impacts the tissue or the body, but does not penetrate  
33 the tissue. It may cause the splitting of the skin, but it is not  
34 cutting per se, the tissue. It impacts and causes a crushing blow.  
35 Other types of injuries would be ballistic injuries, gunshot wounds,  
36 and that's another whole category. But we use the broad term of  
37 blunt force injuries indicating objects that interface with the body  
38 in a blunt manner. Looking at PE 5a for ID, in my opinion, those  
39 injuries are consistent with blunt force injuries. Before I made the  
40 incisions, nothing had penetrated the skin. There was no stabbing or  
41 cutting. He had no gunshot wounds. So, something impacted the body  
42 without disrupting skin integrity, and that would be a blunt force  
43 injury. I did not observe externally or internally linear or pattern  
44 injuries. As to what I would expect to see if an injury had been  
45 made with a stick either swung or used in a poking manner, when we

1 look at the bruising or injury patterns, certain objects, when they  
2 interface with the body will leave a characteristic pattern or mark.  
3 For example, when a linear object such as a baton or a baseball bat  
4 or stick or tire iron or whatnot strikes the body in a forceful  
5 manner, looking at the skin from the side, it causes a linear divot  
6 basically. It impacts crushing in, and what happens is that  
7 stretching along the sides of where that object hits the body is  
8 actually where you get the bleeding. So, when you get hit with the  
9 baseball bat or baton, you actually get two linear stripes of  
10 bruising. You don't actually get the bruising in the center. It  
11 stretches the skin on the side where objects, such as a rock or a  
12 baseball, you actually get a bulls-eye pattern where it stretches  
13 around the side. And so, linear objects, you get very characteristic  
14 tram or railroad track bruising. Other objects can certainly leave  
15 patterns where you get the bruising in a pattern that indicates the  
16 type of object that causes that such as tire marks, boot marks, tread  
17 patterns. Like I said, linear objects leave a characteristic double  
18 band of bruising. As to what the absence of linear or pattern  
19 injuries in the area of blunt force trauma indicate, Mr. Dilawar's  
20 bruising is what we call confluent and pattern less. It's just  
21 continuous bruising that spans around his legs with no areas that  
22 indicate any specific areas that are darker or lighter that would  
23 indicate the type of object, meaning that it's fairly diffused force  
24 applied or multiple that all blends together. And I do not see in  
25 any area that indicates a linear object or any other object that  
26 would leave a pattern. Assuming, hypothetically, that someone struck  
27 Dilawar 30 times in the legs, approximately 15 on each side, that  
28 would have created an amount of force sufficient to cause the damage  
29 that we see in PE 5a, b, and c, for ID. My opinion is that the  
30 extent of the injury, when I talk about the 25 percent of the tissue  
31 being necrotic, essentially, all of the muscle is damaged from the  
32 knee to the groin, the buttocks, there's very little skeletal muscle  
33 of his thighs that is normal, that is undamaged. It's all damaged,  
34 and the degree of damage, the extent of that damaged muscular tissue,  
35 I believe the majority is irreversible, and I do not believe that the  
36 legs would have been salvageable. I believe the injury to the legs  
37 are so extensive that it would have required amputation.

38  
39 The Defense Counsel objected to the answer of the witness. The  
40 Military Judge overruled the objection.

41  
42 In my medical opinion, I believe the treatment would have  
43 required amputation of the legs to save the individual. Also, when I  
44 talked about the muscle being damaged, compounds in that skeletal  
45 muscle leak out into circulation which is normally in the skeletal

1 muscle and they allow the muscle to contract, and they're not  
2 circulating. That's potassium and myoglobin. That has profound  
3 physiological effects on the body. The myoglobin getting into  
4 circulation is filtered by the kidneys, and causes kidney failure.  
5 Mr. Dilawar had evidence of what's called rabdomiolysis where the  
6 myoglobin is circulating in the body from the damage to the muscle.  
7 And when that is filtered by the kidneys, it causes kidney failure,  
8 and would require, at least initially, dialysis, and would commonly  
9 require kidney transplant. The damage to the leg and muscle tissue,  
10 that muscle tissue is substantially destroyed. His legs were  
11 disabled before he died. The injuries to those legs occurred while  
12 he was alive. If you take a dead body, and someone pounded it, it  
13 would not cause the bleeding into the tissue as his has. That  
14 requires blood pressure to force the blood into the tissue. I had an  
15 occasion to review the autopsy report that Dr. Ingwersen prepared on  
16 the first detainee that died, Habibullah.

17  
18 The Defense Counsel objected to the question, "And did you  
19 observe any photographs of the legs during the review of that  
20 autopsy," for hearsay. After argument from both sides, the Military  
21 Judge overruled the objection.

22  
23 The Civilian Defense Counsel renewed the defense's request for a  
24 Dr. Ingwersen. The Military Judge denied the request for reasons  
25 stated in his prior ruling.

26  
27 **Questions by the Trial Counsel, continued:**

28  
29 PE 6a for ID is a photograph of the back of Habibullah taken  
30 slightly to the right. His head would be to the right side of the  
31 photograph and his feet would be down to the left of the photograph.  
32 His buttocks are covered with a diaper of some sort. This is showing  
33 the back of his legs, the back of both thighs, right and left. This  
34 is the knee on the upper portion of the photograph, the paplatial  
35 region, and then this is showing the top part of his calves. On the  
36 right leg, which is towards the bottom of the photograph, you can see  
37 he's got red and purple areas which is most consistent with bruising  
38 or contusions on the back of this area, and you can see small reddish  
39 bruises that extend up the back and side of the right thigh. The  
40 left leg, on the upper part of the photograph, shows more extensive  
41 dark purple bruising on the back of the upper calf, the back of the  
42 knee and extending out into the lower part of the thigh, on the outer  
43 aspect. There's purple bruising here. The areas further up the  
44 thigh suggest of a red discoloration of bruising as well. The left  
45 leg is higher up on the photograph as is now displayed with the date



1 marker at the top of the photograph, and the hands holding the date  
2 marker. PE 6b for ID is also a photograph that I reviewed when I  
3 reviewed the autopsy report. In this photograph, you can see the  
4 back of the deceased's head, to the right of the photograph, his  
5 buttocks, you can see bruising on the upper-back part of the left  
6 thigh. As you come down to the knee, you can see some sort of  
7 reddish here, and then dark purple on the back of the knee and on to  
8 the thigh. You also can see some of the bruises on the back of the  
9 right thigh. In my medical opinion knee strikes to Mr. Habibullah  
10 thighs could have caused that kind of bruising.

11  
12 The Trial Counsel requested that PE 4, 5a, 5b, and 5c for ID be  
13 admitted into evidence. The Defense Counsel objected as it had in  
14 its previous motions. The Military Judge admitted PE 4, 5a, 5b, and  
15 5c.

#### 16 CROSS-EXAMINATION

#### 17 Questions by the Defense Counsel:

18  
19  
20  
21 I have been promoted since the last time we spoke in January. I  
22 have been promoted since the autopsy report. I spoke at the Article  
23 32 Investigation in March, and I spoke over the telephone. I was not  
24 here in person at the Article 32. This is the first time in court  
25 that I've had an opportunity to review the photos in front of Trial  
26 Counsel or subject to cross-examination. I stated that I did not  
27 conduct the autopsy on PUC 412, Habibullah. I was not even in the  
28 area where that happened. I just reviewed the autopsy report of Dr.  
29 Ingwersen because I arrived in Afghanistan approximately a week after  
30 the first individual's death when I arrived to conduct the autopsy on  
31 the second detainee. Dr. Ingwersen and I discussed the case at that  
32 time. I assisted in the autopsy process after she performed the  
33 autopsy on the first case. I assisted Dr. Ingwersen after the fact.  
34 I took samples back. I did some of the microscopic examination, and  
35 I reviewed the report. My signature, I believe, is on the report as  
36 well. I had never taken the photos of PUC 412. The photos are  
37 labeled as Chad Parcels. I did not see Chad Parcels taking the  
38 photos.

39  
40 The Trial Counsel objected to the Defense Counsel's line of  
41 questions because the photos were not authenticated. The Military  
42 Judge overruled the objection.

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Questions by the Defense Counsel:

For PUC 421, that's Dilawar, and he was the one with the skin folded back on the legs. I recall I had to go from the United States to Afghanistan to conduct the autopsy. The actual journey took me from 24 to 36 hours. I was in country for 16 to 18 hours before I got to examine the body. I would have to go back to my itinerary. We arrived at night, and we did it the following afternoon. I would have to review the records to tell you how long it was after Dilawar's death until I started the autopsy. It would be greater than 24 hours since Dilawar's death before I performed the autopsy. I would have to look at the time of death to the time we started the autopsy. I did review the autopsy report before I came here. The time of death was 10 December 2002, and I conducted the autopsy on 13 December 2002. It was about three days or 72 hours, give or take. In between the time that Dilawar died to the time the autopsy was started, he was at the mortuary facility when we arrived. As to if I don't know if anything happened between the time Dilawar died and the time the autopsy occurred that could have caused those injuries, as I was saying, bruising occurs during life. You can beat a dead body and you won't create bruising or hemorrhage within the tissue. You could not get that degree of hemorrhaging at the instance of death. Bruising requires blood pressure. Once his blood pressure is dropping or stops, there is no force to push that blood into the tissue. I would have to look at the records to give an exact account as to how many people were present. We had mortuary assistance, myself, Dr. Ingwersen. There were some other medical personnel, a dentist. The autopsy was conducted in adequate settings. The lab was better than some facilities I've performed in the states. The most problematic part of this autopsy, but we used buckets of water to get around that. I have certainly done autopsies in other places in the states where there is not access to running water, and we'd have to use buckets of water. They stored the body in refrigerator units. I have no indication to the contrary that the refrigeration units were not up and running. The body was cold when I arrived. I don't specifically know if I coordinated with JAG, but we did brief the commander after the autopsy, because I was told initially that they were aware that we were there and performing the autopsy. I had reviewed Dilawar's records, but they were minimal records. I believe the records were just his initial examination, and his actual resuscitation notes. For the entry examination, it was the examination that occurred when he got to the Bagram facility. I don't know the name of the doctor that performed that examination, because I'd have to look at those records. I don't know what was performed at that examination. Again, I would have to refer to the

1 records to exactly see what was examined. I reviewed the records  
2 that were available, but I'd have to refer to them to describe what  
3 was performed. I do not believe that I stated that an underlying  
4 coronary artery disease was noted in Dilawar's records, but some  
5 coronary artery disease was discovered at autopsy.

6  
7 The Trial Counsel objected to the questions of coronary artery  
8 disease was irrelevant. After argument by both sides,  
9 the Military Judge overruled the objection.

10  
11 **Questions by the Defense Counsel, continued:**

12  
13 Arteries to the leg were affected. As to if he had coronary  
14 artery disease that would have affected the injuries, in the process  
15 that occurs in the coronary arteries is atherosclerosis where there's  
16 plaque formation or "hardening of the arteries". You know, with  
17 cholesterol, plaque forms on the inside of the arteries. The  
18 coronary arteries are what supply the heart with blood, and when  
19 little blockages occur in the coronary arteries, that's called a  
20 coronary artery disease. If a complete obstruction occurs, that's  
21 what causes a heart attack. When that process occurs in other  
22 arteries, we call that arteriosclerotic or vascular disease or  
23 peripheral vascular disease. I saw no evidence of any vascular  
24 disease in any of Mr. Dilawar's extremities or in any other blood  
25 vessels. I didn't see any evidence of vascular disease in his legs.  
26 I did not speak with any medics at the Bagram site, and I don't  
27 recall speaking with any other physicians of the facility. I did  
28 speak to Dr. Ingwersen. Dr. Ingwersen was my co-worker. We were  
29 both medical examiners. She signed the medical report as the  
30 Regional Medical Examiner, and I was the assistant medical examiner  
31 because I'm at the main office. The way the medical examiner system  
32 works, there's the chief medical examiner, and then I was the second  
33 in command which is the assistant. That later was changed to call  
34 first chief deputy. And then the regionals are under that. So,  
35 actually, as far as in the medical examiner's position, I was in a  
36 higher position. The regional medical examiners are individuals that  
37 are qualified forensic pathologists that we have out in different  
38 bases to respond to aircraft mishaps and other death investigations  
39 throughout the world. We are the only federal medical examiners  
40 office. So, we cover all cases of U.S. federal interests. So, we  
41 have Dr. Ingwersen in Germany, and we have regional people throughout  
42 the United States. Our central office in Rockville, Maryland are  
43 approximately three to ten or twelve forensic pathologists at any one  
44 time, the chief medical examiner oversees the entire medical  
45 examiners system. I was his assistant or first chief deputy. COL

1 Ingwersen did outrank me in military rank. Two people signed the  
2 autopsy report because, in this case, she had performed the previous  
3 autopsy, attempted to come back because of delays in Turkey. I  
4 actually arrived in Afghanistan sooner than COL Ingwersen, and it's  
5 not uncommon to have more than one medical examiner involved in the  
6 case. So, since this was the second death, we felt it would be  
7 better to have two pathologists see the autopsy. COL Ingwersen was  
8 present for the autopsy. COL Ingwersen didn't come in late from  
9 Turkey. We didn't start the autopsy until they arrived.

10  
11 The Trial Counsel objected to the question, "Now, you can't be  
12 certain what caused Dilawar's death," for relevance. The Military  
13 Judge sustained the objection.

14  
15 **Questions by the Defense Counsel, continued:**

16  
17 The autopsy occurred three days after the death. I can't be  
18 certain what caused the bruising. I can describe the injuries. I  
19 was not present for any Habibullah or Dilawar's life. I was not  
20 present, but I believe the efforts to resuscitate them are delineated  
21 into some of the records. As to what impact the freezing and the  
22 thawing of the body has on the autopsy, if the body is actually  
23 frozen, there can be leakage of fluids. We occasionally do autopsies  
24 on bodies that have been frozen. Obviously, the body has to be  
25 thawed prior to conducting the autopsy. When it's frozen, we can do  
26 the external examination, but it's difficult to remove the organs.  
27 Microscopically, it's more challenging particularly in the brain as  
28 the organ that's most affected by the freezing. Skeletal muscle is  
29 minimally affected by freezing. Other organs would be minimally  
30 affected by freezing and thawing. As to if it would surprise me if  
31 COL Ingwersen told CID that Dilawar's body was frozen solid and that  
32 it took three days to thaw him for the autopsy, I cannot speak to  
33 what she said. I don't believe it would have taken three days to  
34 thaw if only three days transpired. The thawing of the body  
35 certainly could change the coloration of the skin's surface which is  
36 why I said many things can cause reddening of the skin, and that's  
37 why I make the incisions. Freezing and thawing would not alter the  
38 deep hemorrhage and bruising of that tissue, nor would it alter the  
39 necrotic appearance of the tissue. I did not stage a reenactment  
40 with COL Ingwersen.

41  
42 The Trial Counsel objected to the question, "Do you know  
43 anything about the chaining or anything about how Dilawar was kept  
44 prior to ----" for irrelevance. The Military Judge overruled the  
45 objection.

1           **Questions by the Defense Counsel, continued:**

2  
3           I have read some of the CID reports on how Dilawar was kept. I  
4 did not see any of it firsthand. As to what impact standing would  
5 have on leg injuries, standing alone would not cause bruising or  
6 injury to the muscle. Standing would not cause hemorrhaging or  
7 damage it. Standing would not impact the damage to the tissue at  
8 all. It would affect his blood pressure if he's standing versus  
9 sitting down or lying down. As he goes into shock, that's going to  
10 be aggravated by standing. That's really the main physiologic affect  
11 I could think of standing versus him being in another position.  
12 Standing requires a higher blood pressure to maintain standing than  
13 an individual sitting or lying down.

14  
15           The Trial Counsel objected to the question, "And if you were  
16 standing, you would have a higher blood pressure, correct," for  
17 relevance. The Military Judge overruled the objection.

18  
19           **Questions by the Defense Counsel, continued:**

20  
21           If he were standing, his blood pressure would be higher to  
22 maintain consciousness. The degree of blood pressure difference that  
23 I'm talking is not such that again that physiologic difference  
24 between a resting blood pressure standing versus sitting or lying  
25 down would not, I believe, dramatically affect the injury to the  
26 legs. It would not cause the hemorrhage or the bruising. I have  
27 heard the common peroneal strike described. The first time I heard  
28 peroneal strikes described was in reference to this case. Peroneal  
29 strike is not a medical term. I am familiar with the peroneal nerve.  
30 The peroneal nerve is referred to as a sciatic nerve. It's actually  
31 multiple lumbar nerves that come from the spine that merge to form  
32 one large nerve that exits out of the pelvis to the hip, and straight  
33 down the center of the back of the leg, just behind the femur. It  
34 runs down the center of the back of the leg, and then it actually  
35 divides down just above the knee into the tibial nerve and what I  
36 learned as the fibular nerve, but it's also referred to the peroneal  
37 nerve which comes on the side of the knee. The sciatic nerve comes  
38 down the center of the back of the leg, deep to the muscle. It's  
39 right in front of the bone, beneath the muscles. And then, at the  
40 lower thigh, above the knee, it splits, and you have the tibial nerve  
41 going straight down. The peroneal or fibular nerve comes laterally  
42 and comes on the side of the knee. Again, the sciatic nerve is very  
43 deep. The peroneal nerve, as you feel the side of your knee, there's  
44 not a lot of tissue, but it's a deeper structure. The peroneal nerve  
45 is closer to the skin where it courses on the side of your knee.

1 Other than that, it's sort of deep in the leg. I only know about the  
2 number of blows that Dilawar was alleged to have suffered by  
3 the reports. I wasn't there, and I didn't see anyone strike  
4 Dilawar. I would anticipate if someone was struck in the peroneal  
5 nerve. I have not been struck in the peroneal region. I don't  
6 think that tissue was crumbling in the leg. As to if Dilawar would  
7 have been able to walk if tissue was crumbling in this leg from these  
8 injuries, it is a cumulative injury. Certainly, he could walk with  
9 some degree of injury to his leg. (At the time of his death, that  
10 degree of injury, I believe walking would have been exceedingly  
11 difficult if not impossible. As to if I would be surprised if he did  
12 walk immediately prior to his death, I would not believe he would be  
13 capable of a normal gait. Certainly, it's less effort to keep your  
14 legs locked, and shuffling requires less effort than a normal stride  
15 and bending of legs. The legs would not have been capable of normal  
16 function. I stated at the Article 32 investigation, there was no  
17 evidence of compartmental syndrome. Compartmental syndrome is if an  
18 individual survives an injury, the muscle tissue is damaged from any  
19 number of causes, fluids start pouring into that muscle. As we saw  
20 in the calf, the muscles are actually contained within bundles.  
21 There are bundles of muscles, and you saw how that tendon encases it.  
22 As the muscle ends, the tendon goes on. And that's how muscles move  
23 limbs. For example, your biceps muscle is encased in a fascia, and  
24 fluids start pouring in from the blood supply to that area, and that  
25 causes swelling of that muscle. However, the muscle is encased in  
26 that tight fascia. That swelling occurs and, without surgical  
27 intervention, there's no place for that to expand, and that swelling  
28 actually cuts off the blood supply coming into the muscle. So, more  
29 damage is caused by the swelling that continues on, and that's what's  
30 called compartmental syndrome. Dilawar did not have evidence, he had  
31 not survived long enough to develop compartmental syndrome that I  
32 could visually see. That happens to somebody who lives longer after  
33 the injuries, and then that's treated with what we call fasciotomies  
34 or incisions made to relieve that pressure. I said approximately a  
35 quarter of the muscles were dead in both legs. There are multiple  
36 muscles in the thigh. It was nearly circumferential. Like I said,  
37 there was some relative sparing on the inner-aspect of both thighs.  
38 Essentially, the muscles all around the circumference of the leg were  
39 all damaged in some way. There was some relative sparing of the  
40 inner-thigh. There appeared to be hemorrhage in all areas of both  
41 legs. So, we're talking about a ring damage around both legs with  
42 relative sparing on the inner-aspects. It wasn't difficult to  
43 conduct the autopsy with this crumbling tissue. It was a matter that  
44 the skin was reflected, and incisions made, and the tissue, just as  
45 in other organs, all organs are examined for how they look and the

1 consistency, and this muscle had areas where it was falling apart.  
2 There are certainly natural reasons to have necrotic tissue. Some of  
3 the natural reasons to have necrotic tissue are if someone had a  
4 heart attack, blood supply is cut off to part of the heart, and that  
5 tissue dies, and becomes ischemic disease and loses its blood supply,  
6 and it can die and become a focal of necrotic myocardial tissue. The  
7 necrotic tissue doesn't just sit in the body, the whole healing  
8 process begins if the individual survives. If they survive a heart  
9 attack, the white blood cells come in, the body's defense systems are  
10 cleaning up injured and dead tissue. Macrophisers are cells that,  
11 you know, basically ingest that material, blood vessels grow in, and  
12 there's a whole stage of healing. Blood vessels go in, and if the  
13 tissue is not irreversibly damaged, sometimes it can actually  
14 regenerate more muscle tissue. If it's irreversibly damaged, it may  
15 scar. You know, there are people that survive different ages of  
16 heart attacks, and sometimes it's just pure fibrous scar tissue, and  
17 other times that can actually rupture because it's weak, there's no  
18 integrity there. Necrotic just means that tissue is dead. You could  
19 have necrotic skin cells, necrotic ulcer, the sore in the center may  
20 be necrotic. So, necrotic is not just related to the heart or  
21 circulatory system at all, that was just an example. I respect COL  
22 Ingwersen's medical opinion. I respect her as a professional.  
23 Dilawar's body was not brought to the United States because at that  
24 time that decision was not made by myself, and the various chains had  
25 decided early in the OEF, OIF conflict that we were not sure that we  
26 could move the body to the United States being that he was not a U.S.  
27 citizen. So, there were concerns about that, and so it was  
28 determined that it would be more advantageous for us to go there to  
29 attend the autopsy.

30  
31 The Trial Counsel objected to the question, "Do you know what  
32 happened to either of the bodies after you performed the autopsy,"  
33 for relevance. The Military Judge sustained the objection.  
34

35 **Questions by the Defense Counsel, continued:**  
36

37 There are still samples that we can take from these bodies. I  
38 save the samples from the body. The samples would be at the Armed  
39 Forces Medical Examiner's Office, in Rockville, Maryland. I have not  
40 recently reviewed those samples. I have read the reports and  
41 reviewed the injuries, and I can say what is consistent or  
42 inconsistent with the injuries, but I have no firsthand knowledge of  
43 what caused the injuries.  
44

1 The Trial Counsel objected to the question, "Did you ever brief  
2 CPT Woods or CPT Beiring at all on this, the MI and the MP  
3 commanders," for relevance. After argument by both counsel, the  
4 Military Judge overruled the objection.

5  
6 **Questions by the Defense Counsel:**

7  
8 I would have to be familiarized with the MI or the MP commanders  
9 because I'm not sure which of them were commanders. We did provide  
10 several briefings, but I believe they were to the base commander. I  
11 would have to go back to my notes because I do not know all of the  
12 individuals that were present at the different briefings that we  
13 provided. There were a number of people in the room, and there were  
14 a number of briefings, and it was a number of years, so I could not  
15 tell you exactly who was present at what briefings.

16  
17 The Trial Counsel objected to the questions, "Was the underlying  
18 coronary artery problem known to anyone before the autopsy," for  
19 relevance. The Military Judge sustained the objection.

20  
21 **Questions by the Defense Counsel, continued:**

22  
23 We did prepare death certificates for the individuals, but I'm  
24 not aware or familiar with any logbook. I did not make any personal  
25 entries into logbooks, but I did not actually look at any original  
26 books provided by the facility. As to if legitimate force could have  
27 resulted in these injuries, I wouldn't think that.

28  
29 The Trial Counsel objected to the question, "You don't know what  
30 legitimate use of force is," for relevance. The Military Judge  
31 allowed the defense to rephrase the question.

32  
33 **Questions by the Defense Counsel, continued:**

34  
35 On a scale of one to ten, if somebody used a force of three with  
36 ten being the strongest, a force of three depends on the individual  
37 if he could have caused that type of injury. It depends on the  
38 surface area that the force was applied to per pounds per square  
39 inch.

40  
41 The Trial Counsel objected to the defense's line of questioning.  
42 The Military Judge sustained the objection.



1           **Questions by the Defense Counsel, continued:**

2           As to if I am qualified to state whether this force was  
3 excessive or not, I can describe the injuries to the bodies, and  
4 that's my area of expertise.  
5

6           The Trial Counsel objected to the question, "Okay. But you  
7 wouldn't be able to say whether or not excessive force was used," as  
8 asked and answered. The Military Judge sustained the objection.  
9

10           **Questions by the Defense Counsel, continued:**

11           There is extensive injuries to the legs, and compared to other  
12 injuries I've seen, it's not from a simple fall. I did not see how  
13 those injuries occurred. I have reviewed reports.  
14  
15

16                           **REDIRECT EXAMINATION**

17           **Questions by the Trial Counsel:**

18           Returning to PE 5a, it's not possible that those injuries were  
19 inflicted after Mr. Dilawar was dead. I can say that these injuries  
20 were not caused after death to a medical certainty. I can say that  
21 because of the location of the blood and the type of damage to the  
22 muscle. Like I said, that type of bruising and that extensive  
23 hemorrhage would not occur if a dead body were run over or pounded.  
24 Those injuries do not occur after death. That's how we can delineate  
25 ante-mortem, or injuries that occur during life, versus post-mortem  
26 artifacts, or things that happen to the body after death. The  
27 facility that we conducted the autopsy was adequate. I don't feel  
28 there were any scientific areas that would call into question the  
29 conclusions that I made in conducting the autopsy. I was able to use  
30 scientific equipment to use microscopic as well as gross observation  
31 of the tissue. Regarding the injuries to the thigh, there is no  
32 relevance to the fact that he may or may not have had coronary artery  
33 disease. As I said, the underlying coronary artery disease is what  
34 we call an incident, separate findings. He did not have vascular  
35 disease of his legs that I could see looking at his vessels, looking  
36 at his aorta. Outside of his heart, he did not have vascular  
37 disease. That did not contribute in any way to the injuries.  
38 Regarding attempts to resuscitate a person, there is no resuscitation  
39 procedure that I'm aware of that would cause massive tissue damage to  
40 the thighs. Normal resuscitative efforts require securing an airway,  
41 possibly putting in a tracheotomy tube, ventilating the individual or  
42 chest compressions which would be right over the sternum. Regarding  
43  
44  
45

1 the refrigeration of the body, PE 4 has discoloration, and that's why  
2 I peeled the skin back. There is nothing in PE 5a, 5b, or 5c where I  
3 did the interior examination, there was nothing in there that would  
4 be affected by refrigeration or freezing that would cause my results  
5 to be skewed. Heightened blood pressure would not be a reason to  
6 aggravate this degree of muscle damage. Regarding the injuries, most  
7 of the damage was done to the thigh and the outside of the thigh.  
8 Regarding the timing of the injuries, I'm able to determine that the  
9 injuries occurred within 48 to 72 hours. It was a conservative  
10 estimate to the injuries. They are recent injuries, and there's no  
11 body response to those injuries. So, they are acute or recent.  
12 There are things that I would have looked for or seen if the injuries  
13 had been older than 48 hours. It is not possible that a person was  
14 walking around with this damage and that it was an older injury.  
15 Regarding natural cause, there is no way a heart attack would have  
16 this degree of bruises on the leg muscles. This degree of injury can  
17 only be explained by a traumatic injury. People on blood thinners or  
18 ~~certain medicine~~ <sup>Coumadin</sup> may bleed more, but nothing that would cause that degree  
19 of injury down that deep. Like I said, elderly people, where their  
20 vessels are fragile, and they bleed easier just from normal things,  
21 but that skin level would not cause this type of deep hemorrhage in  
22 an individual of this age. Regarding medical cause, I'm determining  
23 the cause of death to be blunt force of death to the lower  
24 extremities.

25  
26 The Defense Counsel objected to the answer of the witness for  
27 uncharged misconduct. The Military Judge directed the Trial Counsel  
28 to rephrase his questions.

29  
30 Questions by the Trial Counsel, continued:

31  
32 These injuries were what I would characterize as blunt force  
33 trauma. I can say to a medical certainty that the cause of these  
34 injuries was some kind of blunt force.

35  
36 RECROSS-EXAMINATION

37  
38 Questions by the Defense Counsel, continued:

39  
40 I don't know anything about Dilawar's legs prior to him coming  
41 into the Bagram control point, except the references to his  
42 occupation, and what's in his record. I don't know whether Dilawar  
43 had a hard life, an easy life, whether he was standing all day or  
44 sitting all day, or if he had other prior injuries, but he has no  
45 evidence of prior medical injury. I see no evidence of any older

injuries anywhere on Dilawar's body. There were a few scrapes or scratches that appeared slightly older, but no healing fractures, no scars, no other injuries. This degree of hemorrhage is all recent. All of the injury I see, older necrotic tissue would have had healing processes going on if it had been more than a day or two prior to his death, there would be a body's response to that, and he had no evidence of any healing or response to any of the injuries in his legs. I took microscopic samples throughout the leg. As to if I examined the muscle in total, I didn't because that would have required taking his whole body back to the United States, and that didn't happen. It is impossible to examine the entire body microscopically. If I were to microscopically examine the entire muscle, it would have meant getting thousands and thousands and thousands of samples, and I'm not aware of that ever happening except to illustrate <sup>an</sup> anatomy text. We take representative samples any time we deal with a gross specimen, we take representative samples in areas that appear normal, abnormal, and the variations between those two, and then we take those samples and look at them microscopically. A microscopic slide is a microns thick sample. It's impossible to examine a whole muscle microscopically.

The Trial Counsel objected to the questions, Now, doctor, when-- somebody with coronary artery disease, should they be standing for prolonged periods of time," for relevance. The Military Judge overruled the objection.

**Questions by the Defense Counsel, continued:**

There is no reason to preclude standing with Dilawar's coronary artery disease. Typically, with heart disease, you would get exhaustion, anginal exhaustion, patients would describe a pain or chest pain if they have a blockage.

The Trial Counsel objected to the defense questioning as asked and answered. The Military Judge sustained the objection for relevance.

**Questions by the Defense Counsel, continued:**

I have reviewed some reports that we had received. I do not know how many people delivered blows to the legs.

The Trial Counsel objected to the defense as asked and answered. The Military Judge overruled the objection.

1           **Questions by the Defense Counsel, continued:**

2  
3           I don't have any personal knowledge who delivered blows to the  
4 legs.

5  
6           The following questions were marked as: AE XCVIII, question by  
7 SGM Escamilla; XCIX, question by LTC Simonelli; and C, question by  
8 1SG Sims.

9  
10                   **EXAMINATION BY THE COURT-MARTIAL**

11  
12           **Questions by the Military Judge:**

13  
14           The time span in which the injuries were applied, I cannot,  
15 within medical certainty delineate. Like I said, they were all very  
16 recent, and I would say within 48 hours. Usually, you get some  
17 tissue response within 24 hours. So, my opinion is that they are  
18 within 24 hours, but whether the injuries occurred all at one instant  
19 or over several hours, I cannot delineate that because the response  
20 is not that precise where I can say, "This area was injured two hours  
21 prior," because we cannot medically go to that level of certainty. I  
22 can't quantify as in pounds per square inch as to how much force was  
23 necessary to cause the damage that I observed. I can describe it in  
24 terms of other injuries that I've seen, the depth of injury is  
25 important, because if you just get hit, you know, running on a corner  
26 and bang your knee to a chair or something, you'll get a superficial  
27 bruise on your leg. You won't get hemorrhage all the way deep to the  
28 bone. It's considerable force to cause that damage.

29  
30           The Defense Counsel objected to the witness's response because  
31 she was going to speak about specific instances. The Military Judge  
32 overruled the objection.

33  
34           **Questions by the Military Judge, continued:**

35  
36           'It's extensive force to cause this degree of injury. Like I  
37 said, just a fall, a bump, tripping downstairs, for example would not  
38 cause this amount of injury, this deep into the legs. It's a major  
39 part of the muscle mass of your body in your legs, and that's a major  
40 part of the body weight, that muscle area. And it's damaged, like I  
41 said, from the skin all the way to the bone. There is actually  
42 injury in the knee joint itself, hemorrhage in the joint. The bone  
43 was not fractured, but all of the soft tissue from the bone out was  
44 damaged. So, that's extensive. I can't give you, like I said, a  
45 pounds per square inch, how much was applied, but it's beyond normal

1 bumps in the playground and things like that. It's extensive force.  
2 Other actions such as punching with a fist, kicking with a foot or  
3 striking with an elbow could have caused the same type of bruising  
4 and damage besides the knee which is the hypothetical put to me. The  
5 knee does not leave it as a pattern. I can describe it as a  
6 patternless injury meaning I don't see evidence such as a rod or  
7 baton, many other blunt objects or things impacting the body could  
8 cause that. I don't have any means to determine if the muscle damage  
9 occurred during one incident or as a result of several incidents.

10  
11 There being no questions by either party, the witness was warned  
12 and withdrew.

13  
14 The court-martial recessed at 1005, 16 August 2005.

15  
16 The court-martial was called to order at 1018, 16 August 2005.

17  
18 All parties present prior to the recess were again present. The  
19 members were present.

20  
21 Mr. George Chigi III, civilian, was called as a witness for the  
22 prosecution, was sworn, and testified in substance as follows:

23  
24 **DIRECT EXAMINATION**

25  
26 **Questions by the Trial Counsel:**

27  
28 My name is George Chigi III. I'm a Special Agent criminal  
29 investigator with the U.S. Army CID at Fort Hood, Texas. I was  
30 formally with the Army for 30 years. I was assigned to CID at that  
31 time. I was assigned to CID for 16 or 17 years. Before I went to  
32 CID, I was in the special forces. I have conducted a couple to  
33 several thousand interviews in CID. I am trained to take interviews.  
34 In service schools, the U.S. Army CID school and the REID course,  
35 I've taken both of those and some other courses along the way in  
36 service training at Fort McClellan and Fort Jackson, South Carolina.  
37 I have some civilian law enforcement training. After graduating with  
38 a bachelor's degree in criminal justice, I went to work for the New  
39 York Special State Prosecutor's Office in the city of New York. I've  
40 had the opportunity to conduct interviews during that period of time.  
41 I had an occasion to meet with PFC Brand then SPC Brand on the 3<sup>rd</sup> of  
42 February 2004. I see PFC Brand in the room today. PFC Brand is  
43 sitting in front of me wearing the Class A uniform, dress greens with  
44 the PFC rank on it. When I questioned him on the 3<sup>rd</sup> of February  
45 2004, I was at the Embassy Suites hotel in Cincinnati, Ohio. I was

1 requested to be at that location to interview PFC Brand in reference  
2 to the death of Mr. Dilawar in Afghanistan in December 2002. PFC  
3 Brand was informed of his Constitutional rights. I informed PFC  
4 Brand of all of his rights before making the statement. PFC Brand's  
5 rights were given to him at the beginning of the interview. It had  
6 started at about 0800 hours that morning. I read PFC Brand's right  
7 directly to him from the DA 3881, the rights advisement form. PE 3  
8 is the DA 3881 that I'm talking about. The signatures of Angela  
9 Birt, Willie Brand, and myself are on the DA 3881. That day I read  
10 his rights, I read the form to him from the top of the form right  
11 through the bottom of it, and I had him read the last two lines to me  
12 out loud, and I asked him if understood it. When he said he  
13 understood, I had him initial in several places on the form, and I  
14 asked him to sign the form after he said he understood the form. He  
15 read, "I understand my rights as stated above. I am now willing to  
16 discuss the offenses under investigation and make a statement without  
17 talking to a lawyer first, and without having a lawyer present with  
18 me." I believe, at that time, PFC Brand understood what he was about  
19 to get into. PFC Brand waived his rights. After PFC Brand made a  
20 statement to me, someone wrote it down. The next few pages of PE 3  
21 are the statement PFC Brand made, read, initialed, and signed. This  
22 was also signed by Angela Birt and myself. I signed it as a witness,  
23 and I was in the room. When PFC Brand came into the room, we were in  
24 a hotel room at the Embassy Suites in Cincinnati, Ohio. The Embassy  
25 Suites rooms are divided in two, there is a bedroom, and then there's  
26 a door dividing the bedroom from the living room portion. We were in  
27 the living room portion. There was a small couch, and overstuffed  
28 chair, a small table, a television, a couple of large windows that  
29 had curtains in front of them. There were carpets on the floor, and  
30 I believe there might have been some photographs on the wall, but I  
31 had taken those down as best I recall. I am five foot-eight, five  
32 foot-nine. I suppose PFC Brand is around six-one or six-two, I'm not  
33 sure. I didn't do anything to intimidate him to make a statement. I  
34 did not promise him anything to make a statement. There was nothing  
35 unusual about his age, intelligence, or education that made me  
36 believe he might not have understood what he was about to talk about.  
37 I explained what to him what I was going to ask him about. I told  
38 PFC Brand that we were investigating the death of Mr. Dilawar, and  
39 that we had information to believe that his death was caused by blows  
40 that he had received during the time that he was incarcerated, and  
41 that we had reason to believe that PFC Brand might have delivered  
42 some of the blows to Mr. Dilawar. It's my practice to tell the  
43 person I'm interviewing the crimes I suspect him of. I did tell PFC  
44 Brand what crimes I suspected PFC Brand of. I told PFC Brand that he  
45 was suspected of negligent homicide, assault, and a false statement.

1 I explained to him that the negligent homicide was as a result of the  
2 blows. The false statement was about when someone makes a statement  
3 that they know to be a lie when they make it. The assault would be  
4 striking someone. When I actually sat down and took the statement  
5 from PFC Brand, no one was in the room with me except for PFC Brand  
6 and myself. At some point, SA Birt came into the room afterwards.  
7 SA Birt came into the room to take a typed statement from PFC Brand.  
8 Even though she had not been in the room when I initially spoke with  
9 PFC Brand, SA Birt was aware of what was going on in the room. We  
10 had an intercom system, a baby monitor, set up in the room so that  
11 she could hear the conversation going on during the course of the  
12 interview, and PFC Brand was told that the room was monitored and  
13 that she was listening to the interview. I wasn't there on that date  
14 to tell PFC Brand about all of the strikes delivered to all of the  
15 detainees, I was there for one particular detainee, Mr. Dilawar, PUC  
16 421. I had spoken to other 377<sup>th</sup> MP soldiers prior to speaking with  
17 PFC Brand on this occasion. I interviewed a number of them.  
18 The Civilian Defense Counsel objected to the witness's answers  
19 for being hearsay. After argument from both sides, the Military  
20 Judge overruled the objection.

21  
22 **Questions by the Trial Counsel, continued:**

23  
24 As to what I learned that led me to bring PFC Brand back for this  
25 interview, one of the individuals, SPC Cammack, had stated that he  
26 had been asked to come into an isolation room that Mr. Dilawar was in  
27 to help PFC Brand control Dilawar, and that while he was in the room  
28 that he delivered some blows to one of the legs of Mr. Dilawar, and  
29 PFC Brand delivered some blows to the other leg or the thigh of Mr.  
30 Dilawar. Looking at PE 3, the first question is, "How many times at  
31 the most did you strike Dilawar, PUC 421, and under what  
32 circumstances?" Answer, "Somewhere in the area of 37 times, less  
33 than 40 for sure. There was one time, which I do not remember  
34 before, where I told Dilawar that, 'That's it,' implying that I was  
35 fed up with him, and I said that I was going to give him 15 common  
36 peroneal strikes in each leg, and then I delivered the blows. When I  
37 recounted the story later, that is the way I told it. I told people  
38 that I had to switch knees because my leg got tired. I'm not  
39 absolutely certain I delivered 30 strikes at that time. That was the  
40 number I said, but it may have been a few more or less than that.  
41 There were also another five to seven times I struck him with knee  
42 strikes during times when he was being noncompliant." Question,  
43 "Where did the 30 knee strikes occur?" Answer, "Dilawar was  
44 restrained in the isolation cell area on the top floor in the first  
45 cell on the left. I can't recall the number of the cell."

1 The Civilian Defense Counsel objected to the witness reading PE  
2 3. The Military Judge overruled the objection.  
3

4 Questions by the Trial Counsel, continued:

5  
6 Question, "How was Dilawar restrained at the time you delivered  
7 the 30 blows?" Answer, "He was chained to the ceiling. His hands  
8 were either together over his head or out to his side. He was  
9 wearing a set of handcuffs (handcuffs), and it was a long (leg iron)  
10 connecting him to the Hesco <sup>WW</sup> wire ceiling. I can't recall the  
11 configuration of his restraints, only that he was restrained in one  
12 of two ways I described. His legs would have been shackled together  
13 with a set of leg irons at the ankles. His feet would have been  
14 touching the floor." PFC Brand did not recall what Dilawar had done  
15 to make him strike him those 30 times. Turning to page three of PE  
16 3, counting down to the seventh question and answer, it says, "Where  
17 did you learn to give common peroneal knee strikes?" Answer, "During  
18 my right-seat ride OJT in the BCP, I was taught by other 377<sup>th</sup> MPs.  
19 We were told that it hurt like a bitch, and I learned this when  
20 Morden came up beside me and gave me one as a joke, and it hurt like  
21 hell."  
22

23 CROSS-EXAMINATION  
24

25 Questions by the Civilian Defense Counsel:  
26

27 I have been a CID agent for 16 or 17 years when I was on active  
28 duty. I was not the lead agent in the investigation of the injuries  
29 sustained by suspected terrorists, PUCs 412 or 421. I did not get  
30 involved in this case back when both individuals were found at the  
31 Bagram facility in December. I have gone to Bagram three or four  
32 prior to this incident. I don't recall who the commander was at the  
33 time. I went into the isolation cells.  
34

35 The Trial Counsel objected to the question, "Did you see any  
36 individuals being hooded or chained," for relevance. The Military  
37 Judge sustained the objection.  
38

39 Questions by the Civilian Defense Counsel, continued:  
40

41 I was not an agent assigned to this case back when I was in  
42 Afghanistan. The first time my services were called upon were  
43 approximately a month before I interviewed PFC Brand. I interviewed  
44 other individuals suspected of inflicting injuries. I interviewed  
45 SPC Cammack, and I can't remember whom else I interviewed. I



1 interviewed SPC Cammack twice. SPC Cammack had made other  
2 statements. I don't recall how many statements SPC Cammack made.  
3 SPC Cammack had admitted to lying to me in those statements, and the  
4 statements had been made under oath. I was called because of my  
5 unique qualifications as a polygrapher. I was called because CID  
6 wanted to make a determination as to how many blows might have been  
7 administered. There was some conflict between the various people who  
8 had been interviewed. It was clear to me as an investigator that  
9 numerous MPs had administered blows. There was doubt as to when they  
10 were administered, or the force or severity with which they were  
11 administered. Consistently, all indicated that they were being done  
12 as compliance blows. I don't know if PFC Brand had made numerous  
13 statements to CID off hand. I understand that PFC Brand was  
14 interviewed shortly after the incidents came to light while he was  
15 still in Bagram. I believe SA Flores conducted the interview with  
16 PFC Brand. I do not know what PFC Brand was advised of by way of  
17 rights at that time. I do not know when PFC Brand was next  
18 interviewed. I don't know if PFC Brand had conducted another  
19 interview. I told PFC Brand that I had information that he stated  
20 that he had struck Dilawar once or twice I believe, and we had  
21 information to believe that he had struck Dilawar more times than  
22 that. I did not show him copies of his original statement that PFC  
23 Brand provided to SA Birt in January 2004. I knew that PFC Brand had  
24 been interviewed, but I did not show him a copy of the statement. If  
25 there were a statement that PFC Brand made, I would have reviewed his  
26 statement. I don't remember that today. I did prepare for the  
27 testimony today. I was called in as a polygrapher on the 3<sup>rd</sup> of  
28 February. I not only read the defendant rights, I read him two sets  
29 of rights. One of the rights was the rights that I've mentioned to  
30 the Trial Counsel that he was suspected of committing offenses of  
31 negligent homicide which he's not being charged with today, and  
32 rights as a suspect for false statement. I did not read PFC Brand  
33 his rights as being a suspect for maiming nor maltreatment. The  
34 interview was in the Embassy Suites. I was not in uniform. I did  
35 identify myself as a CID agent. I even identified myself as a  
36 polygrapher. I showed up with a polygraph instrument. I sat down  
37 and explained what that process would be to the defendant. I had to  
38 secure a separate rights advisement and approval before I could  
39 conduct the polygraph. I never did conduct the polygraph. I was not  
40 alone in that room as a CID agent. SA Birt was in the next room  
41 listening in on a baby monitor. We were not recording. None of this  
42 was being recorded nor videotaped. All we have is my memory and the  
43 written statement that was taken from SA Birt. Before Agent Birt  
44 came into the room, 30 or 45 minutes was spent by me alone with the  
45 defendant. As to how long I was in that room talking to the

1 defendant on 3 February before I allowed him to leave, he came in at  
2 0800, and I believe he left around 10:30. Half of that time he was  
3 there, I spent with him. I probably would have told him that there  
4 was no need to do a polygraph examination after he told me what he  
5 had done, and that we would take a statement based upon what he told  
6 me. I testified at an Article 32. In fact, at the Article 32  
7 testimony, I said, "Once he said, 'I made 30 strikes more or less,'  
8 as far as I was concerned, that was it because that's what I was  
9 there to give him an examination for. At that point in time, all we  
10 needed to do was take a statement. There was no need for me to test  
11 him. I didn't show up with a tape recorder because I didn't have a  
12 tape recorder. Recording his statement would have been the best way  
13 to take down his statement. I was concerned that when I conducted  
14 the interview on 3 February 2004, a considerable period of time had  
15 passed since the dates that I was going to be making inquiries about.  
16 There was nothing that precluded me or SA Birt from bringing a tape  
17 recorder, except the fact that I didn't have a tape recorder. If  
18 Agent Birt told me that she had conducted an interview of the  
19 defendant about a month earlier, she would have told me she had. She  
20 did not tell me that there was confusion on the part of the defendant  
21 between PUCs 412 and 421. I did not show the defendant, during the  
22 course of my interview with him, photographs of the two PUCs I was  
23 talking about. The photographs were available, and they were part of  
24 a CID file. PFC Brand did not have uncertainties about who was who  
25 when I interviewed himself. I did not find myself being forced to  
26 use things like who died first or who died second as a frame of  
27 reference that I recall. I might have used that as a frame of  
28 reference. When I took the statement, PE 3, from the accused, it's a  
29 four-page document. I did not type this statement. SA Birt typed it  
30 right after I interviewed PFC Brand. The rights warning informing  
31 the accused of what the charges were was at 8:11. Underneath that is  
32 the separate rights warning given for the polygraph that was never  
33 given, four minutes later. The actual typed statement has a time  
34 date block of 10:22. That was the time that everything was  
35 completed. That was the time that the statement had actually been  
36 sworn to. So, everything was done in that period of time. Just less  
37 than 50 percent of that time was spent alone with me one on one with  
38 the defendant. I only know that SA Birt told me that she was there,  
39 and I went into the next room, and she was in there. The first part  
40 of this statement of PE 3 seems to be a narrative explanation. I was  
41 not asking him questions. As to how I come up with a narrative  
42 explanation, because the document contained a running story by the  
43 defendant, SA Birt typed the statement based upon questions that she  
44 asked of PFC Brand. It's my testimony that the information on PE 3  
45 was obtained by SA Birt during the interview of myself and PFC Brand.

1 She then came into the room and used that information to type a  
2 statement and asked PFC Brand if that was correct, that she was going  
3 along and asking him questions as she progressed and typing the  
4 statement.

5  
6 The Trial Counsel objected to the question, "You would agree  
7 that the best way to know exactly what was said by whom and when  
8 would have been to just simply record it, correct," as being asked  
9 and answered. The Military Judge sustained the objection.

10  
11 **Questions by the Civilian Defense Counsel, continued:**

12  
13 I found the defendant to be a cooperative and likeable  
14 individual. PFC Brand didn't refuse to answer any questions that I  
15 asked. In fact, he continued to insist that everything he had done  
16 had been in compliance with what he considered orders. PFC Brand  
17 was, in his mind, simply trying to deal with a combative detainee.

18  
19 The Trial Counsel objected to the question, "He was, in his  
20 mind, as expressed to you, simply trying to deal with a combative  
21 detainee," as misstating the facts in evidence. The Military Judge  
22 overruled the objection.

23  
24 **Questions by the Civilian Defense Counsel, continued:**

25  
26 There is a drawing attached to PE 3. The defendant didn't draw  
27 that. I drew that diagram. I did that drawing at 0935 hours. I  
28 believe the drawing was done after SA Birt entered the room, but I'm  
29 not sure. On that diagram, there is a reference to the side of 15 to  
30 30 common peroneal strikes. There was between 15 to 30 strikes in  
31 issue. I was concerned that the statement about the number of blows  
32 ranged between 15 and 30 which is 100 percent difference. I did not  
33 ask the defendant to give examples of the types of noncompliance or  
34 difficulties that he had with the detainees, but he stated that PUC  
35 421 was doing things like mule kicking the door, trying to pull his  
36 hood off, things of this nature, being noncompliant and not listening  
37 to directives or order. I have heard that from other MPs. This  
38 information did not surprise me. When I had him describe the  
39 situation that I eventually drew a sketch of, chaining with arms  
40 extended above the head, I had heard that was going on.

41  
42 The Trial Counsel objected to the question, "You even knew that  
43 the chain of command had heard of that," for relevance. The Military  
44 Judge sustained the objection.  
45

Questions by the Civilian Defense Counsel, continued:

The defendant didn't know the date that he administered 15 blows. I didn't ask specifically in the statement, but the date provided to me was that it was a few days before the death of PUC 421 when he delivered two or three blows, and this information was provided at a later date to Cammack, but the date was unknown. The information that Cammack provided was in March of 2003. It was several months later. And I testified at the Article 32 that the defendant seemed to be confused about dates and times. In fact, in the statement that I read parts of, he continued to say in the narrative portion that he was not absolutely sure that he delivered 30 blows at a time. Some of the things that we talked about earlier, the noncompliance, were referred to in here by mule kicking and pulling the hood off.

The Trial Counsel objected to the question, "Did he go into any elaboration as to the chair ~~process~~ and the hooding process that would allow you to understand why you ----" for relevance. The Military Judge sustained the objection.

The Trial Counsel objected to the question, "Any compliance blows administered by the defendant he said were in the process of either chaining or hooding the defendant, correct," for mischaracterization of facts in evidence. The Military Judge directed the Civilian Defense Counsel to rephrase the question.

Questions by the Civilian Defense Counsel, continued:

PFC Brand told me that the blows were administered for various reasons such as taking his hood off and mule kicking the door. PFC Brand did not describe any assaultive conduct by Dilawar that I recall. I was not able to determine when the defendant, with any degree of precision, administered the blows on the date and time. I was not able to determine Cammack's date and time that he delivered blows either. In my testimony, I indicated that the defendant told me that he might have exaggerated items in his earlier statement. PFC Brand stated that he had indicated at one time that when he was delivering the blows using his knees that his knees got tired, and he had to switch knees, and he said that he recounted that to other MPs, but that was just a joke was one area exaggerated. I asked him where he learned how to deliver the common peroneal strike, and he said he was trained to do so. I did not follow-up and try and determine if there was any truth to that claim. I asked him where and when he had

1 received training on that strike, and he had provided information,  
2 but I do not exactly recall what he had replied to that question.

3  
4 The Trial Counsel objected to the question, "Now, you asked him  
5 if he believed the administration ~~of~~ those blows had been abusive,"  
6 for facts not in evidence. The Civilian Defense Counsel stated he'd  
7 rephrase the question.

8  
9 **Questions by the Civilian Defense Counsel, continued:**

10  
11 I did not ask the defendant if he believed that giving the  
12 common peroneal strike was wrong. At the Article 32, I said that I  
13 had heard it or read it in his statement, but I did not ask him that  
14 question. I did not say, "I recall the defendant being asked if he  
15 believed that giving the common peroneal strikes was wrong," and I  
16 said to you that I had heard him being asked that, but I did not ask  
17 the question.

18  
19 The Trial Counsel objected to the question, "Did you go on in  
20 that same 32 testimony ----" for badgering the witness. The Military  
21 Judge overruled the objection.

22  
23 **Questions by the Civilian Defense Counsel, continued:**

24  
25 I did not go on in my Article 32 testimony to say that the  
26 defendant thereafter said, "No. No. Not wrong, wrong, necessary to  
27 get them to do what you wanted them to do," and I had heard him say  
28 that after he was asked the question by SA Birt. I did not ask the  
29 question. This was said by him in that same question, but SA Birt  
30 asked the question. You're asking if I asked the question, but I did  
31 not ask that question. It was asked of PFC Brand, and it's in his  
32 statement. I believe the defendant was on the night shift, but I'm  
33 not certain. I did not ask the defendant if he had ever seen  
34 evidence of bruising, scarring or damage to any of the detainees.  
35 There is no particular reason that I did not advise PFC Brand that he  
36 was a suspect for maltreatment.

37  
38 The Trial Counsel objected to the question, "You asked the  
39 defendant if anybody in a leadership position knew about the practice  
40 of delivering blows, correct," for relevance. the Military Judge  
41 overruled the objection.

42  
43 **END OF PAGE**  
44

Questions by the Civilian Defense Counsel, continued:

I believe the defendant told me that other individuals knew that common peroneal strikes were being used. The defendant mentioned some of those people by name. One of the people was CPT Wood if it's in his statement. I believe CPT ~~Bearing~~ <sup>Bearing was</sup> the MP commander knew peroneal blows were being used, and other MPs, some of them NCO only had a limited role as an investigator. I believe did follow on any of those things to see if there was truth to that that people knew. As to whom I went and talked to, I believe I spoke to CPT Bearing, but I don't have that information at hand, his statement or the interview in hand. That was conducted some times afterwards, I recall.

The Trial Counsel objected to the question, "They knew that folks were being chained, correct," for relevance. The Military Judge sustained the objection.

Questions by the Civilian Defense Counsel, continued:

I don't recall if I conducted an interview with a SPC Morden. I remember just speaking to Cammack and ~~Bearing~~ <sup>Bearing was</sup>, and those are the only two I recall at this time. There is no reason I drew the diagram as an attachment to PE 3 instead of having the defendant do it. I got the defendant to arrive at the hotel because SA Birt requested that he be present through his chain of command. I did not direct him to be there. In PFC Brand's four-page statement secured on the 3<sup>rd</sup> of February, there is no specific date mentioned to when the blows were allegedly administered. Based on my review of the case file and interview of various individuals, I cannot tell the court how many people, in a ten day period administered blows to either PUC 412 or 421. It was more than one who administered blows.

REDIRECT EXAMINATION

Questions by the Trial Counsel:

On 3 February 2004, I was in that room because SPC Cammack told me that PFC Brand in Qatar had admitted to striking Dilawar 30 times in a row. It was for that specific purpose that I was taking that interview. I was doing a polygraph examination to ascertain whether or not PFC Brand had lied about the 30 strikes before. Until 3 February, CID had never heard this story except from Brian Cammack. After PE 3 was written out, PFC Brand had an opportunity to read it, and he put his initials on the statement. PFC Brand wrote his

1 initials next to the date, the time, next to his grade, before his  
2 name, and at the bottom of the first page where it says initials. On  
3 five places of that page, he put his initials. The second page there  
4 are two places where he initialed at the top of the page and at the  
5 bottom of the page. The same thing applies for page three. On the  
6 last page, he initialed it twice, next to the word "affidavit" at the  
7 top of the page, and at the bottom of the page where it says  
8 initials. PFC Brand adopted this statement as a written record of  
9 what he had said in that interview. As SA Birt was taking this  
10 statement, she would read portions to him, and then continue typing  
11 the statement. So, she was reading it to him as she typed it, and  
12 then afterwards, she had him read it, and then she had him initial  
13 the form. I did not beat PFC Brand into making this statement. PFC  
14 Brand had an opportunity to read it after he got done. PFC Brand did  
15 not tell me anything in that room that is different from what's in  
16 that statement. PFC Brand did not seem unsure about which detainee I  
17 was talking about at all.

#### 18 **RECROSS-EXAMINATION**

##### 19 **Questions by the Civilian Defense Counsel:**

20  
21  
22 Based on my answers, my main focus was on the number of blows  
23 and that he had made the statement that Cammack stated that he had  
24 made. I told PFC Brand that Cammack had made the statement, and I  
25 asked him whether or not he had made the statement, and at that time,  
26 he stated he had remembered stating that. I paraphrased to the  
27 defendant what Cammack had told me. I did not show PFC Brand a  
28 statement or anything like that. In PE 3, I don't believe my  
29 conversation is in there. Looking at PE 3, I don't see anywhere  
30 where I told PFC Brand what Cammack had told me that he said. There  
31 is a reference to PFC Brand being in the cell with Cammack, but not  
32 about the 15 to 30 peroneal strikes. There is no reference to the  
33 earlier allegations from Cammack.

34  
35 The following questions were marked as: AE CI, question by  
36 SGM Escamilla; and AE CII, question by 1SG Sims.

#### 37 **EXAMINATION BY THE COURT-MARTIAL**

##### 38 **Questions by the Military Judge:**

39  
40  
41  
42 When reading an individual his rights, my practice is to advise  
43 the individual of the rights for which he is suspected. I advised  
44 PFC Brand of all of the offenses I suspected him of as of 3 February  
45 2004. If during the interview additional information comes to light,

1 there is a requirement, as I understand it, to read additional rights  
2 for charges that come to light as a result of that additional  
3 information. I am satisfied that I advised the accused of all of the  
4 offenses he discussed in his statement. It is my understanding that  
5 members of CID had investigated the chain of command or leadership  
6 regarding any policies relating to procedures in effect at the Bagram  
7 collection point. It's my recollection that everyone was interviewed  
8 at one point or another regarding protocol. To my knowledge there  
9 was no one else from PFC Brand's chain of command present at the  
10 hotel when he was interviewed at the hotel on 3 February 2004. As  
11 far as I knew, PFC Brand was alone. I am not sure, but I recall  
12 personally interviewing four or five people relating to this case.

#### REDIRECT EXAMINATION

##### Questions by the Trial Counsel:

I understood the basis of the negligent homicide charge.

The Civilian Defense Counsel objected to the question, "What was it in your mind," for relevance. After argument from both parties, the Military Judge overruled the objection.

##### Questions by the Trial Counsel, continued:

In my mind, I believe that the death was caused by negligence, by repeated blows to Mr. Dilawar causing his eventual death. I understood that those blows had damaged muscle tissue, and that's what I believed, whether it's true or not, that that was the cause of the death. So, when I told PFC Brand that he was being investigated or suspected of negligent homicide, he knew what it was that I thought he had actually done. The last question on the first page of PE 3 was, "Do you recall what Dilawar did to provoke this response from you," his answer was no.

#### RECROSS-EXAMINATION

##### Questions by the Civilian Defense Counsel:

I advised PFC Brand that he was suspected of a false statement, negligent homicide, and assault. The false statement was pertaining to any other statements that he had made regarding this issue that he knew they would be a lie when he made them. This was regarding any statement that PFC Brand had made. I realize PFC Brand is being charged with making a false statement in December of 2002. I



1 understand it's alleged that it was false in that he said it wasn't  
2 abusive. The false statement covers anything that someone lies about  
3 in a statement.

4  
5 There being no further questions by either party, the witness  
6 was warned and withdrew.

7  
8 The court-martial recessed at 1112, 16 August 2005.

9  
10 The court-martial was called to order at 1215, 16 August 2005.

11  
12 All parties present prior to the recess were again present. The  
13 members were present.

14  
15 SA Daniel Flores III, U.S. Army, was called as a witness for the  
16 prosecution, was sworn, and testified in substance and as follows:

17  
18 **DIRECT EXAMINATION**

19  
20 **Questions by the Assistant Trial Counsel:**

21  
22 I am Daniel Flores III. I'm a CW2. I'm the special agent in  
23 charge of the Ansbach CID office. I have been in the Army for just  
24 over 17 years. I have been at CID for just over 10 years. As a CID  
25 agent, I received the initial CID training in 1995 at Fort McClellan,  
26 Alabama, and since then, I've attended various other courses dealing  
27 with investigations. I have experience with interviewing suspects or  
28 of people who are not suspects, but I want to get information from  
29 them. I have conducted over 200 interviews over the course of my  
30 career. On 21 December 2002, I had an opportunity to interview PFC  
31 Brand. PFC Brand was a Specialist at that time. He is in the  
32 courtroom wearing a Class A uniform with PFC stripes on it sitting at  
33 the defense table. The reason I was meeting with him on that day, we  
34 were notified that there was a PUC or a detainee, 412, who had died  
35 at the Bagram collection point in Bagram, Afghanistan, and we were  
36 interviewing all personnel who were on shift or had anything to do  
37 with that detainee. When PFC Brand came to interview with me, the  
38 interview occurred at Bagram airfield. The office was a brick  
39 building bombed out. It was formerly used as a jet engine test  
40 facility. We had occupied the bottom floor in one of the back  
41 offices, an office roughly about half the size of this room where we  
42 had built our own desks and set up our computers in and were using as  
43 an office space. The courtroom is about 15 feet by 40 feet. When  
44 PFC Brand came in, he had his assigned M-16. PFC Brand placed that  
45 on the wall next to him in the chair that he was sitting at. I had

1 my assigned 9-millimeter in a leg holster attached to my right leg.  
2 PFC Brand was able to see my weapon. I would sometimes wear civilian  
3 clothes which consisted of khaki pants and a T-shirt, or other times,  
4 I wore the DCUs. At some point, I did read PFC Brand his rights and  
5 tell him why he was there. I wrote down PFC Brand's information on a  
6 DA 3881, a rights waiver certificate, showed him that information,  
7 verified that it was the correct information, and then I let him know  
8 that I was going to read off the back of another DA 3881 and read  
9 that to him. PE 2 is the rights waiver form I read to him. On the  
10 date I interviewed PFC Brand, I collected his information, and  
11 annotated it on this DA 3881, and then I put my information in  
12 Section b of block five. I then went over everything with PFC Brand,  
13 and I explained to him that I was a CID agent, and I was going to  
14 question him about aggravated assault. I then let him know that I  
15 would read off an identical form changing all the "I"s to "you", so  
16 when I read it to him it would make sense. I read him his rights,  
17 and he initialed after each right, verified that he understood his  
18 rights, and he then agreed to waive his rights and speak with me. He  
19 initialed in the section right underneath Section B, signed it, I  
20 signed, I then had him put the time in, and he put his initials in to  
21 verify that he had placed the time in that block. PFC Brand put his  
22 initials on the first page of PE 2 six times. The second page of PE  
23 2 is the rights that I read to PFC Brand. I read all of the rights  
24 to PFC Brand. There is nothing about PFC Brand's age or education or  
25 mental acuity that led me to believe that he might not understand  
26 what he was doing. After I read his rights to him, I took a  
27 statement from him. Turning to the next few pages of that, I took a  
28 narrative session of this form and then a question and answer  
29 session. When I was taking his statement, I was typing it up. After  
30 I typed the statement, I then printed the statement out, handed it to  
31 PFC Brand, let him review it, and if he had any changes to add or  
32 delete or correct, I gave him a pen and told him he could do that.  
33 If he was satisfied with the statement once we made the corrections,  
34 I then had him read it one last time, and he initialed the bottom of  
35 each page, and then he signed it, and I swore him to it. When PFC  
36 Brand was giving me this statement, he had as much time as he wanted  
37 to read the statement. I can't remember exactly how much time he  
38 took, but he took as much time as he needed to read it. PFC Brand  
39 understood that this was his sworn statement in a CID investigation.  
40 PFC Brand understood that he knew he was supposed to be telling the  
41 truth at that time. I inquired of him about his involvement about  
42 striking detainees. That was the reason for advising him of  
43 aggravated assault at that time, and that was based on my Trial  
44 Counsel's recommendation at that time. On 21 December 2002, the  
45 final autopsy reports had not come back on either of the dead

1 detainees, but we had preliminary autopsy results. I explained to  
2 PFC Brand that the reason he was there, he was suspected of striking  
3 the detainee. So, he knew he was there to be asked about striking  
4 detainees or if he had seen anybody else strike detainees. In the  
5 initial part of that statement, PFC Brand admits that on one  
6 occasion, he struck Habibullah either once or twice. Then, further  
7 down the statement he says he struck Dilawar on two separate  
8 occasions, and that he says that he struck him once or twice.  
9 Turning to the last page of the statement, page three of PE 2, it  
10 says, "Have you ever seen anyone get abusive with any of the  
11 detainees?" His answer was, "No." I then asked him, "Have you?"  
12 His answer was, "No." And the last question was, "Is there anything  
13 else you want to add to your statement?" His answer was, "No." When  
14 I asked him, "Have you," I meant to ask him if he had ever gotten  
15 abusive with any of the detainees. PFC Brand seemed to understand I  
16 was asking if he had gotten abusive with detainees. At no time in  
17 this statement in 2002, PFC Brand never told me that he struck  
18 Dilawar 30 times. I was present for the autopsy of the first  
19 detainee who died. Photographs were taken during that autopsy. PE  
20 6a for ID is a picture of the backside and the legs of PUC 412,  
21 Habibullah. This fairly and accurately describes how he looked on 6  
22 December 2002. PE 6b for ID is a photograph of Habibullah as well,  
23 but this time it's with a scale. This fairly and accurately  
24 represents how he looked on 6 December 2002.

25  
26 The Trial Counsel requested that PE 6a and 6b for ID be admitted  
27 into evidence. The Defense Counsel had no further objections other  
28 than what was already logged. The Military Judge admitted PE 6a and  
29 6b.

30  
31 **Questions by the Trial Counsel, continued:**

32  
33 When I interviewed PFC Brand, I did not threaten him in any way.  
34 PFC Brand was roughly about six feet. I believe PFC Brand weighed  
35 about 195. I had an opportunity to see Dilawar. Dilawar was about  
36 five, six, roughly weighing about 130 to 140 pounds. I was at the  
37 Bagram collection point, and I had an opportunity to look at the  
38 logbooks that were in the isolation cell. As to what I found in  
39 there that would give me information that other people or PFC Brand  
40 was striking Dilawar, there was no information relating to that in  
41 that book. Therefore, I didn't seize it into evidence. Basically,  
42 the logbooks just had shift change stuff. There was no information  
43 to show who had struck a detainee or how many times.

**CROSS-EXAMINATION****Questions by the Civilian Defense Counsel:**

I have been a CID agent for over 10 years. I arrived in August of 2002, and this incident happened in December 2002. In my capacity as a CID agent, I had not been in the Bagram facility any time prior to this incident. I eventually did go into the facility to be able to create some photographs to do a crime scene examination, and to expose photographs. It would be fair to say that I was the lead agent. I remained in that capacity until I redeployed, and I went to Uzbekistan in February 2003, and then left the theater in March of 2003. After I left, SA Kenneth Luciani took over the case after I left. The last I knew SA Luciani was assigned to the Fort Bragg office. I was not doing this investigation on my own. I had another agent with me, a SA Potter, and my operations officer out of Uzbekistan, SA Randy Lighty, assisted us as well. And then, I was followed by SA Kenneth Luciani. I am not sure how long he remained on the case. I know it was six-month rotations at that point. I did go down to do a crime scene examination. This took me for the very first time into the facility. At that time, I directed various photographs to be taken, and they were photographs of the isolation cells, and the purpose of getting those photographs was to document the scene where Habibullah had last been held prior to his death. I took the pictures for Dilawar as well, and that was for the same thing. The report of a death was separated in time. I recall that I first received the report about Habibullah on 4 December of 2002, and I received the report about the second individual on 10 December 2002. I began my crime scene investigation on the first one, Habibullah on 6 December when I was able to get into the facility. I was already actively engaged in an investigation when I received the report of a second issue, and I took responsibility for that as well. I called in for additional assistance to conduct the investigation. I called my operations officer, CW3 Randy Lighty. That's how we ended up getting these other people involved in the investigation. Agent Potter and myself were the ones who conducted the interviews, and we were the only two assigned to Afghanistan at the time. Altogether, I couldn't tell you the exact number of people who were interviewed, but I know there were quite a few. I believe I went into the Bagram facility to conduct my crime scene examination around three times. Two of the times I went into the crime scene was to get photographs and document the scene, and the other time was specifically to look at the logbook. I am not sure where the logbooks are. I left the logbook there. I did not seize the logbooks because they had no evidentiary value.

1 The Trial Counsel objected to the question, "Were you ever told  
2 that people had made reports or things had been logged," for hearsay.  
3 The Military Judge sustained the objection.  
4

5 Questions by the Civilian Defense Counsel, continued:  
6

7 Other than the logbook<sup>WMS</sup> I investigated to find out if  
8 information had been maintained on computers. We asked for any  
9 records that they had in the facility. I don't believe that I was  
10 told that there was information being maintained on computers other  
11 than their medical records and other records of the detainees. I did  
12 not seize any hard drives or anything for evidentiary purposes.  
13 Altogether, I examined the one logbook that they had up in there for  
14 the isolation cells. Off hand, I couldn't remember how many entries  
15 were in that logbook. I saw no record of any type of entries dealing  
16 with strikes.  
17

18 The Trial Counsel objected to the question, "What about sleep  
19 deprivation, was that ----" for relevance. The Military Judge  
20 sustained the objection.  
21

22 The Civilian Defense Counsel requested for reconsideration of  
23 the Military Judge's objection.  
24

25 The Military Judge stated that there was need for an Article  
26 39(a) Session.  
27

28 The members withdrew, the witness withdrew, and an Article 39(a)  
29 Session was called to order at 1233, 16 August 2005.  
30

31 The Civilian Defense Counsel proffered to the Military Judge  
32 that the witness would state that the strikes came as a result of  
33 having the detainees being chained or hooded, and that they were  
34 directives by MI.  
35

36 After argument from both parties, the Military Judge found that  
37 what was done and the reasons that were done was irrelevant, but that  
38 the fact that the incident occurred was all that was relevant, and  
39 that the facts would speak for themselves, and that the defense was  
40 limited to elicit the facts about the defense, and that was as far as  
41 it was going to go, and that they could get into the definition of  
42 abuse.  
43

44 The Trial Counsel stated that the prosecution did not receive  
45 notice that the defense of mistake of fact was going to be argued.

1 The Military Judge stated that he did not know if mistake of  
2 fact was raised, but if it did come out through the facts, that  
3 subject would be addressed at the appropriate time.  
4

5 The members entered the courtroom, the witness entered the  
6 courtroom, the session terminated, and the court-martial was called  
7 to order at 1246, 16 August 2005.  
8

9 **CROSS-EXAMINATION (CONTINUED)**

10 **Questions by the Civilian Defense Counsel:**

11  
12  
13 Returning momentarily to the crime scene investigation, when I  
14 went in there, I took photographs, and the photographs were basically  
15 to take pictures of people in various positions inside the isolation  
16 cell, and that was Dr. Ingwersen's idea. Dr. Ingwersen wanted to  
17 know what position the detainees were in. Dr. Ingwersen was present  
18 with me when I took the photographs. Dr. Ingwersen thought the  
19 photographs were necessary for her to properly examine and conduct  
20 her investigation. I did not take the photographs of the positions  
21 the detainees were in, but I was present. Her assistant took those  
22 photographs. The photographs were of individuals with hands extended  
23 above their head and shackled in various capacities. I don't recall  
24 if any of the detainees had hoods on. She was advised that some of  
25 the people that have been in that position had also been hooded. I  
26 did not direct the photographs, but the doctor did. I took my own  
27 separate crime scene examination photographs. I did not have  
28 complete unfettered access to the Bagram facility. I was not allowed  
29 to go into the MI room. I did not want to take photos in the MI room  
30 because at that point there was no reason for me to take photographs  
31 of the MI interrogation room. I was specifically concerned with  
32 where the death had occurred which was that isolation cell. I don't  
33 believe at that point, I was advised in my investigation leading up  
34 to the crime scene exam that some allegations of abuse extended into  
35 the MI room. I did later learn that some allegations of abuse  
36 extended into the MI room.  
37

38 The Trial Counsel objected to the question, "And so you never  
39 got in there as an investigator," as asked and answered. The  
40 Military Judge sustained the objection.  
41

42 **Questions by the Civilian Defense Counsel, continued:**

43  
44 The defendant was called down to the CID office. The defendant  
45 was read his rights. I advised him that he was suspected of the

1 crime of aggravated assault. I had already received the preliminary  
2 autopsy findings.

3  
4 The Trial Counsel objected to the questions and answers about  
5 determination of death. The Military Judge sustained the objection.

6  
7 **Questions by the Civilian Defense Counsel, continued:**

8  
9 I was briefed on the preliminary findings, and Dr. Ingwersen  
10 then changed it. Based on my briefing from Dr. Ingwersen, I then  
11 consulted with the legal adviser, MAJ Bovarnick. I referred to MAJ  
12 Bovarnick as my <sup>am</sup> trial counsel, but he is who I went to for legal  
13 advice. MAJ Bovarnick was the CJTF-180 legal advisor.

14  
15 The Trial Counsel objected to the question, "And when you sat  
16 down and talked to him, he's the one who told you to limit your  
17 rights warning to aggravated assault, right," for hearsay. The  
18 Military Judge sustained the objection.

19  
20 **Questions by the Civilian Defense Counsel, continued:**

21  
22 Before I made a determination as to what offense was going to be  
23 included in the DA 3881, I conferred with my operations officer, CW3  
24 Randy Lighty, and with MAJ Bovarnick. I interviewed several  
25 interpreters. I don't know the exact amount, but a rough estimate, I  
26 would say five or six interpreters. I wanted to interview the  
27 interpreters because they were present during the interviews of the  
28 detainees. I don't know what the MI personnel language capabilities  
29 are to say that the interpreters were the only people in there that  
30 one could say had direct immediate communication abilities with the  
31 detainees. When I was talking to the defendant, I advised him and,  
32 in fact, questioned him about abusive conduct. PFC Brand told me  
33 that he hadn't observed abusive conduct, and that he didn't believe  
34 he had engaged in abusive conduct. That was the very last part of  
35 the four-page statement that I took from PFC Brand.

36  
37 The Trial Counsel objected to the question, "That statement  
38 obtained after you interviewed him for a period of almost six hours,  
39 is that correct," for facts not in evidence. The Military Judge gave  
40 no ruling on this objection.

41  
42 **Questions by the Civilian Defense Counsel, continued:**

43  
44 PFC Brand was interviewed roughly for just over an hour. As to  
45 if I testified at the Article 32 that the statement was taken on 21

1 December 2002, that the interview started at 0300 Zulu, and the time  
2 I signed the statement was 0930 Zulu, it was 0430. The time is  
3 correct on the sworn statement. I did not videotape the interview,  
4 nor record the interview. It's not our practice to record  
5 interviews. Nothing prevents me from recording interviews. At the  
6 time, PFC Brand reviewed the statement, and he initialed the pages at  
7 the bottom, and agreed with the affidavit by signing the form would  
8 make it his statement.

9  
10 The Trial Counsel objected to the question, "But there are  
11 things you talked about that never found their way into the  
12 statement, correct," for arguments with the witness. The Military  
13 Judge directed the Civilian Defense Counsel to ask a pointed  
14 question.

15  
16 **Questions by the Civilian Defense Counsel, continued:**

17  
18 I don't recall if I exactly defined the word abuse to the  
19 defendant or not, but I did go over what aggravated assault was. At  
20 the Article 32, I had said that I asked if the defendant if he had or  
21 seen anyone get abusive, and I defined abusive as being mean, hitting  
22 with force or causing to bleed, and a nonproportional response. I  
23 defined what I constituted abuse meant with our interview. That was  
24 the definition I gave to PFC Brand. Nonproportional force causing  
25 someone to bleed was what I told PFC Brand constituted abuse. When I  
26 gave that definition, PFC Brand said he hadn't been abusive. Looking  
27 at PE 2, I don't see anywhere that has the definition of abuse. In  
28 fact, at the Article 32, I said I probably gave that definition  
29 during the oral part of the investigation when we were discussing the  
30 offense. As to how long the oral part of my statement occurred  
31 before we went into the formal, if I had a copy of the CID form 44,  
32 it would say exactly what time we started, and I would say a rough  
33 estimate was about 15 minutes prior to the rights advisal which was  
34 0310 Zulu. The defendant had no questions when I defined abusive to  
35 him. I further elaborated on my definition of abuse by saying it  
36 meant outwardly mean, hitting for no reason, and causing to bleed  
37 from the Article 32. That definition is not in the statement. I  
38 recall that the defendant was cooperative. PFC Brand answered every  
39 question I asked. I didn't specifically give a number of blows to  
40 someone, but I did ask him if he administered blows in the context of  
41 being abusive. He did explain to me that any blows he administered  
42 was not considered abusive. He told me that the thought any blows  
43 that he administered were for the purpose of getting the detainee to  
44 comply with whatever direction they were trying to get them to do. I  
45 don't recall what specifically PFC Brand was giving for direction,



1 but I believe it was something like he was trying to get him to put  
2 his hood back on. PFC Brand also elaborated on the detainee being  
3 uncooperative. Reviewing PE 2, I see that PFC Brand had stated that  
4 the detainee was being uncooperative when they were trying to him to  
5 go to the bathroom, to eat, or keep his hood on. I was going back  
6 and forth between PUCs 412 and 421 in that statement, and both of  
7 them were really referenced as being the most combative or  
8 noncompliant of all the people they ever dealt with. I do not know  
9 how many detainees or suspected terrorists or whatever they called  
10 them there that PFC Brand had treated over the period of time he had  
11 been there. I do not know how many detainees had been processed  
12 through the facility. PFC Brand said that these two detainees stood  
13 out. That was a reputation that was apparently held by other people  
14 as well.

15  
16 The Trial Counsel objected to the question, "Including the legal  
17 advisor, MAJ Bovarnick, correct," for hearsay. The Military Judge  
18 sustained the objection.

19  
20 **Questions by the Civilian Defense Counsel, continued:**

21  
22 When I gave, as part of my definition, outwardly mean, I meant  
23 hitting someone for no reason, going up to him and striking him. The  
24 blows that we talked about common peroneal strike is a term that one  
25 of the MPs gave us. I'm not exactly sure when the term was used, but  
26 it was used by the MPs. When I talked with PFC Brand on 21 December,  
27 he used the term compliance blow. PFC Brand basically stated that he  
28 would knee him in the thigh area getting them to do what they wanted  
29 them to do. I was asked by the Trial Counsel about logbooks, I  
30 questioned the defendant about logging incidents. I asked him  
31 whether or not any of these things had been recorded anywhere, and  
32 the defendant said, "It wasn't then, but it is now." I am not sure  
33 if they changed the policy with respect to logging incidents in  
34 Bagram or not. I did not follow-up if they changed the policy. I  
35 did examine an SOP at the time. The SOP was still in the process of  
36 being reviewed by the legal department.

37  
38 The Trial Counsel objected to the question, "MAJ Bovarnick was  
39 one of the people still in the process of reviewing the SOP," for  
40 relevance. The Military Judge overruled the objection.

41  
42 **Questions by the Civilian Defense Counsel, continued:**

43  
44 I'm not sure if MAJ Bovarnick was still in the process of  
45 reviewing the SOP.

1 The Trial Counsel objected to the question, "After the first  
2 death, is it not correct that they were considering changes to the  
3 SOP," for hearsay. The Military Judge sustained the objection.  
4

5 **Questions by the Civilian Defense Counsel, continued:**  
6

7 The defendant, in the course of his statement to me, indicated  
8 other people who had administered similar blows. The people he  
9 identified in PE 2 were SGT Humphrey, SPC Morden, and he had heard  
10 that SGT Berkley had administered similar blows to detainees. He did  
11 identify several NCOs to me as well. It is true that PFC Brand also  
12 administered that one of the blows was administered in the presence  
13 of a SGT Curtis on page one of PE 2. SGT Curtis I believe was one of  
14 the shift NCOs. I interviewed several interpreters, the defendant,  
15 Cammack, and people from MI.  
16

17 The Trial Counsel objected to the question, "Who did you  
18 interview from MI," for relevance. The Military Judge sustained the  
19 objection.  
20

21 **Questions by the Civilian Defense Counsel, continued:**  
22

23 I interviewed CPT Beiring, and CPT Wood. When I asked the  
24 defendant about compliance blows, I also addressed the issue of  
25 force. PFC Brand did not indicate that he saw any bruising. PFC  
26 Brand did not tell me he ever saw blood which was part of my  
27 definition of abuse. I am not sure if PFC Brand had said that the  
28 detainees took their pants down. I do not know when the detainees or  
29 PUCs were showered. I did try to determine who might, if at all,  
30 have witnessed or seen any evidence of injuries as a result of  
31 compliance blows by asking whether or not they were examined, or when  
32 they made complaints if they were examined. The logbooks were not  
33 used for logging complaints of abuse. I believe the interpreters  
34 were a source for the detainees to complain to. The ICRC did conduct  
35 visits to the facility. That's the International Commission of the  
36 Red Cross.  
37

38 The Trial Counsel objected to the questions, "Did you determine  
39 if there were walk-throughs by superior authorities in the chain of  
40 command like the company commander or other ----" for lack of  
41 knowledge and hearsay. The Military Judge sustained the objection.  
42

43 **Questions by the Civilian Defense Counsel, continued:**  
44

1 I did not seize a copy of the SOP, but one was provided to me.  
2 I am not sure if I got the interim SOP that was being worked on, but  
3 I believe that was the case. In the course of the statement in PE 2,  
4 the defendant elaborated on some of the things that detainee 421  
5 allegedly did, peeing on himself, and being required to be carried to  
6 the bathroom. I don't recall if I followed up and talked to other  
7 people that would cause me to believe that those events actually  
8 happened. When I said the defendant told me that he was having  
9 trouble keeping the hood on a person, or he administered a compliance  
10 blow, I assume that the hood was being removed by their hands. I am  
11 not sure exactly why they placed the hoods on the detainees.

12  
13 The Trial Counsel objected to the question, "In terms of lesser  
14 forms of compliance, the defendant indicated to you that he relied on  
15 other forms or measures of force to secure compliance, correct," for  
16 improper form of questioning. The Military Judge sustained the  
17 objection.

18  
19 **Questions by the Civilian Defense Counsel, continued:**

20  
21 I don't recall the defendant telling me that he utilized  
22 mechanisms other than compliance blows to secure compliance by  
23 detainees. PFC Brand's statement states that the only time he used a  
24 compliance blow or a knee strike was when the individual was  
25 combative. He didn't say anywhere in the statement that he was doing  
26 the blows just to be a mean guy, or abuse as I defined it. At no  
27 time did I ask the defendant when he was last on duty.

28  
29 The following questions were marked as: AE CIII, question  
30 by SGM Escamilla; CIV, question by SGM Escamilla; CV, question by LTC  
31 Simonelli; CVI, question by LTC Castillo; CVII, question by SGM  
32 Jones; CVIII, question by SGM Escamilla; CIX, question by LTC  
33 Simonelli; and CX, question by SGM Escamilla.

34  
35 **EXAMINATION BY THE COURT-MARTIAL**

36  
37 **Questions by the Military Judge:**

38  
39 During my interview of the interpreters, I did not develop other  
40 information regarding other misconduct involving detainees. During  
41 my investigation and interviews at the Bagram collection point, I did  
42 see an SOP. I don't recall interviewing SSG Plummer. During my  
43 investigation, I don't recall whether or not the SOP spelled out when  
44 a guard could strike a detainee. When I interviewed MI personnel, I  
45 did not see an SOP that related how the MI and the MPs would conduct

1 operations. As far as I know, there wasn't any kind of joint SOP  
2 between the MI and the MPs. Based on my investigation, I'm not aware  
3 whether there was a written or verbal SOP that would allow guards to  
4 utilize techniques including striking detainees in order to gain  
5 compliance. In my interviews with MI personnel, I believe there were  
6 a couple of interrogators who said they were physical with PUCs 421  
7 or 412, but I don't recall them saying they struck the detainees. I  
8 don't recall if the SOP I reviewed had any MI input. The SOP at the  
9 control point that I reviewed did not address the use of compliance  
10 blows. The SOP did not address when mandatory entries were to be  
11 made in the logbooks. I don't know if there is an AR that covers  
12 persons in custody or detainee operations that state that there are  
13 certain mandatory daily journal entries. No interpreters that I  
14 interviewed seemed apprehensive or fearful when questioned by myself  
15 or any other investigators. Based on my investigation, and including  
16 my review of the SOP, I believe it was common practice for MPs to use  
17 physical force such as a compliance blow to gain detainee compliance.  
18 I'm not sure whether the chain of command was aware of this practice  
19 of compliance blows. The chain of command was not asked why the SOP  
20 or any other orders did not have specific guidance on use of force,  
21 but we did ask them what their SOP and guidance was, and they weren't  
22 very specific what that guidance was with us.

#### RECROSS-EXAMINATION

##### Questions by the Civilian Defense Counsel:

28 At the Article 32, I testified that I believed the chain of  
29 command was aware that compliance blows were being administered.

31 There being no further questions from either party, the witness  
32 was warned and withdrew.

34 SFC Gerald A. Hawkins, U.S. Army, was called as a witness for  
35 the prosecution, was sworn, and testified in substance as follows:

#### DIRECT EXAMINATION

##### Questions by the Trial Counsel:

41 *W* I am SFC Gerald A. Hawkins. Right now, I'm assigned to the 3<sup>rd</sup>  
42 *et* the 338<sup>th</sup> Training Support Battalion located in Columbus, Ohio. I  
43 have been in the Army for 22 years. All 22 years has been in the  
44 Army Reserve. I have been an MP for about 10 years. My position in  
45 the 377<sup>th</sup> MP Company for about eight of those years, and I was the