

1 first platoon Sergeant. I am familiar with PFC Brand. I have known
2 PFC Brand the whole time he was there. He is sitting right there
3 wearing the Class As with the PFC rank. Going back to August of 2002
4 through May of 2003, I was with the 377th at that time. PFC Brand was
5 in the 377th in first platoon. We were stationed in Bagram,
6 Afghanistan. In June 2002, the 377th was mobilized at that time. We
7 mobilized to Fort Dix, New Jersey doing training there and assisted
8 with the training. We stayed for about two and a half months at Fort
9 Dix. Around the end of August, beginning of September, we started to
10 filter into Afghanistan. When we got stationed in Bagram, my platoon
11 was initially stationed at the entry control points of the base.
12 Around October, November time frame, the troops slowly started
13 filtering into the Bagram collection point. My platoon did the 7:00
14 p.m. to 7:00 a.m. shift. That was the night shift. PFC Brand was
15 working that shift. Within my shift, we had one isolation area on
16 the second floor of the building. We had a floor NCOIC who was in
17 charge of the floor in the general population area. We had one
18 person that worked in the isolation cell upstairs. We had escort
19 teams that would escort the PUCs throughout the facility, to
20 interrogation rooms or to latrine runs. We had an SOG, who was the
21 Sergeant of the Guard for the facility. And then, you had myself,
22 the NCOIC on our shift, and then we had Lieutenant Buelterman
23 initially when we started. I remember what the layout of the Bagram
24 collection point looked like. The bottom floor had six general
25 population cells downstairs once you came past the RTO's desk on the
26 left-hand side. Then, there was an interrogation room on the right-
27 hand side, and then you had two additional rooms where the clothes
28 were for the PUCs and their property. And then we had an isolation
29 cell that we built down there later on. Looking at PE 8, the bottom
30 picture of the three on there is the main floor. The isolation cells
31 would have been here in the empty block in the middle portion of the
32 exhibit. I'll place an X where the isolation cells were on the
33 bottom diagram of PE 8. I am familiar with the first detainee who
34 died, BT 412, otherwise known as Habibullah. Habibullah was down in
35 the downstairs isolation area. I remember he was in the biggest cell
36 right here to the left of the bottom diagram of PE 8, and I will put
37 the letter H in that cell. The top two pictures on PE 8 are the
38 outside of the cell. The two pictures show a number seven. I am
39 familiar with the upstairs of the Bagram collection point. The
40 diagram on the bottom of PE 7 is the isolation cell on the left-hand
41 portion of the diagram. I am writing ISO in the cells on PE 7. The
42 second detainee who died in that facility was BT 421. I am aware
43 that BT 421 was in the rear of the cell, on the upstairs isolation
44 cell. During December 2002, my platoon was stationed on the night
45 shift. PFC Brand was a Specialist at that time. Inside the

1 facility, a Specialist could have been in either isolation cells, on
2 the main floor, could have been the escort inside the facility, or
3 basically could have done anything other than the SOG or the floor
4 NCOIC. During any given week, my soldiers were working for about a
5 month without being off until we got a rotation, and then we started
6 working, and they worked for about seven days before they had an off
7 day. There were rules of force that were in effect at the Bagram
8 collection point for my platoon.

9
10 The Defense Counsel objected to the witness's answer for
11 hearsay. After argument by both sides, the Military Judge sustained
12 the objection.

13
14 **Questions by the Trial Counsel, continued:**

15
16 As far as levels of force, I put out that you are to use minimum
17 amount of force necessary on any PUCs that were combative against the
18 soldiers or against other PUCs.

19
20 The Defense Counsel objected to the question, "If you were in a
21 situation as a soldier, and you didn't know what to do about use of
22 force, what were you supposed to do," for speculation. The Military
23 Judge overruled the objection.

24
25 **Questions by the Trial Counsel, continued:**

26
27 I told my soldiers that if they were unsure as to what amount of
28 force they needed to use, they were to contact the SOG. I did not
29 envision a time when a PUC might get combative. There were two
30 personnel who would escort a detainee. I had two personnel on escort
31 because it was safer. You could have one person on each side to
32 control the PUCs a lot better. In my facility, it was not unclear to
33 me as to what a guard could do to a detainee who was chained up in an
34 isolation cell.

35
36 The Defense Counsel objected to the Trial Counsel's question as
37 leading. The Military Judge sustained the objection.

38
39 **Questions by the Trial Counsel, continued:**

40
41 If a detainee was in an isolation cell, and he was chained up,
42 the guard would have no authority to strike the detainee for not
43 putting his hood on. There was nothing that led me to believe that
44 that might be unclear at that time. If a detainee was chained up in
45 a cell, a guard had no authority to go in and strike the detainee 30

1 times in a row for any reason. As to what the proper way to get a
2 detainee to put his hood on if he wasn't putting it on, if the
3 detainee was shackled he couldn't fight you with his hands. If the
4 person went in the cell, they should have had another person with
5 him. There was only supposed to have been two people in the
6 isolation cell instead of one person, and if they had a problem, they
7 should have called the SOG. I did discipline my soldiers for abusing
8 detainees. It was a SPC Corey Jones that I had to discipline. The
9 first time it was brought to my attention by another soldier that he
10 twisted the cuffs on one of the PUCs, and when he did that, I had
11 took him outside, verbally counseled him, and the next day, he was
12 walking with a PUC, and he took him to the wrong area, and the floor
13 NCOIC said, "No, he goes over here instead of the iso cell," and
14 Corey Jones snatched him on the back of his hood and pulled him back
15 in the other direction. When he did that, I went to the Lieutenant,
16 and we actually did a counseling statement on him, and I removed him
17 from the facility. Corey Jones worked at the post commander's office
18 the rest of the time that he was there. I removed him from the
19 facility for just yanking on the hood. I can't remember if I yanked
20 SPC Jones out before or after the deaths in that facility. It would
21 not have made a difference whether it was before or after the deaths.
22 I was the NCOIC on the night shift, and the detainees were in the
23 facility. My guard's duties were to maintain the detainees in the
24 facility. We fed the detainees, clothed them, and transported them
25 to different parts of the facility for interrogation for MI,
26 basically, just made sure they stayed there. So, if a guard wanted
27 to move a detainee, the detainee was required to go. The detainee
28 was subject to the guard's orders. As NCOIC, I had the opportunity
29 to look through the logbooks in the facility. In looking through the
30 log books, we were checking for special incidents that might have
31 happened with the PUCs or new arrivals inside the facility, and the
32 information from the log books, we used for guard mount so that the
33 troops throughout the whole facility would know what happened in
34 every area of the facility. If a guard struck a detainee, the
35 reporting requirement would have been to inform the SOG, it would
36 have been logged in the logbook, and we would have done sworn
37 statements on them. I saw someone had struck a detainee once that
38 was written down in the logbook when we had a combative PUC
39 downstairs. I was in the over watch. SGT Berkley and three of the
40 other guards on the floor were trying to get him inside of the
41 airlock, and he started fighting with them in the airlock, and
42 instead of trying to continue putting him in the airlock, I came down
43 on the floor and told them to get him out of there so nobody would
44 get hurt, and we took him to one of the iso cells because there was
45 razor wire on the inside of the airlock. That's the instance when

1 SGT Berkley struck the detainee. The detainee was being combative at
2 that time. The detainee was threatening SGT Berkley and the other
3 soldiers also. Other than that, soldiers weren't logging strikes if
4 they were giving them. I was not aware that my soldiers were
5 striking detainees in the isolation cells simply to get them to put
6 their hoods on.

7 8 CROSS-EXAMINATION 9

10 Questions by the Defense Counsel: 11

12 I gave a number of statements to CID. I gave about four or five
13 statements. At least in one of those statements, I was read my
14 rights pertaining to dereliction of duty, negligent homicide, cruelty
15 and maltreatment of a prisoner, and a false official statement, and I
16 waived those rights when I gave a statement. Going back to the
17 leadership of the 377th, there was a friction between the First
18 Sergeant and CPT Bearing. This friction did impact how the unit was
19 run to some degree.
20

21 The Trial Counsel objected to the question, "So much so that the
22 First Sergeant did not want to be around CPT Bearing," for hearsay.
23 The Military Judge overruled the objection.
24

25 Questions by the Defense Counsel, continued: 26

27 It impacted to some degree on the day-to-day operations of
28 Bagram. I could not say why 1SG Jones would not come into the Bagram
29 control point, because I very seldom had conversations with her.
30

31 The Trial Counsel objected to the question, "But she was not
32 present a lot in BCP," for asked and answered. The Military Judge
33 sustained the objection.
34

35 Questions by the Defense Counsel, continued: 36

37 I've had very little contact with BT 412 and 421. I didn't have
38 that much contact with them because I was the NCOIC, and I carried a
39 weapon most of the time inside the facility. I would transport the
40 prisoners back and forth every once in a while depending on what was
41 happening during the day. I was not in the iso cells on a regular
42 basis when these prisoners were interacting with my MPs, but I made
43 rounds throughout the facility throughout the shift. I was the
44 supervisor. I popped in throughout the whole facility once in a
45 while. Regarding PUC 412, I do not remember anything specific about

1 him. In my first statement to CID, I remember that I said he came in
2 combative, always spitting, constantly talking to the other
3 detainees, and not wanting to listen to what he was being told. The
4 first day he arrived at the confinement facility, he hit the guard
5 with his testicles because that's what I was told.

6
7 The Trial Counsel objected to the question, "Okay. Was he
8 combative," for hearsay. The Military sustained the objection.

9
10 **Questions by the Defense Counsel, continued:**

11
12 I don't have any personal knowledge of PUC 412. I probably saw
13 PUC 412, but I didn't have a lot of contact with most of the PUCs. I
14 dealt with my guards who had come in contact with PUC 412. They had
15 a relationship with him when they came in contact with him on a daily
16 basis. The nature of the relationship was transporting him
17 throughout the facility, if he went to interrogation rooms and the
18 latrine, and the guards maintained him in the iso cell.

19
20 The Trial Counsel objected to the question, "And what was PUC
21 412's reputation," for lack of foundation. The Military Judge
22 sustained the objection.

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

25
26 I know the troops that PUC 412 came into contact with. I
27 associated with my whole platoon who had come into contact with PUC
28 412. At one time or another, my whole platoon rotated through the
29 iso cells. PUC 412's actions were logged in the logbooks, and I read
30 the logbooks. PUC 412's reputation was combative, spitty, talking to
31 other PUCs. PUC 412 was in restraints because he had spit on guards,
32 hit guards, tried to kick at guards. I saw PUC 412 restrained in the
33 cell. PUC 412's position was that he had a belly chain on, a chain
34 that went to the ceiling in the front, one chain in the front so that
35 he couldn't hit himself against the wall or try to strike at somebody
36 once they went into the cell. PUC 412 could move around, but it
37 wasn't a lot. PUC 412 could not mule kick the door or the cell
38 because he was suspended away from the door, and he was in the center
39 of the cell. Some detainees who weren't chained as much as PUC 412
40 could mule kick the door. They could try to destroy the cell.
41 Destroying a cell was a problem because they were plywood cells that
42 were built, and they could kick at the door, kick at the hinges on
43 the doors that you would put the shackles on their legs with. We did
44 have a detainee who broke the door off. I can't remember that
45 detainee specifically who broke the door. That person who broke the

1 door was not chained in the cell. That person did not escape because
2 the guards grabbed him and stopped him. I don't remember exactly how
3 many guards grabbed him. I made a second statement after PUC 421
4 died. I remember that PUC 421 was combative also from what I was
5 told by the soldiers and the logbook. PUC 421 had a combative
6 reputation. I read things in the logbook regarding his combative
7 nature. I remember the one detainee striking SGT Berkley like I had
8 explained earlier, the one who had tried to reach for his weapon when
9 we were taking him out of the airlock. I can't remember if it was
10 412 or 421. SGT Berkley had a 9-millimeter weapon. The PUC was
11 still in shackles and leg irons, and he was thrashing. That was the
12 one that wouldn't let us get him in the airlock, and I don't know if
13 he grabbed at a weapon because he still had a hood on, but he went
14 close to Berkley's weapon, and Berkley struck him in the chest. It
15 would have been dangerous if he would have grabbed a weapon.
16

17 The Military Judge instructed the Defense Counsel to move to
18 questioning that was more relevant.
19

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

22 Regarding the common peroneal strikes, we were trained at Fort
23 Dix by MPs in the third platoon.
24

25 The Trial Counsel objected to the question, "Isn't it true that
26 that training was inadequate," for argumentative question. The
27 Military Judge sustained the objection.
28

29 **Questions by the Defense Counsel, continued:**
30

31 I think the teaching of the common peroneal strike was good. It
32 is true that there was only one class offered at Fort Dix, and it was
33 all day. This class wasn't only on common peroneal strikes, they did
34 a lot of nonlethal training. When I first gave my statement to CID,
35 I knew that common peroneal strikes were taught at Fort Dix, but
36 other than that, I did not put in my statement that they were taught.
37

38 The Trial Counsel objected to the question, "Okay. But you
39 stated in your statement that you don't think you were ever given
40 direction on when a common peroneal strike or a pressure control
41 tactic could be applied," for relevance. The Military Judge
42 sustained the objection.
43

44 **Questions by the Defense Counsel, continued:**
45

1 The common peroneal strike was taught to me when common peroneal
2 strikes should be applied at Fort Dix.

3
4 The Trial Counsel objected to the defense showing DE C for ID
5 because they were using the statement to impeach the witness. The
6 Military Judge stated that the witness was reviewing his statement to
7 refresh his recollection.

8
9 DE C for ID is my statement that I made on 5 February 2004. My
10 memory has been refreshed by reading DE C for ID. I did say that I
11 didn't think we were given direction on when a common peroneal strike
12 or pressure point control attack could be applied. As to what
13 changed my mind between then and now, if you're talking about level
14 of force, when it's supposed to be used, they didn't give us
15 specifics on when we could use it and when we couldn't use it. So,
16 on levels of force, if you got to that level, you could use the
17 common peroneal strike or pressure points.

18
19 ~~MS~~ The Trial Counsel objected to the question, "So, they just
20 ~~threw~~ a bunch of tactics out there and said, 'Here are your tools,'
21 but they never told you how to use those tools, correct," for
22 hearsay. The Military Judge sustained the objection.

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

25
26 So, the instructors at Fort Dix threw out techniques on force.
27 The people at Fort Dix left it up to me and the soldiers as to when
28 to use those techniques. As to if there were any changes that
29 occurred after PUC 412 died, I think we were told not to use the
30 hoods on the PUCs anymore. I don't specifically remember if anything
31 was told to us about force. After PUC 421 died, the commander put
32 out, and I don't remember if it was in between the two or after, that
33 the use of common peroneal would not be used. I can't remember if
34 the commander had said this before or after the second death, but I
35 think it was said after at least one of the people died.

36
37 The Trial Counsel objected to the question, "So, it wasn't
38 addressed by the unit until there was a death," for the way it was
39 phrased for argumentative. The Military Judge sustained the
40 objection.

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

43
44 There was guidance as to when to use the common peroneal strike
45 in the rules of force because, basically, we went to a two man escort

1 because we wanted to have more control over the PUCs, and I had put
2 out to my platoon that I did not want them to use common peroneal
3 strikes because they would have two personnel always with the PUCs
4 when they moved the PUCs. Most of the time there was no need for
5 more than two people to control a PUC. There was a fight on the
6 floor when we were taking the one out of the cell who was fighting
7 with the guards in the airlock. The only reason why we needed more
8 than two guards to control a PUC was because the guards were in the
9 cell, and the airlock had razor wire on the inside. So, we were
10 trying to get them out of the cell and it took more of us to get him
11 out of there so that he wouldn't get cut and the soldiers wouldn't
12 get cut. After PUC 421, I stated in my statement of 5 February 2004
13 that I and 1LT Buelterman was writing details in the green logbooks
14 because we knew they would be important. I did detail the death of
15 PUC 421 in those logbooks along with 412. Those log books would not
16 detail times when PUCs were combative. These were different logs
17 from the ones that were at the iso cells and on the floor. There
18 were log books on the floor, and that's not where we logged the
19 deaths in. We logged the deaths in a different book so that we could
20 keep it, and 1LT Buelterman put that in the office with the other
21 logs that were in there. The logbooks were green like the standard
22 Army issue green books. These log books would go where the iso cells
23 were or on the floor. There were three logbooks for each iso room
24 and the main floor in the facility. I was not aware of common
25 peroneal strikes being delivered to the PUCs. I thought I was in
26 tune with what my soldiers were doing.

27
28 The Trial Counsel objected to the question, "Okay. But now you
29 realize you weren't based on the allegations, correct," for
30 argumentative. The Military Judge sustained the objection.

31
32 The Trial Counsel objected to the question, "Are you aware that
33 several of your soldiers, between four and five of them, if that,
34 delivered common peroneal strikes," for asked and answered. The
35 Military Judge sustained the objection.

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

38
39 I didn't know until now how many of my soldiers used common
40 peroneal strikes. I never saw PFC Brand give a common peroneal
41 strike. I don't know if the commander knew about the common peroneal
42 strikes. As to if I didn't know about the common peroneal strikes,
43 why the commander discontinued them after the second death, I
44 couldn't tell you, he just put it out to the whole company. I had no

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1 part in that decision-making process. I testified as PFC Brand's
2 Article 32 on the telephone in March of this year.

3
4 The Trial Counsel objected to the question, "Didn't you say 'The
5 commander said that we should learn how to use common peroneal
6 strikes, and it was taught at Fort Dix so that we did the training
7 there, and we took over the facility on the night shift," for using
8 testimony from the Article 32 testimony. The Military Judge
9 sustained the objection.

10
11 The Trial Counsel objected to the question, "What did the
12 commander say to you about using common peroneal strikes," for
13 hearsay. The Military Judge sustained the objection.

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

16
17 As far as when I discussed common peroneal strikes with anyone
18 that was of a superior rank between the time we were received the
19 orders to deploy and when we came back home, the first time we talked
20 about it was at Fort Dix when they did the training there. That was
21 the only time until the commander put out that no common peroneal
22 strikes were supposed to be used in the facility. So, the only time
23 I had contact with somebody of a superior rank and talked about the
24 common peroneal strikes was at Fort Dix and that was my commander,
25 CPT Beiring, and 1LT Buelterman was also there too.

26
27 The Trial Counsel objected to the defense's question for
28 relevance. The Military Judge sustained the objection.

29
30 **Questions by the Defense Counsel, continued:**

31
32 The SOG gave directives to chain up the PUCs. The SOG would be
33 there because he had to give the directive, and either he would have
34 escorts come and assist, but there were always two to three people
35 who did the chaining. The chaining was kept track of by using
36 logbooks. There was nowhere else that kept track of who was being
37 chained. On the main floor, there was a dry erase board, but in the
38 iso cells, they had dry erase boards as well. Initially, there
39 weren't any dry eraser boards in the facility. We put those up.
40 When the commander finally said there would be no more common
41 peroneal strikes, it was done in guard mount. The whole platoon was
42 in the guard mount. I don't know if other platoons were with us.
43 Our platoon did guard mount separate from the other platoon. They
44 were already working the facility. So, I know the commander put it
45 out in our guard mount. I did not receive any hip pocket training at

1 Fort Dix regarding the common peroneal strike. I know what hip
2 pocket training is. I am sure there were no hip pocket trainings
3 concerning the common peroneal strike. I attended the Fort Dix with
4 my platoon, and that included PFC Brand. I was taught on the common
5 peroneal strike. When delivering the common peroneal strike, you are
6 supposed to use the dominant knee. I think it was two or three guys
7 out of third platoon who taught us at Fort Dix.

8
9 The Trial Counsel objected to the question, "So, your people in
10 377th taught you how to do common peroneal strikes, correct," for
11 asked and answered. The Military Judge sustained the objection.

12
13 **Questions by the Defense Counsel, continued.**

14
15 They were 377th soldiers who taught.

16
17 **REDIRECT EXAMINATION**

18
19 **Questions by the Trial Counsel:**

20
21 There is nothing different about the common peroneal strike than
22 any other strike that you can deliver to anybody else as far as use
23 of force rules. The normal use of force rules that you would learn
24 in MP basic training would apply. I have been to the rifle range. I
25 have not had rules of engagement training.

26
27 The Defense Counsel objected to the question, "In Afghanistan,
28 when you went over, did the JAGs give you rules of engagement
29 training," for relevance. The Military Judge overruled the
30 objection.

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

33
34 In Afghanistan, the JAGs gave me rules of engagement training.
35 I did not get both of those trainings on the same day. I knew both
36 trainings, and I knew when to keep them together.

37
38 The following questions were marked as: AE CXI, Question by SGM
39 Escamilla; CXII, question by LTC Simonelli; CXIII, question by 1SG
40 Montague; CXIV, question by 1SG Sims; CXV, question by LTC Simonelli;
41 CXVI, question by 1SG Sims; and CXVII, question by 1SG Montague.

42
43 **END OF PAGE**
44

1 **EXAMINATION BY THE COURT-MARTIAL**

2
3 **Questions by the Military Judge:**

4
5 Something can happen in the cells or operational areas to the
6 PUCs without the knowledge of Guards, the SOG, or the platoon
7 Sergeant if they are in the iso cell, and there was one guard there,
8 basically, you wouldn't know what was happening in there unless the
9 guard logged it all in the log book. On the main floor, there was
10 always three to four personnel downstairs. SSG Plummer was in the
11 platoon, but she was not there for the whole time. SSG Plummer went
12 back out on the gate. One of the gate personnel lost one of their
13 E6s, he had a family emergency, and she went back out to the gates,
14 but I couldn't tell you specifically when she went back out there. I
15 know that SSG Plummer understood the use of force or the policy I
16 stated on using minimal force. The SOGs knew about the policy on use
17 of force. As far as I knew she understood that force could be used
18 if the guards felt like there was bodily harm that could happen to
19 them or one of the other PUCs, they knew that they could use force.
20 I was present during my platoon's transitional training from ECP to
21 BCP off and on because I was out at the entry control points. I was
22 one of the last ones that came in; the other soldier that came in was
23 1LT Buelterman into the BCP. This was for the platoon we relieved.
24 During the transition, techniques used by the previous guard force
25 was discussed on how to deal with combative detainees or detainees
26 who did not comply. As to what I recall about use of force being
27 discussed with the outgoing platoon, basically, each unit that came
28 into the facility, they handed over the use of force as far as for
29 each platoon. We came into the facility and took over for second
30 platoon. So, basically, all we did was mirror everything second
31 platoon did when the flip-flopped out with us. The technique of
32 using compliance blows was not discussed as far as I know. I assumed
33 duty as first platoon Sergeant probably two years after I came to the
34 unit. I was squad leader, then the platoon Sergeant left, and then
35 off and on I was acting First Sergeant and platoon Sergeant
36 throughout my whole time at the 377th. I assumed those duties before
37 the unit was notified of our mobilization for deployment. The SOP
38 broke out the specific duties of the Sergeant of the Guard. Most of
39 the time MI made the decision to shackle the hands of the detainees
40 while they were in the isolation cells, or it was done by the SOG if
41 he was combative with the guard. There was information discussed or
42 exchanged about detainees not complying and how to handle those
43 situations because they were always supposed to go to the SOG if they
44 had a problem with a PUC, and that was put out in guard mount. The
45 information was put out in several guard mounts. Noncompliance with

1 PUCs did not happen that often. I would describe the level of
2 discipline among my soldiers under my supervision as being pretty
3 good. As to who was responsible or who supervised the compilation of
4 the logbooks, what ended up happening as far as every day, myself or
5 1LT Buelterman or the SOGs would go out and look through all the
6 logbooks. After the logbook got filled, it would go into the
7 headquarters where SGT Davis worked at, and he locked it in a safe
8 there. As to how much time I spent in the collection facility as the
9 platoon Sergeant and what times of day it was, like I said, when we
10 first got there, we were at the entry control points for about two
11 months, and when my platoon went in, I was the last one that filtered
12 in, I was in the facility every day, except for about every 15 to 20
13 days because myself or 1LT Buelterman would swap out, or one of the
14 SOGs would be the NCOIC, and one of the other E6s would be SOG for
15 the facility. As to as shift NCOIC, if I received shift change
16 briefings from the Sergeant of the Guard, when our platoon came off,
17 the other platoon would actually go into their guard mount, and they
18 would come around to myself and the SOG and asked us what happened at
19 the end of our shift so they could explain what happened at their
20 guard mount. That exchange of information was informal before the
21 next platoon's guard mount. The SOGs could act alone to chain
22 detainees. I did give an order to chain some detainees. There were
23 medical or physical examinations conducted on the PUCs when they
24 first came into the facility that would do a complete physical on
25 them, and check to see how they were. When the detainees were ready
26 to ship to Guantanamo, they would have another complete physical on
27 them. When we got into the facility, there was a medic stationed in
28 the facility, and he constantly routinely checked the PUCs, but as
29 far as once we got in the facility, we did not have a medic. We had
30 combat lifesavers, but we had no medical personnel there on a regular
31 basis. We ended up getting a medic assigned to our unit, and then he
32 started coming in and giving medication to the PUCs if they needed
33 medication. None of the examinations resulted in the disclosure of
34 any physical abuse against the PUCs that I am aware of. (The levels
35 of force, as they apply, from the least to the most deadly are as
36 follows: First, you would just go ahead and tell the PUCs what you
37 need them to do, we didn't have interpreters in the facility. So,
38 most of it was done by hand gestures, as far as for them to get up or
39 sit down or for them to come to the front of the gate, or go to the
40 back of the gate. Then, you would have other guards that would
41 assist you to move them wherever they needed to move, so you would
42 use a show of force with more troops; and as far as them trying to
43 escape, you start at the bottom as far as yelling at them and telling
44 them to halt, move on up, show of force; and then shoot them if they
45 tried to escape. So, you had different levels of force you could use

1 for the prisoners. My specific duties as the platoon Sergeant or the
2 shift NCOIC, I basically made sure everything was running fine inside
3 the facility. I also coordinated with SGT Davis who was the
4 headquarters cell for us there as far as when we knew when we had to
5 go down to the flight line to pick up new PUCs, and we would assign
6 guards that were in the facility to assist going down to the flight
7 line to pick up the PUCs and bring them back in. I assisted in
8 inprocessing of the PUCs; and coordination between the MI, the SOG,
9 and myself as far as movement of PUCs and stuff inside the facility.
10 The procedure we followed to get an interpreter was to call down to
11 the JOC, because we wouldn't have interpreters on night shift. The
12 day shift had interpreters, and MI had interpreters. So, if we
13 needed an interpreter, we would go up to MI and get one of MI's
14 interpreters to come down if we had to give directions to one of the
15 PUCs, but most of the time MI was asleep at night. I did not
16 supervise the use of an interpreter, nor have I arranged for an
17 interpreter to be used with my soldiers.

18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 RE CROSS-EXAMINATION

Questions by the Defense Counsel:

23 There was no hip pocket training at Bagram between the second
24 and my platoon. They basically showed us what they did in the
25 facility, and that's what we did once we got inside the facility.

27 The Trial Counsel objected to the question, "Okay. That's not
28 hip pocket training," as confusing the witness. The Military Judge
29 sustained the objection.

Questions by the Defense Counsel, continued:

33 Chaining was not used for punishment, but it was used for
34 restraint. What we had to do is if the PUC was combative, then we
35 chained them because we didn't want them to hurt the guards or the
36 other PUCs. If SSG Plummer said yesterday that chaining was used for
37 punishment, it was only if the PUC was persistent, we did have to
38 chain them if they were persistent because sometimes they would fight
39 with you, they would stop, and then they would come back and fight
40 with you again later on. I am saying that you had to stop them and
41 you would have to correct them, so, you would have to chain them.
42 Regarding the medical exams, the detainees were examined for
43 hepatitis and I can't remember what other disease they were tested
44 for. It's true that some detainees had masks on for tuberculosis so
45 they wouldn't spread the disease.

1 The Trial Counsel objected to the question, "Now, are you
2 stating that there are always two guards on one of the PUCs at all
3 times, correct," for mischaracterization. The Military Judge
4 sustained the objection.

5
6 Questions by the Defense Counsel continued:

7
8 There were not always two guards on one PUC because, sometimes
9 when we had to go to the flight line, the JOC would call us to tell
10 us that we're going to get six prisoners that came in. Well, we'd
11 send down what we could send down to pick up the PUCs, but it was as
12 a team. So, it wasn't a one to one thing. At any time, you always
13 had another person there with you.

14
15 The Trial Counsel objected to the question, "Now, you also
16 testified that after the second detainee died, the common peroneal
17 strike was outlawed, correct," for mischaracterization of facts. The
18 Military Judge sustained the objection as being asked and answered.

19
20 Questions by the Defense Counsel continued:

21
22 After the second PUC died, you could still chain the detainees^{WMS},
23 but you had to chain the PUC's hands below their waste. Chaining to
24 the ceiling was prohibited after the second PUC died.

25
26 The Trial Counsel objected to the question, "CPT ^{being} ~~Bearing~~ told
27 you that," for relevance. The Military Judge sustained the objection
28 for hearsay.

29
30 Questions by the Defense Counsel continued:

31
32 The command told me that chaining to the ceiling was prohibited.

33
34 There being no further questions by both parties, the witness
35 was warned and withdrew.

36
37 The court-martial recessed at 1421, 16 August 2005.

38
39 The court-martial was called to order at 1434, 16 August 2005.

40
41 All parties present prior to the last recess were again present.
42 The members were present.

43
44 END OF PAGE
45

1 PVT Brian Cammack, U.S. Army, was called as a witness for the
2 prosecution, was sworn, and testified in substance as follows:
3

4 **DIRECT EXAMINATION**

5
6 **Questions by the Trial Counsel:**
7

8 I am Brian E. Cammack, and I reside in Williamstown, Kentucky.
9 I am still a Private in the U.S. Army. I don't have a uniform on
10 today because I was convicted in this courtroom previously, and I've
11 already served my sentence, and the corrections facility that I went
12 to threw away my Class A uniform. I am now on involuntary ~~extended~~ ^{release} ~~in~~
13 leave. I was with the 377th MP Company. My rank and duty position
14 there was as a Specialist and I was an MP and a medic. I recently
15 pled guilty to the charges I was talking about here in this
16 courtroom. The charges I pled guilty to were assault and making a
17 false statement. I had assaulted PUC 412, also known as Habibullah.
18 When I struck him, he was in cell seven of the downstairs isolation
19 cell. He was facing towards the door, belly chain and holding his
20 hands cuffed in his groin area, and he had two belly chains that
21 connected to the ceiling to keep him from kicking at the door. The
22 bottom picture of PE 8 shows the general layout of the downstairs of
23 the prison facility. I know it's the layout because I worked in
24 there. On the right hand side, there are the general population
25 cells, and the left side of the bottom picture of PE 8 is the
26 downstairs isolation. I said I struck Habibullah when he was in cell
27 seven. Cell seven, on the lower diagram of PE 8, cell seven is where
28 the blue H is. I struck Habibullah on the same day of his death.
29 Habibullah was in that cell. The two photographs on the top of PE 8
30 depict the door to the cell that Habibullah was in. I know the
31 second person who died was known as BT 421, and his name was Dilawar.
32 I know that Dilawar was upstairs in an isolation cell. Looking at
33 the bottom diagram of PE 7, that is the layout of the upstairs
34 isolation. On the right hand side, that's looking down on to the
35 general population cells. Dilawar was in cell one which was on the
36 bottom part of the diagram of PE 7, and I will mark it with a D.
37 That is isolation cell one. The two photographs at the top of PE 7
38 depict the door and inside of the cells upstairs. Those pictures
39 fairly and accurately depict the way iso cell one upstairs looked
40 when I saw Dilawar in there in December 2002 with the exception of
41 where the shackles are up on the ceiling. Those shackles on each far
42 wall, nobody has an arm span that reached that far, he would have
43 been off the ground. The two photographs on the top of PE 8 fairly
44 and accurately represent what the outside of the cell looked like at
45 that period of time. The circumstances that led me to strike

1 Habibullah was that we were attempting to feed him, and he was
2 refusing to eat, and he spit on me. I got mad, and I struck him.
3 SPC Morden and SGT Boland were in the cell with me. SGT Boland, an
4 E5 was in the cell with me. SGT Boland, in response to what I did,
5 didn't do anything at the time except walk out of the cell with me,
6 but he came back later and talked to me about the incident, and told
7 me we couldn't be having that type of behavior. He told me that he
8 informed his squad leader which was SGT Berkley, and SGT Berkley was
9 going to be getting with my squad leader, SGT Handorff, and they were
10 going to be talking to me about it later. The NCO told me that we
11 couldn't have that kind of stuff within the facility. I am familiar
12 with the logbooks in that facility. I was an isolation guard. I was
13 a Specialist. PFC Brand, when he was over there, was also a
14 Specialist. He would have been occupying the same positions that I
15 was occupying in the facility. We were in the same squad together.
16 We were in first platoon. SFC Hawkins was our platoon Sergeant.
17 Going to the logbooks, when I was the isolation guard, I had an
18 opportunity to look through them. I would always look at the shift
19 previous before me to see if there was anything unusual that we
20 should know about. When looking at the logbooks, I never saw
21 anything logged about the soldiers striking detainees.

22
23 The Defense Counsel objected to the question, "What did your
24 NCOs know about people using the common peroneal strike, for
25 speculation. The Military Judge sustained the objection.

26
27 The Defense Counsel objected to the question, "Did you
28 personally believe that your NCOs thought it was okay to strike
29 detainees in cells," for leading. The Military Judge overruled the
30 objection.

31
32 **Questions by the Counsel continued:**

33
34 I did not personally believe that my NCOs would think it was
35 okay for a guard to go in and strike a chained detainee. If a
36 detainee was not chained in a cell and the detainee got combative,
37 the guards could strike the detainee. Combative means a situation
38 that posed a threat to either one of the guards or a detainee then we
39 were authorized force to gain control of the situation.

40
41 The Defense Counsel objected to the question, "When, if ever,
42 did an NCO tell you that you could strike a detainee when he was
43 chained up for not putting a hood on, when did that ever happen," for
44 relevance. The Military Judge overruled the objection.

Questions by the Trial Counsel continued:

No NCO ever told me it was okay to strike a detainee when he was chained up for not putting on their hood. No NCO told me to strike a detainee. Going to Qatar, a small group of us went to Qatar to load up all of our equipment on ship that was going to follow us home, and the rest of the main body of the unit all went ahead and flew straight home. There were approximately ten soldiers in Qatar. PFC Brand was one of the soldiers in Qatar. There was an opportunity where people were talking about striking the detainees. We got into conversations talking about some of the silly things the detainees had done, and people started talking about, "Well, I did this, and I did that," and at the time, PFC Brand got into a conversation where he was talking about it. I can't remember what PFC Brand had said that the detainee had done to make him mad, but he said he got up into the guy's face, and said, "Okay. That does it, 15 peroneal strikes to each leg starting now," and then he started doing an imitation with him swinging his leg, and he said his legs got sore, and he acted like he was rubbing his leg, and he switched to the left leg, and was doing an imitation of that with his left leg. PFC Brand's attitude when he was relaying this story was laughing about it, and just thought it was a joke really. I have not seen an NCO or an officer at Bagram airfield say it was okay to strike a detainee who was chained up in a cell for refusing to put his hood on. As to what kind of MP training I have, I was originally a medic, and so I took the reserve component course which is you do one weekend out of the month for six months, and then you do a two week AT conversion course, and you're granted the MOS that you've done for that, and then the training that I received at Fort Dix. With that training I had, I don't think it would ever have been okay for me to go into a cell and strike a detainee 30 times in the leg.

CROSS-EXAMINATION

Questions by the Defense Counsel:

We have met at your office before. CPT Leone is my attorney.

The Trial Counsel objected to the question, "Have you talked to CPT Leone recently," for relevance. The Military Judge sustained the objection.

END OF PAGE

Questions by the Defense Counsel continued:

I pled guilty in May of 2005 to some of the offenses that I was charged with. The other offenses were not pursued. I pled guilty to unlawfully striking Habibullah at least once with my knee, but I did not plead guilty to the other maltreatment charge. I also pled guilty to two specifications for making false statements. I served my punishment, and I'm still a Private in the Army. When I made those false official statements, I made a total of five statements.

The Trial Counsel objected to the question, "Are you sure it wasn't six or seven," for relevance. The Military Judge inquired if the witness could have made more than five statements, and the witness stated that he could have made more.

Questions by the Defense Counsel continued:

I have been given immunity to testify here today. My testifying here today was part of my pretrial agreement, and for the immunity.

The Trial Counsel objected to the question, "So, you made seven statements to CID, and those statements differed in a number of respects, correct," for improper questioning. The Military Judge sustained the objection.

Questions by the Defense Counsel continued:

I stated in one of my statements that I struck Dilawar. I did not strike Dilawar. Like I stated in the Article 32, CID had asked me about a situation they heard about, and I told them I didn't think it was Dilawar because it was right after we had gotten in there, and it was in a combative situation, and they told me that, "Well, no, we already heard the story about this, it was Dilawar," and I thought about it, and they told me it was Dilawar. So, I finally said, "Okay. It was Dilawar, and I came back later, and I said, "No, I've thought about that, and I know it wasn't Dilawar."

The Trial Counsel objected to the question, "So, CID, in essence, forced you to make a statement," for argumentative. The Military Judge sustained the objection.

Questions by the Defense Counsel continued:

I made a false statement that I said I was pretty sure it was not Dilawar, and then after they told me they had already heard the

1 story, and they knew it was Dilawar, then, I said okay maybe it was.
2 CID did not pressure me, but they were telling me they had already
3 heard the story, and they knew it was Dilawar.

4
5 The Trial Counsel objected to the question, "Did they tell you
6 that you were wrong," for relevance. The Military Judge sustained
7 the objection.

8
9 Questions by the Defense Counsel continued:

10 The persons^{UNK} who took these statements ^{were} ~~was~~ SA Flores and SA
11 Potter. After I gave those statements, it was SA Birt and Owens and
12 a Mr. Chigi who took my statements. I gave false statements to SA
13 Flores and Potter. I did not give false statements to SA Chigi or SA
14 Birt. SAs Chigi and Birt interviewed me in Cincinnati.

15
16 The Trial Counsel objected to the question, "Okay. Isn't that
17 where you said you struck Dilawar," for relevance. The Military
18 Judge sustained the objection, and directed the counsel to focus on
19 proper cross-examination.

20
21 The members withdrew, the witness withdrew, and an Article 39(a)
22 Session was called to order at 1452, 16 August 2005.

23
24 The Military Judge stated that the Defense Counsel had the
25 witness admit to making^{my} a false official statement, and that unless the
26 defense had a prior inconsistent statement that related to testimony
27 against the accused, and that anything else the witness would say was
28 irrelevant. He further stated that if the Defense Counsel needed to
29 confer with his co-counsel, he could have a five-minute recess.

30
31 The session terminated at 1453, 16 August 2005.

32
33 An Article 39(a) Session was called to order at 1501, 16 August
34 2005.

35
36 All parties present prior to the last recess were again present.
37 The members were absent.

38
39 The Military Judge ascertained from the defense that they were
40 ready to proceed.

41
42 The witness^{re} entered the courtroom, and was reminded he was still
43 under oath.

1 The members entered, the session terminated, and the court-
2 martial was called to order at 1502, 16 August 2005.

3
4 **CROSS-EXAMINATION CONTINUED**

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

7
8 I had no reason to come into contact with PUC 412. I came into
9 contact, but I did not have a reason to come in contact with PUC 412.
10 I did not see PUC 412 on a daily basis. The only dealing I had with
11 PUC 412 was the day I struck him, and the same day when he died. I
12 know people that had associated with PUC 412, and I know of some of
13 the information that had been passed on to us from combative
14 situations that he had been in.

15
16 The Trial Counsel objected to the witness's answer as hearsay.
17 The Military Judge overruled his objection.

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

20
21 PUC 412 was combative. When I dealt with PUC 412, there was
22 thrashing around. PUC 412's legs were not off the ground when he was
23 in the isolation cell, and his arms were in a belly chain fastened to
24 his waist. PUC 412 was hooded before I went in to try and feed him,
25 and then we removed the hood, and that's when he spit on me. The
26 only relations I had with PUC 421 was one night when I was on the
27 over watch which was just a plank that was above there to try and
28 watch to make sure no one escaped. I saw him get into a combative
29 situation with several guards which they took him up to the isolation
30 cell. The situation that I saw was he was trying to escape out of
31 the airlock which was the double lock doors into the cell, and when
32 they tried to take him out of there, they realized they weren't
33 getting control of him. So, they put him in the isolation cell. I
34 don't remember the time frame when this happened. I don't remember
35 how many days it was before he died. I don't remember how many
36 guards it took to subdue him. I remember it was about five to secure
37 Dilawar. Dilawar was attempting to escape out of the cell they had
38 him in, in a non-isolation cell. The airlock was basically like an
39 isolation cell in the general population. There were two doors to
40 get into the general population cells, and it was big enough to make
41 one cell out of that. So, he was in a cell by himself, but in the
42 middle of the general population.

43
44 The Trial Counsel objected to the question, "Okay. It's true
45 you described this in your sworn statement as a wrestling match,

1 correct," for going into the statement. The Military Judge sustained
2 the objection.

3
4 **Questions by the Defense Counsel continued:**

5
6 I would say I think of this as a wrestling match, and he put up
7 quite a fight if it took five guards to take him down. Dilawar was
8 not chained at the time.

9
10 The Trial Counsel objected to the question, "What was your
11 training like at Fort Dix? Your training was inadequate at Fort Dix,
12 correct, for relevance. The Military Judge sustained the objection.

13
14 The Trial Counsel objected to the question, "You did not receive
15 adequate training at Fort Dix," for relevance. The Military Judge
16 sustained the objection.

17
18 **Questions by the Defense counsel continued:**

19
20 My training at Fort Dix did not prepare me for what I
21 encountered at Bagram. They didn't teach me about the use of force
22 at Fort Dix. Our NCOs taught us hand-to-hand, and rules of
23 engagement. That was hip pocket training. They did not teach us
24 about the common peroneal strikes at Fort Dix. Third platoon did not
25 teach us the common peroneal strikes at Bagram. We never really had
26 any interaction with third platoon. They were a different shift than
27 us. The shift we relieved was third platoon, but we got no hip
28 pocket training from the third platoon. They never told me what they
29 did on their watch so that I could transfer it to mine. I don't
30 remember receiving anything from third platoon.

31
32 The Trial Counsel objected to the question, "Would you be
33 surprised if Sergeant Hawkins said they did," for improper testimony.
34 The Military Judge sustained the objection.

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

37
38 I can say it was pretty common to be sent on missions to either
39 repatriate one of the prisoners who had been found innocent, and we
40 were sending him home, or to go pick up somebody that they had caught
41 out in the field. It's possible that third platoon did give us some
42 type of training, and that I was out on a mission that day, but I
43 don't remember anything like that. I don't remember if the SOP at
44 Bagram was word of mouth or if there was something actually in
45 writing. I don't remember reading any document. Detainees were

1 chained because they were being punished. After the second detainee
2 died, we stopped chaining the detainees to the ceiling. That was on
3 the order of my command. CPT Beiring was my commander. I was also
4 given an order to stop using the common peroneal strikes, but I don't
5 remember the time frame when they told us to stop using the strike,
6 but I do remember that speech when they told us to stop. I don't
7 remember if they gave us this speech after the first detainee died.
8 In Bagram, I did not see anyone else use the common peroneal strike.
9 I saw PFC Brand use the common peroneal strike right after I got
10 there when I mistook that for the situation with Dilawar. When I
11 described the time when Brand and I were dealing with a combative
12 situation, we both delivered a common peroneal, and CID told me they
13 heard the story, and they thought it was Dilawar, and I finally said
14 that it was Dilawar, but other than that time I struck Habibullah, I
15 don't remember seeing anybody else strike the detainees. I said
16 earlier that when I spoke with CID, they told me that they had
17 already heard the story, and they were trying to get me to say it was
18 Dilawar, but I told them I thought it was long before Dilawar came in
19 there, and they told me that it was Dilawar. So, I agreed with them,
20 and then I came back and told them later that I was thinking about
21 that, and it was not Dilawar.

22
23 The Trial Counsel objected to the questions of the witness
24 because the witness had indicated that it was a different detainee.
25 The Military Judge overruled the objection.

26
27 **Questions by the Defense Counsel continued:**

28
29 The person we hit was neither Dilawar nor Habibullah. That
30 detainee that we hit was being combative, and I thought that using
31 common peroneal strikes was a good way to control the detainee. The
32 strike did control the detainee. It was effective and useful, and
33 nobody got hurt. The nature of our conversation in Qatar was one of
34 joking. As to if people were joking about the deaths, I wouldn't say
35 joking, but up until that point, the deaths hadn't come up. At the
36 time, we were joking around about some of the silly things that we
37 had seen them do such as they would try to hide the food from us, and
38 when we did cell searches, they would try to act like it's not theirs
39 when it was rolled up inside their blankets. We were joking around
40 about things like that. The topic of conversation eventually turned
41 to the deaths, but it wasn't like a direct turn around. We
42 eventually went into some of the combative situations that we had
43 been put in, and that's when PFC Brand turned it into the thing that
44 he was talking about with the 15 on each leg.

1 The Trial Counsel objected to the question, "This conversation
2 happened over two years ago, correct," for misstating facts in
3 evidence. The Military Judge sustained the objection.

4
5 **Questions by the Defense Counsel continued:**

6
7 This conversation happened about March of 2003. It was over two
8 years ago. Other people admitted to kneeling detainees as well at
9 that time. Among the other people who admitted kneeling detainees,
10 neither SPC Morden nor SGT Berkley were in Qatar. SPC Nichols and
11 SPC Wathon admitted to striking the PUCs as well as myself.

12
13 The rial Counsel objected to the question, "Okay. And
14 Specialist Nichols said that he did it over 50 times, didn't he," for
15 hearsay. The Military Judge sustained the objection.

16
17 **Questions by the Defense Counsel continued:**

18
19 PFC Brand was in a jovial mood that day. PFC Brand was
20 laughing. PFC Brand could have been telling a tall tale.

21 The following questions were marked as: AE CXVIII, question by
22 SGM Escamilla; CXIX, question by LTC Simonelli; CXX, question by 1SG
23 Montague; CXXI, question by SGM Escamilla; and CXXII, question by LTC
24 Simonelli.

25
26 **EXAMINATION BY THE COURT-MARTIAL**

27
28 **Questions by the Military Judge:**

29
30 I learned the common peroneal strike technique from our NCOs
31 while we were at Fort Dix. Neither me nor any member of our platoon
32 were given lawful orders by our superiors either verbally or in
33 writing to use compliance blows against combative detainees. I would
34 defined a combative detainee, based on my experience, would be
35 anybody posing a physical threat to us or another detainee at the
36 time whether it was trying to escape or trying to physically assault
37 one of our guards or a fellow detainee. I did not let anyone in my
38 chain of command know that I struck a detainee. I was briefed on how
39 to handle a detainee once I did use force. SFC Hawkins usually put
40 it out that if they were inside the cell, and we had a problem, push
41 them away from the door, hurry up, shut the door, let him know, and
42 he will handle the problem from there. The next step from that was
43 that he would take the problem up to the interrogators and they would
44 figure out something to do as punishment for them. I used the
45 logbooks to record information in them. I would write all activities

1 that happened in the area that I was in charge of. If somebody went
2 to the interrogation room, you would put exactly what time they left,
3 and what time they came back. If you had any situation with them, it
4 would be put in that logbook. I would see my platoon Sergeant about
5 three to four times at night in a 12-hour shift. I used an
6 interpreter. The circumstances that I would use an interpreter,
7 sometimes, if the detainee was trying to ask for a doctor or he was
8 trying to tell us something we couldn't understand, it was common for
9 us to go get an interpreter or one of the cooperative detainees that
10 we had that spoke English and the language that that person spoke, we
11 would go get them and relay the messages to try and figure out what
12 he was trying to tell us. PUCs 412 and 421 stood out among all the
13 other PUCs because they had much more history to them of combative
14 situations. Every guard mount meeting that we had before shift,
15 while they were there, there was always information put out about
16 them and what they had done in the last 24 hours. It got to a point
17 where just everybody knew to watch out. Any time you had to deal
18 with one of them, then you knew that something was going to happen.
19 As far as us on the night shift, I almost never saw the commander or
20 the ~~First~~ ^{was} Sergeant. When handling a detainee, we were not left
21 alone. We had a standing rule of at least two escorts for a
22 cooperative detainee and at least three escorts for a known combative
23 detainee. It would be possible to be alone with a detainee in an
24 isolation cell. The MI people had the responsibility for determining
25 punishment for the detainees. At first, the MI tried to do things
26 that we thought was too harsh, and we eventually started saying,
27 "Well, we won't do this," or, "We won't do that." If MI tried to tell
28 us something, we'd pass it on to the SOG, and if he agreed with it,
29 then we would execute it whether it was having somebody stand up for
30 a few hours or try to keep them awake for the next 24 hours. That
31 was standard operating procedure that the MI would indicate what
32 needed to be done. I was present during the transitional training
33 from the entry control point duty to the BCP, and we did have
34 transitional training with the platoon we replaced. When we replaced
35 them, we shadowed them for the first day, and then they shadowed us
36 and watched how we did it, and they approved how we were doing
37 things, and on that third day, they loaded up in the planes and went
38 home. We did not discuss techniques on how to deal with combative
39 detainees with the platoon that we relieved. I did not discuss
40 compliance blows with the platoon we relieved, and I don't know if
41 the leadership did. It was an unwritten SOP to use compliance blows
42 against combative detainees. Once the combative situation was taken
43 care of, compliance blows was not authorized. Again, combative
44 situations are any physical threat to our safety or the safety of
45 another detainee or anyone else present. I did not have a

1 predetermined action in mind of using the compliance blow against
2 PUCs 412 and 421 once I knew I would have to handle them based on
3 what I heard in guard mount, but I knew that I was going to handle
4 the situation as best that I could, and I failed to do that when he
5 spit on me. In my opinion, I believe other guards had the
6 predetermined course of action to use the common peroneal to gain
7 compliance because that strike was so easily used. Many of the
8 pressure points, if you hit it and you missed that nerve, all you've
9 done was hit somebody. If you missed the nerve on the common
10 peroneal, you still knocked their leg off balance enough to get
11 control of them. And with that being the easiest one to use, that
12 just became the main one that we used, and I can see how people
13 pretty much just relied on that one alone.

14 RE CROSS-EXAMINATION

15 Questions by the Defense Counsel:

16
17
18
19 I used the common peroneal strike to get control over the
20 detainees. I used other cooperative detainees as interpreters. So,
21 there were times at the Bagram control point where interpreters were
22 hard to come by. After PFC Brand made his statement in Qatar, I
23 didn't tell anyone about that because I couldn't tell anyone. We
24 were in Qatar on our way home. I did not tell my chain of command at
25 the time, because there was no chain of command. There was 1LT
26 Mueller, and SGT Handorff staying gone arguing with them trying to
27 get airplanes, and they usually didn't come back until late at night.
28 So, I wouldn't even see them that night, and by the next day with
29 everything else going on, we were being put on details or running
30 around trying to trace down where our airplane was because each day
31 it was rumored that it was there, and then we'd show up, and it
32 wouldn't be there. With all the hassle we had, I never relayed the
33 information. The punishments that the PUCs received were logged.

34
35 There being no further questions by either party, the witness
36 was warned and withdrew.

37
38 The court-martial recessed at 1530, 16 August 2005.

39
40 The court-martial was called to order at 1541, 16 August 2005.

41
42 All parties present prior to the last recess were again present.
43 The members were present.

44

1 CW4 Angela G. Birt, U.S. Army, was called as a witness for the
2 prosecution, was sworn, and testified in substance as follows:
3

4 DIRECT EXAMINATION

5 Questions by the Trial Counsel:
6

7 I am Angela G. Birt. I am a CW4 with the 11th MP Battalion in
8 Baghdad, Iraq. I am not in a Class A or Class B uniform today
9 because I just arrived from the combat zone on Thursday. I have been
10 in the Army for just over 21 years. I have been in CID for just
11 about 16 years. Between 2000 and 2003, I was stationed at Fort
12 Belvoir, Virginia at ~~the~~ Headquarters, U.S. Army CID. I did become
13 familiar with an investigation into the deaths of two detainees at
14 Bagram airfield. I saw the initial reports as they rolled in, and
15 then I was asked to review the reports as they were prepared for
16 closure in April of 2003. In April of 2003, my position in relation
17 to those cases was as a command forensic science officer, and my
18 responsibilities were to oversee and review any sensitive or high
19 visibility investigations. When I took over the investigation,
20 another agent was assigned with me, a SA Carton, and we began working
21 on that case in August of 2003. In August of 2003, we did a
22 comprehensive review of the file again, and began to structure an
23 investigative plan. That investigative plan included from the
24 beginning with what the doctrine was for the detention facilities at
25 that time, and what the MPs were supposed to be doing. From there,
26 we traveled to the Pentagon and talked with subject-matter experts.
27 After that was completed, we then went to the training facility at
28 Fort Dix and talked with the actual trainers who conducted the train-
29 up with the 377th, and asked them about what training had been
30 conducted, and what standard they were trained to. And then,
31 probably in September or October, we began the process of locating
32 witnesses who had previously been interviewed and re-interviewing
33 them. We started with the interpreters who had worked in the
34 facility with some of the interrogators and military police, and that
35 progressed through October. In November, we finalized the interviews
36 by visiting the Bagram control point in Bagram, Afghanistan and
37 talked with those folks. We visited the facility, looked for
38 records, didn't find any, but we looked for records there, and then
39 in December, we brought on some additional members of the team in
40 preparation for travel to Cincinnati to interview the 377th MP
41 Company. In December, we took a week off, brought everyone up to
42 speed, about six additional agents were added, and we read the case
43 file from cover to cover, and made sure everybody had the same
44 knowledge of the case, and then we went to Fort Bragg and interviewed
45

1 the MI interrogators in January, and in February, we went to
2 Cincinnati, Ohio, and set up for about three weeks, possibly a little
3 longer than that. We had to go back a couple of times to interview
4 about 90 plus members of the 377th MP Company. March and April is
5 when the Iraq war started, and my duties took me to Dover to work on
6 the remains of some soldiers there. And we began to wrap things up
7 in June. In June, we did interviews in Guantanamo Bay, Cuba. We
8 went down and found other detainees that had been in the facility at
9 the same time that the two men who died were there to see if they had
10 any information to relay. In July, we visited Fort Bragg and
11 interviewed leadership, consulting attorneys, commanders, folks who
12 were involved in the chain of command all the way up to the base
13 commander. In August, we began to wrap things up, and there were a
14 few more things that were done as the Trial Counsel was brought in,
15 and he did a complete review of the case. He asked us to do some
16 follow-up leads, and re-interview a few people, clarify some things,
17 and in September, I began to prepare the final report which was
18 published in October 2004. After October 2004, both cases had been
19 completed. At that time, all of the soldiers involved in this case
20 were not under one command. The soldiers involved in this case were
21 scattered across the globe. There was an effort to consolidate them
22 to one court-martial convening authority done by MAJ Dehn, our Trial
23 Counsel. I don't have knowledge when PFC Brand was charged. The
24 charged sheet should reflect that. I am familiar with the common
25 peroneal strike now. The strike was demonstrated to us by several
26 people, and it basically involved the striker using their kneecap or
27 the flat of their thigh to strike the area of the recipient's leg
28 between the pelvis and the knee. I did not receive one of those
29 strikes. I had an occasion to ask PFC Brand whether he had delivered
30 any of those strikes. On 24 January 2004, I had an opportunity to
31 interview PFC Brand on that day. That interview occurred at the
32 Embassy Suites hotel in a suburb of Cincinnati called Blue Ash.
33 Present at the interview was myself, SA Carton, and PFC Brand. The
34 layout of that Embassy Suites hotel was a standard hotel suite with a
35 living area that's in the front of the suite with a couch, an
36 overstuffed chair, a desk, and a computer table that I had set up for
37 taking statements. There was an area that had a sink and a
38 refrigerator where we kept refreshments for the interviewees and also
39 behind the door was a sleeping quarters and a restroom. The
40 interview started in the late morning around 11:00, and proceeded
41 until about 1700, 1730. In that interview there was PFC Brand, SA
42 Carton, and I. PFC Brand was a Specialist at that time. As to how
43 far away I was from PFC Brand, it varied. It was a lengthy
44 interview. So, at the time we were advising him of his rights, SA
45 Carton was sitting right next to him on the couch, and then I was

1 sitting in the overstuffed chair. Then, later on during the
2 interview, I progressed to the typing function and began writing down
3 what was being said, I was sitting behind the desk probably no
4 further than I am from the panel which is about eight feet from my
5 chair to the panel bar. Neither SA Carton nor I were ^{in my} ~~uninformed~~ ^{was}. SA
6 Carton was armed. PFC Brand was not able to see the weapon at first,
7 but SA Carton did remove his jacket during the interview so he would
8 have been able to see the weapon. If PFC Brand had to go to the
9 bathroom or get a drink of water, he was allowed to do that. PFC
10 Brand was informed that he was allowed to get water or go to the
11 bathroom. Before we began the interview, SA Carton informed PFC
12 Brand of his rights. There is a DA 3881 that contains the
13 rights/warning procedure that we use routinely, and SA Carton reads
14 from the script on the back of the form. PE 1 is a true and correct
15 copy of the rights/warning that was read to PFC Brand that day. SA
16 Carton advised PFC Brand of his rights by asking him to verify the
17 information located at the top portion of the form which contained
18 his name, rank and social security number and his unit of assignment,
19 and then he went through that Section A advises him, "The
20 investigator whose name appears below has told me that he or she is
21 with the United States Army Criminal Investigation Command as a
22 special agent and wanted to question me about the following offenses
23 of which I am suspected or accused." The word accused is marked out,
24 and it bears PFC Brand's initials next to it. And then, the offenses
25 are assault and battery, false official statement, cruelty and
26 maltreatment, and negligent homicide follow, and they are also
27 followed by PFC Brand's initials again indicating that nothing else
28 was to be discussed. Then, on the backside of DA 3881, after we
29 discussed the nature of all of these offenses, basically asking PFC
30 Brand, "What do you think that assault and battery is," and
31 discussing it and making sure that he understands each one of these
32 offenses, and making sure that he understands that we were talking
33 about them in context with the two men in Afghanistan. Then, SA
34 Carton reads, "Before I ask you any questions, you must understand
35 these rights," and he reads the exact rights that are on the form.
36 The exact rights that are on DA 3881 are on page two. After we read
37 the rights, we ask a series of questions to PFC Brand. The questions
38 are also on the waiver certificate. The questions are, "Do you
39 understand your rights? Have you ever requested a lawyer after
40 having been read your rights? Do you want a lawyer at this time, and
41 at this time, are you willing to discuss the offenses under
42 investigation and make a statement without talking to a lawyer and
43 without having a lawyer with you?" And there is a pause and an
44 answer after each one of those. PFC Brand did answer those
45 questions. PFC Brand understood his rights. PFC Brand put his

1 initials and signature in block three where it says, "Interviewee,"
2 indicating that he wished to waive his rights. He put his initials
3 on the date and time, and at the beginning and end of the line
4 bearing the offenses. As to when I talk about the offenses if I
5 speak of them in the abstract or let him know what act it was that I
6 think he did that might make him guilty of it, with this particular
7 case what we talked about was there are lawful reasons that a police
8 officer might put his hands on someone, and that's not what we're
9 talking about. We were talking about excess abuses of force, or use
10 of force when it's not lawful. So, that was the assault portion that
11 we were discussing, and false official statement of course meant that
12 he executed a statement under oath, and it has been proven to be
13 knowingly and intentionally false. Cruelty and maltreatment meant
14 that there was some type of misbehavior with regard to people in his
15 custody namely the prisoners in Bagram that subsequently died, and
16 the negligent homicide of course was that the two men in that
17 facility died as a direct result of some misconduct. The misconduct
18 that I told PFC Brand that I thought he had done to lead to that
19 death was the striking the detainees' legs with common peroneal
20 strikes. I don't think at this point, we had gone into the level of
21 detail of how the detainees had died. PFC Brand knew it was the
22 striking of the thigh that we were looking at. After we read his
23 rights and explained to PFC Brand what we were talking to him about,
24 we did not write down what he was saying at first. Initially, what
25 happens is we build a rapport with the interviewee by collecting
26 information about them. That's typically done on a CID Form 44, and
27 it's just name, rank, social, date of birth, place of birth, sex,
28 race, educational level, marital status, where they live, that type
29 of thing, and then we begin to talk to them about their experience
30 and their history, their education, and then we begin to hone in on
31 the particulars of that particular mission, how he came to be in
32 Afghanistan, what type of training he went through to get to
33 Afghanistan, and how it prepared or didn't prepare him for whatever
34 happened there. Then, at some point during the interview, after
35 we've done that initial portion, it becomes necessary for someone to
36 transition, and begin to write or else the interview would go a long,
37 long time. So, I moved to the laptop computer and began to prepare
38 the statement that he had given to us verbally. There was nothing
39 about his age, education or demeanor that might make me think that he
40 didn't understand what he was doing there. PFC Brand was an MP. PFC
41 Brand was also trained as a correctional specialist. I would have
42 expected that somebody with his training would understand that rights
43 get read, and what they mean. The MPs are trained how to execute
44 this form. That's part of their training, and I started out as an
45 MP. So, I know that it's covered in training classes. I see PFC

1 Brand in the courtroom today. PFC Brand is the gentleman sitting at
2 the defense table in Class A uniform wearing PFC rank with the
3 nametag Brand. When I interviewed PFC Brand, he told me that he had
4 gone through a 95 Charlie course at Camp Ripley, Minnesota which is
5 also in the statement. PFC Brand went through AIT at Fort McClellan,
6 Alabama. PFC Brand had served in Kosovo before in the same capacity
7 that he held in Afghanistan.

8
9 The Civilian Defense Counsel objected to the question, "And what
10 did he say about when he was allowed to and when he used force on
11 detainees in Kosovo," for relevance. After argument by both parties,
12 the Military Judge overruled the objection.

13
14 **Questions by the Trial Counsel continued:**

15
16 PFC Brand said that when he was in Kosovo it was never necessary
17 to strike detainees. If PFC Brand had to strike a detainee, he said
18 he would only be able to do it when he was threatened. PFC Brand
19 discussed that he had been trained on detainee operations before he
20 went to Afghanistan. Going back to Kosovo, PFC Brand made a
21 statement that he only used force when threatened or attacked. At
22 Fort Dix, he was asked whether the training was adequate to prepare
23 his unit to conduct operations at the Bagram collection point because
24 it's in his statement. Page two of the statement, the second
25 question and answer says that PFC Brand thought the training was
26 adequate at Fort Dix. The next question is, "Did the training you
27 got from Fort Dix personnel concur with the MP doctrine you knew from
28 previous training?" Answer, "Yes, the practical exercises could have
29 been better, but the tasks, conditions and standards were the same
30 doctrine I learned before." So, what he learned at Fort Dix was what
31 he learned in all of his training before. PFC Brand talked about
32 some hip pocket training events that occurred at Fort Dix.

33
34 The Civilian Defense Counsel objected to the witness reading
35 from PE 1 unless the witness had a problem with remembering. The
36 Military Judge sustained the objection.

37
38 **Questions by the Trial Counsel continued:**

39
40 PFC Brand described hip pocket training events that he received
41 at Fort Dix. PFC Brand learned pressure point control techniques
42 there, but no blows.

43
44 The Civilian Defense Counsel objected to the question, "What was
45 the technique that was taught for a combative person, or what he