

0134-02-CID369-23

Sworn Statement**LOCATION:** Bagram Airfield, Afghanistan, APO AE 09354**DATE:** 17 Dec 02**TIME:** 1320Z02**NAME:** Joshua R. CLAUS**SSAN:****RANK:** SPC/E-4/Active**ORGANIZATION:**

I, SPC Joshua R. CLAUS, want to make the following statement under oath:

The first time that BT-412 was interviewed, SGT LEAHY and myself conducted the interview. I cannot remember who the interpreter was. The detainee was brought into the room by the MP's on his own power. He was restrained by leg and arm shackles. When he came into the room, he sat on the floor. My job during the interview was to write notes on his body position and anything else I noticed about the PUC. During the interview we just had him tell his story, and did not forcibly ask him any questions. Neither one of us ever forcibly laid our hands on him, and if we did touch him, it was only to calm him down by placing our hand on his shoulder. When we were finished with the interview, he was escorted out by the MP's on his own power. The first time I interviewed BT-421 was in the evening of 9 Dec 02. I was with SPC WALLS and the interpreter was Ali. He was dragged in by the MPs because he said that his legs hurt him. When I asked him why his legs hurt him, he said that he was struck by the MP's. When the detainee entered the room, he had on leg and arm shackles. When he entered the room, he sat on a chair with his knees bent. He asked for a bottle of water, so I went out into the hallway and got him one. While bringing it over to him, it fell out of my hands and hit the floor, cracking on the bottom slightly. I brought the bottle over to him, but he could not raise his hands up to get the bottle and it fell in his lap. He finally was able to get the bottle to his mouth and took a drink. We started the interview, but the PUC was not responding. He kept saying that his legs hurt him and he was very tired. I went over to him and had him place each of his feet in my hands one at a time. He did so, but very slowly. After a little while, I wanted him to stand up, but he would not do so. I got behind him and placed my hands under his armpits and helped him to stand up. After a few minutes of standing, he said that he was tired, so I asked the MP who was in the room with us to lean him up against the wall, which he did. After talking to him for a few minutes, I took him back to the center of the room. When he got into the center of the room, he was swaying and looked kind of white, and seemed really tired. I handed him the water bottle and he drank a little but then stopped. I wanted him to drink the rest of the bottle, so I took the bottle and held it up to his mouth and had him drink the rest of it. Just a short time later, two other MP's including the SOG came into the room and escorted him back to his cell.

Q: When BT-412 came into the interview room, was he walking by himself?

A: Yes.

Q: When he left the room was he walking by himself?

A: Yes.

Initials of Person Making Statement



Page 1 of 3 Pages

DA Form 2823

FOR OFFICIAL USE ONLY

Exhibit: _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB

AFFIDAVIT

I, Jeff A. BOVARNICK, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 23. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

Jeff A. Bovarnick
(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 26th day of May 2004 at Fort Bragg, NC 28307.

Daniel G. Carton
(Signature of Person Administering Oath)

SA Daniel G. Carton, 3609

(Typed Name of Person Administering Oath)

Article 136 (b) 4 UCMJ

(Authority to Administer Oath)

INITIALS

JAB

FOR OFFICIAL USE ONLY

Page 23 of 23

EXHIBIT _____

0134-02-010369-23533

Statement of SPC Joshua R. CLAUS, taken at Bagram Airfield, Afghanistan, APO AE 09354, on 17 Dec 02, continued:

Q: When BT-421 left the interview room, was he walking by himself?

A: Yes.

Q: When BT-421 said that he was struck by the MP's, did he say when or how?

A: No he pointed to his left outer thigh and said that he was hit here.

Q: Did you or SGT LEAHY ever strike BT-412?

A: Never.

Q: Did you or SPC WALLS ever strike BT-421?

A: No.

Q: Did the interpreters ever strike the PUC's?

A: Never.

Q: Prior to BT-412 coming into the interview room, what cell was he in?

A: I think he was in ISO, but I'm not sure.

Q: After leaving the interview room, what cell was he put in?

A: I think he was brought back to ISO. He was placed into a standing position, because he had just gotten to the Detention Facility and that was the practice for newly arrived PUC's in order to deprive them of sleep and to become more compliant.

Q: Prior to BT-421 coming into the interview room, what cell was he in?

A: He was in ISO upstairs.

Q: After leaving the interview room, what cell was he put in?

A: He was put back into his cell in upstairs ISO.

Q: Other than you lifting his feet and helping him to stand up, did you touch BT-421?

A: Any other time that I did was to rub or touch his back. The Afghans do not like other guys to touch them, and I like to use that to break them down.

Q: Who was the MP that was in the room with you?

A: I am not sure of his name, but he is a SPC, has a moustache and I believe his name is Tony.

Q: Did the MP forcibly place him against the wall?

A: No. He just brought him over and let him rest against the wall.

Q: Do you know if any guards had struck BT-412 or BT-421?

A: No, I never saw them strike either one of the detainees.

Q: Did you ever hear of another interrogator strike a PUC?

A: No.

Q: Did you notice any bruising or injuries on either BT-412 or BT-421?

A: No visible signs.

Q: When BT-421 told you that his legs were hurting did you believe him?

A: No. I have had many PUC's who would fake an injury or a pain in order to get out of an interview. I felt that BT-421 was really tired and that his legs may have been hurting for standing, but I did not feel that he was in any medical emergency.

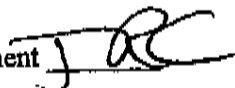
Q: Is this statement in your own words and typed by this agent?

A:

Q: Do you have anything further to add to your statement?

A: No ///End of Statement///

Initials of Person Making Statement



Page 2 of 3 Pages

DA Form 2823

FOR OFFICIAL USE ONLY

Exhibit: _____

For Official Use Only / Law Enforcement Sensitive

0134-02-CID 569-23533

Statement of SPC Joshua R. CLAUS, taken at Bagram Airfield, Afghanistan, APO AE 09354, on 17 Dec 02, continued:

AFFIDAVIT

I, SPC Joshua R. CLAUS, HAVE READ OR HAD READ TO ME THIS STATEMENT WHICH BEGINS OF PAGE 1 AND ENDS ON PAGE 3. I FULLY UNDERSTOOD THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT *JRC*

WITNESS:

[Signature]
(Signature of Person Making Statement)

(Signature)

(Printed Rank, Name)

(Unit)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 17th day of December, 2002, at Bagram Airfield, Afghanistan, APO AE 09354

[Signature]
(Signature of Person Administering Oath)

SA Richard P. POTTER
87th Military Police Detachment (CID) (FWD)
Bagram Airfield, Afghanistan
APO AE 09354

WITNESS:

(Signature)

(Printed Rank, Name)

(Unit)

Article 136, UCMJ
(Authority to Administer Oaths)

Initials of Person Making Statement *JRC*

Page 3 of 3 Pages

DA Form 2823

FOR OFFICIAL USE ONLY

Exhibit: _____

For Official Use Only / Law Enforcement Sensitive

0134-02

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY:
PRINCIPAL PURPOSE:
ROUTINE USES:
DISCLOSURE:

Title 10, United States Code, Section 3012(g)

To provide commanders and law enforcement officials with means by which information may be accurately identified.

Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.

Disclosure of your Social Security Number is voluntary.

1. LOCATION

CID Office Ft. Bragg NC.

2. DATE

15 Jan 04 *GW*

3. TIME

1100 *GW*

4. FILE NUMBER

0134-02-CID369-23533

5. Name (Last First MI)

WALLS, GLENDALE C.

6. SSN
7. GRADE/STATUS

E-3 PFC *SW*

8. ORGANIZATION OR ADDRESS

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

SECTION A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command and wanted to question me about the following offense(s) of which I am

suspected/accused Aggravated Assault; False Official Statement; Negligent Homicide/III

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me or both.

-or-

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have the right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Have you been advised of your rights in the last 30 days? *Unknown GW*

Do you currently have legal counsel? *NO GW*

SECTION B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (if available)
1a. NAME (Type or Print)

Russell W. Hudson

b. ORGANIZATION OR ADDRESS AND PHONE

1149th MP Det (CID) (512) 782-5661

2a. NAME (Type or Print)
b. ORGANIZATION OR ADDRESS AND PHONE
3. SIGNATURE OF INTERVIEWER
4. SIGNATURE OF INVESTIGATOR
5. TYPE NAME OF INVESTIGATOR

James F. Walker III, SA

6. ORGANIZATION OF INVESTIGATOR

1149th MP DET (CID)

SECTION C. Non-waiver

1. I do not want to give up my rights

☒ I want a lawyer

☒ I do not want to be questioned or say anything

2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

DA FORM 3881, NOV 89 (AUTOMATED)

EDITION OF NOV 84 IS OBSOLETE

For Official Use Only / Law Enforcement Sensitive

End 20

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

0134-02-CID0369-25533

AUTHORITY:

Title 10, United States Code, Section 3012(g)

PRINCIPAL PURPOSE:

To provide commanders and law enforcement officials with means by which information may be accurately identified.

ROUTINE USES:

Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.

DISCLOSURE:

Disclosure of your Social Security Number is voluntary.

1. LOCATION 87TH MP DET. (CID), APO AE 09354	2. DATE 17 DEC 02	3. TIME 0930Z GWT	4. FILE NO.
5. NAME (Last, First, MI) WALLS, GLENDALE C.	6. ORGANIZATION OR ADDRESS		
6. GRADE/STATUS SPC/ACTIVE			

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The Investigator whose name appears below told me that he/she is with the United States Army **CRIMINAL INVESTIGATION COMMAND** and wanted to question me about the following offense(s) of which I am suspected/accused: **AGGRAVATED ASSAULT III**

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any questions or say anything.

2. Anything I say or do can be used as evidence against me in a criminal trial.

3. For personnel subject to the UCMJ I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. I am now willing to discuss the offense(s) under investigation, with or without a lawyer present. I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

6. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE Glenda Walls II
1a. NAME (Type or Print) SA RICHARD P. POTER		4. SIGNATURE OF INVESTIGATOR Daniel Flores III
b. ORGANIZATION OR ADDRESS AND PHONE 87TH MP Det (CID) APO AE 09354		5. TYPED NAME OF INVESTIGATOR SA DANIEL FLORES III
2a. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR 87TH MP DET. (CID) APO AE 09354

Section C. Non-waiver

1. I do not want to give up my rights:
☐ I want a lawyer.

☐ I do not want to be questioned or say anything.

SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED.

DA FORM 3881, NOV 89

EDITION OF NOV 84 IS OBSOLETE

For Official Use Only / Law Enforcement Sensitive

Encl 21

Sworn Statement**LOCATION:** Bagram Airfield, Afghanistan, APO AE 09354**DATE:** 17 Dec 02**TIME:** 1130Z *GLW***NAME:** WALLS, Glendale Clifton**SSAN:****RANK:** SPC/Active**ORGANIZATION:**

I, SPC Glendale C. WALLS, want to make the following statement under oath:

I was the lead Interrogator in the questioning of BT-421, and was there for all five of his interrogations. I had no dealings with BT-412, and never even saw him. During the first three interrogations of BT-421, SPC Jeremy SHOEMAKE and Abdul, the Interpreter, were in the interrogation room with me. During the fourth interrogation, SGT Selena RYAN and Ahmad, the Interpreter, were with me. During the fifth and last interrogation, SPC Josh CLAUS and Ali, the Interpreter, were with me. We would place BT-421 at one end of a table and myself at the other end. The other Interrogator would sit along the side of the table with the Interpreter across from them on the other side. I was the lead Interrogator, so I would ask most of the questions, through the Interpreter, and the Interpreter would relay the answer to me. The additional Interrogator would ask questions I missed, or would ask questions to clarify certain aspects of the questioning.

Q: During your questioning, did you ever strike BT-421?

A: Negative.

Q: Did anyone else strike him?

A: No.

Q: Did any of the other Interrogators strike BT-421 during questioning?

A: Negative.

Q: Did any of the Interpreters ever strike BT-421 during questioning?

A: Negative.

Q: Did anyone ever grab or get rough with him?

A: I grabbed his clothing and put him up against the wall.

Q: How many times?

A: Four times, I would just kind of walk him around the room and put him in different spots.

Q: All during the same session?

A: Yes.

Q: How hard would you say you grabbed and put him against the wall?

A: Not very hard.

Q: Do you think you ever did it hard enough to hurt him?

A: No, I don't think so.

Initials of Person Making Statement *GLW*

Page 1 of 5 Pages

DA Form 2823

FOR OFFICIAL USE ONLY

Exhibit: _____

For Official Use Only / Law Enforcement Sensitive

End 22

0134-02-CID369-23533

Statement of SPC Glendale C. WALLS, taken at Bagram Airfield, Afghanistan, APO AE 09354, on 17 Dec 02, continued:

Q: Did you do anything else?

A: Yes, I placed my right foot on the back of his left knee, when he was kneeling, to get him in the kneeling position.

Q: How much force did you use?

A: I wouldn't say much at all, I really don't know how to measure it.

Q: On a scale of 1-10, with 10 being the most force, how much force would you say you used?

A: I'd say about three to four.

Q: Did anyone else do the same?

A: No, it was just me.

Q: Did you have to do that every session?

A: No, just on the fourth one.

Q: Did anyone else use any blows to BT-421?

A: No, the first three times we talked to him we were very friendly to him, but on the fourth interview, some holes came up and we wanted him to answer us truthfully.

Q: Did anyone use any type of instrument to get him to comply?

A: No.

Q: Did anyone ever strike him on the calves?

A: I would have been the closest by putting my foot in the back of his knee.

Q: Did you do this at any other time?

A: No, just during the fourth session. In the fifth session, we had an MP place him on his knees. The MP kind of tripped him while he held him and placed him down on his knees. He was shackled and cuffed at the time.

Q: Did anyone else ever grab or get rough with him?

A: Selena, mostly all she did was put her hands on his shoulders, she would push down on his shoulders to make him go to his knees. She also grabbed his ears once and lifted him up.

Q: Did she cause any damage to his ears?

A: None that I knew of, there was no blood or anything.

Q: Did she ever do anything else to him?

A: No.

Q: Did she ever strike him in his genital area?

A: No.

Q: Was she ever in a position to have struck him in his genital area?

A: Yes, when he was on his knees, she would place her foot in between his knees.

Q: Did you ever see her strike him in the groin area while in this position?

A: No.

Q: Is it possible she could have?

A: Yes, but I never saw her.

Q: Could someone else have seen her strike him?

A: If she did, Ahmad might have seen it.

Q: Does Ahmad seem reliable and truthful to you?

A: No.

Initials of Person Making Statement GLW

Page 2 of 5 Pages

DA Form 2823

FOR OFFICIAL USE ONLY

Exhibit: _____

0134-02-C10369-23533

Statement of SPC Glendale C. WALLS, taken at Bagram Airfield, Afghanistan, APO AE 09354, on 17 Dec 02, continued:

Q: Why not?

A: Because he leaves a lot out of what is said when he gets the answer for us.

Q: How do you know that?

A: Because whenever the person says something about the Taliban, he leaves that out of the answer.

Q: How many times have you worked with Ahmad?

A: About four or five times.

Q: How many of those times were with BT-421?

A: Just once.

Q: Do you think Ahmad would lie about someone striking BT-421?

A: I don't think he'd have a reason to, he was angry about the stress positions we would use, like putting him on his knees.

Q: Did any of the other Interrogators or Interpreters ever strike BT-421?

A: No.

Q: How would you say BT-421 received bruising to his groin area?

A: I have no idea.

Q: Are you certain you never saw anyone strike BT-421 in the groin area?

A: Yes, I'm positive.

Q: Have you ever seen any of the Military Police (MP) strike any of the PUCs?

A: Yes, BT-421. During my fourth session of questioning BT-421, he refused to follow my instructions and became non-compliant. Since he didn't want to stay on his knees, Selena got a pair of long cuffs and placed one cuff on the chain of the set of short cuffs that were attached to his wrists and placed the other end on the chain of the pair of leg shackles that were on BT-421. Selena then left the booth and told the guard to come get him. Two MP's came into the booth to get BT-421, I don't know who they were, they unlatched the top part of the extra cuffs we added, this left his hands free with the other cuffs around his wrists. He stood up and ran towards one of the walls, one of the MP's grabbed him and threw him on the floor. We had Ahmad tell him not to resist what the MP's were doing. The MP's then unlatched the bottom part of our cuffs and walked him downstairs.

Q: Did he walk under his own power?

A: I believe he did.

Q: Did you see anything else?

A: Yes, I went to my office and heard BT-421 yelling, it sounded like he was in pain. The MP's had put him in an airlock originally and he was cuffed to the ceiling standing up. They tried to reposition the cuffs on his hands and he lifted his legs so they couldn't hang him up to the top of the cage again. After he did that with his legs, they were lifting him back up, he tried to resist and one of the MP's punched him on his right side about six times. They kept trying to put his hands up and he kept resisting them. They then grabbed him and threw him on the ground outside of the airlock onto his stomach. Two more MP's came out from the front desk, there were about six MP's holding him down on the ground, and the same MP that was punching him in the airlock started punching him again while he was on the ground. He punched him about six more times on the same side. Then they brought out a stretcher, hand-cuffed him to the stretcher,

Initials of Person Making Statement GLW

Page 3 of 5 Pages

DA Form 2823

FOR OFFICIAL USE ONLY

Exhibit: _____

For Official Use Only / Law Enforcement Sensitive

0134-02-C10369-23533

Statement of SPC Glendale C. WALLS, taken at Bagram Airfield, Afghanistan, APO AE 09354, on 17 Dec 02, continued:

and carried him upstairs to the first Isolation cell on the left. When he was in the Isolation cell, they asked us to bring an interpreter, I can't remember which one, and they pulled up his hood to see where he was bleeding from. I had told them about a scab on his nose, because I had seen it while I was questioning him, and they thought he had a nose bleed. The scab on his nose had been re-injured and was bleeding.

Q: How did he get the injury (scab) on his nose?

A: I had asked him about it during the first interrogation and he said that he had received it before he came to us, he didn't say from who. He said he was injured at the place he had been before coming to the BCP.

Q: Where you around when he was inprocessed?

A: I was there, but I wasn't downstairs in the inprocessing room when he arrived.

Q: When was the first time you saw BT-421?

A: I talked to him the night he was brought in, a couple of hours after he had been screened.

Q: What was his attitude?

A: He seemed like a really nice man.

Q: Did you notice the injury to his nose then?

A: Yes.

Q: Did it look new or old?

A: It looked old, he already had a scab on it.

Q: How big was the injury?

A: Maybe about an inch, it didn't look like it was one big cut, it looked like a scrape.

Q: I have shown you pictures of BT-421 when he first inprocessed and after he died, is the injury to his nose the same injury you first noted at his inprocessing?

A: It wasn't as big, it just looked like a bunch of scabs that almost matched his flesh.

Q: When did you first notice the larger of the two injuries to his nose, the one in the picture I showed you after his death?

A: During my last interview with him.

Q: Did he say how he had received it?

A: No.

Q: Did you ask him?

A: No.

Q: Do you know of how it was re-injured?

A: No.

Q: Do you pass on information to anyone after a session?

A: Yes, I pass it on to my team leader.

Q: Do you pass on how many times you would have hit him or what injuries he might have sustained?

A: No, we don't hit them.

Q: Have you ever seen a doctor examine the PUCs?

A: No, I just know the doctor works through the MP's.

Q: Is there anything else you want to add to your statement?

Initials of Person Making Statement GLW

Page 4 of 5 Pages

DA Form 2823

FOR OFFICIAL USE ONLY

Exhibit: _____

For Official Use Only / Law Enforcement Sensitive

0134-02-C10369-23533

Statement of SPC Glendale C. WALLS, taken at Bagram Airfield, Afghanistan, APO AE 09354, on 17 Dec 02, continued:

Dec 02, continued:
A: I would kinda like to note the way he was on the last interview with him. He came in and he wanted some water and so we brought him some water. We asked him how he was doing and he said that his wife had died that day, he said his wife had come and told him. We gave him the water, and he couldn't even hold onto it. As soon as we gave it to him he dropped it on the floor. It was in a plastic, .5 liter bottle, and he started drinking it. We didn't talk to him long that day because of the way he was acting that day. The MP's came and got him, and he actually walked out on his own two feet, which was funny because the MP's had to drag him in there when he first came in to the booth.

Q: Is there anything else you want to add?

A: No ///End of Statement/// (glw)

AFFIDAVIT

AFFIDAVIT
I, Glendale C. WALLS, HAVE READ OR HAD READ TO ME THIS STATEMENT WHICH BEGINS OF PAGE 1 AND ENDS ON PAGE 5. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT. *GCW*

WITNESS:

(Signature)

SA RICHARD POTTER
(Printed Rank, Name)

(Printed Rank, Name)

87th MP Det (CID) APO AG 09854
(Unit)

Unit

WITNESS:

(Signature)

(Printed Rank, Name)

(Unit)

Shirley Walker
(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 17th day of December, 2002, at Bagram Airfield, Afghanistan, APO AE 09354

(Signature of Person Administering Oath)

SA Daniel FLORES III
87th Military Police Detachment (CID) (FWD)
Bagram Airfield, Afghanistan
APO AE 09354

Article 136, UCMJ
(Authority to Administer Oaths)

Initials of Person Making Statement GEW

Page 5 of 5 Pages

DA Form 2823

FOR OFFICIAL USE ONLY

Exhibit: _____

For Official Use Only / Law Enforcement Sensitive

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

0134-02-CID369-23533

AUTHORITY:

Title 10, United States Code, Section 3012(g)

PRINCIPAL PURPOSE:

To provide commanders and law enforcement officials with means by which information may be accurately identified.

ROUTINE USES:

Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.

DISCLOSURE:

Disclosure of your Social Security Number is voluntary.

1. LOCATION

Fort Bragg CID, Randolph Street, Fort Bragg, NC

2. NAME (Last First MI)

RYAN, Selena M

3. SSN

4. GRADE/STATUS

SGT/AD

5. DATE

6. TIME

7. FILE NUMBER

8. ORGANIZATION OR ADDRESS

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

SECTION A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command and wanted to question me about the following offense(s) of which I am

suspected: Assault Consummate by Battery/Cruelty and Maltreatment/Negligent Homicide/False Official Statement

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me or both.

-OR-

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have the right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Have you been advised of your legal rights within the last 30 days? yes

Are you presently represented by legal counsel? yes

SECTION B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (if available)

1a. NAME (Type or Print)

SA Daniel G. CARTON, 3609

2. ORGANIZATION OR ADDRESS AND PHONE

HQ, USACIDC, Fort Belvoir, VA 22060

3a. NAME (Type or Print)

3. ORGANIZATION OR ADDRESS AND PHONE

4. SIGNATURE OF INTERVIEWEE

5. SIGNATURE OF INVESTIGATOR

6. TYPE NAME OF INVESTIGATOR

SA James F. WALKER, 5902

7. ORGANIZATION OF INVESTIGATOR

HQ, USACIDC
Fort Belvoir, VA 22060

SECTION C. Non-waiver

1. I do not want to give up my rights

☒ I want a lawyer

☒ I do not want to be questioned or say anything

2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30: the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

0134-02-010367-23533

THORITY:
INCIPAL PURPOSE:
ROUTINE USES:
DISCLOSURE:

Title 10, United States Code, Section 3012(g)
To provide commanders and law enforcement officials with means by which information may be accurately identified.
Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
Disclosure of your Social Security Number is voluntary.

1. LOCATION Bagram Airfield, Afghanistan, APO AE 09354	2. DATE 17 Dec 02	3. TIME 1514Z	4. FILE NO.
5. NAME (Last, First, MI) RYAN, Sclena M.	8. ORGANIZATION OR ADDRESS		
6. SSN	7. GRADE/STATUS SGT/RA		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command (CID) and wanted to question me about the following offense(s) of which I am As a Special Agent

AGGRAVATED ASSAULT / RBM
suspected/accused
Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)
Have you been advised of your legal rights in the past and requested legal counsel? NO SML

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (if available)

1a. NAME (Type or Print)
SA RICHARD P. POTTER
b. ORGANIZATION OR ADDRESS AND PHONE
87th MP Det (CID)
APD AE 09354
2a. NAME (Type or Print)

b. ORGANIZATION OR ADDRESS AND PHONE

3. SIGNATURE OF INTERVIEWEE

4. SIGNATURE OF INVESTIGATOR

5. TYPED NAME OF INVESTIGATOR

SA RANDY M. LIGHTY

6. ORGANIZATION OF INVESTIGATOR

87th Military Police Detachment (CID), Bagram Airfield, Afghanistan, APO AE 09354

Section C. Non-Waiver

1. I do not want to give up my rights:

☐ I want a lawyer.

☐ I do not want to be questioned or say anything.

SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA Form 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED.

DA FORM 3881 NOV 80

EDITION OF NOV 84 IS OBSOLETE

For Official Use Only / Law Enforcement Sensitive

Final 24

Sworn Statement

0134-02-010369-23533

LOCATION: Bagram Airfield, Afghanistan, APO AE 09354

DATE: 17 Dec 02 SML

TIME: 17:15 Z SML

NAME: RYAN, Selena M.

SSAN:

RANK: SGT/E-5/Active

ORGANIZATION:

I, SGT Selena M. RYAN, want to make the following statement under oath: I spoke to BT 421 one time and that was about a day and a half before he died. He came into the room with 2 guards and he was shackled with long cuffs on his ankles and long and short cuffs on his wrists. He also had the hood on. The guards took off the short cuffs leaving him standing and they left the room. We then told him to get down on his knees and he complied. Then we started going over the basic questioning pertaining to the time of his capture and basic biographical stuff. He was sort of answering questions and others he would give a very vague answer. He kept smiling and laughing and we kept asking him what was he smiling about and he kept saying nothing. Nothing. Then he stood up. We asked him why he stood up and he said because his knees hurt. After that is when Glenn and I approached him and put him on his knees. Before we did that though we told him not do anything without us telling him to do it. We kept asking him questions. I can't remember exactly how many times he stood up before we put him on the wall, but it was a couple times. Then he said his knees hurt and we said OK fine then we're going to put you on the wall and we put him on the wall. Then we continued to ask him questions while he was on the wall, but he just continued to slide down the wall. This was to the point that he would actually sit on the ground. Then I would help Glenn to lift him back up. That continued for I don't know how many times. It got to the point that he wasn't looking at me, and he was looking at the interpreter, so I grabbed him on both sides of the head and turned his head towards me. Then I held his chin in place so that he was looking at me, because he was trying to turn away. I had him hold his arms up so that if he turned his head away the only thing he was looking at was his arms. He would keep bringing his arms down so that we either had to tell him to put them back up, or just take and put his arms back up. Then at one point we brought him back to sit on his knees, because he said his legs were hurting. Then while he was on his knees he kept sitting back on his heels, and we wanted up straight with his weight on his knees. He had his knees closed, so I took my foot and went back and forth spreading his knees apart. Glenn had already picked him up onto his knees. I think we put him on the wall again. Then after that we put him back on his knees. We kept alternating like that because he kept bitchin' about his legs....his legs.... and like that. The last time he was on his knees we went to go get the guard and the guards came. Two of them. When they went to prep him to go downstairs, BT 412 pushed them or something, I didn't see exactly what he did, but he had moved the guards away somehow. Then he moved away from them and the guards tackled him. He was on the ground and he was struggling with them. Then they picked him up, put the bag on his head, and

Initials of Person Making Statement

SML

Page 1 of 3 Pages

DA Form 2823

FOR OFFICIAL USE ONLY

Exhibit: _____

0134-02-CID369-23533

Statement of SGT Selena M. RYAN, taken at Bagram Airfield, Afghanistan, APO AE 09354, on 17 Dec 02, continued:

they walked him downstairs. He wasn't really walking on his own, but they helped him. That was it for our time in the booth. Then less than an hour later I heard him moaning as if he were crying. Then we went out on the balcony and I saw him in the airlock with his hands up. The guards went in there and he was kicking at them. When he would slow down with his kicking he would just like hang there with his wrists. When he had all of his weight on his hands it looked like the bar he was strung to, just bent a little. It took like I don't know how many, but it was a bunch of them, and they pulled him out of the airlock. When they got him out of the airlock they were wrestling on the ground. I think there were about five guards wrestling with him. Then they put him on the litter and they handcuffed him to it, so he couldn't fight anymore. Then they took him to the ISO upstairs. That was the only contact I had with him and the next morning I was scheduling guys to go in there with him, they went in with him that night, and later he was dead he was dead sometime after their interview.

Q: How many times did you observe anyone strike BT 421?

A: The time when I was on the balcony I saw the MPs hit him numerous times, but I don't recall where on his body they hit him.

Q: How many times did you hit BT 421?

A: I never hit him.

Q: Did you kick BT 421 in the genitals while you were interrogating him?

A: No.

Q: Why would anyone think you kicked him in the genitals?

A: Cause they couldn't see what I was doing. And if we're talking about Ahmad. He probably didn't want to be in the booth anyways. They couldn't see what I was doing because I was in front of the table, the PUC was in front of me, and Ahmad was behind the table, and I don't think he could see.

Q: Why do you say Ahmad didn't want to be in the booth anyway?

A: Because he was obviously segregating himself from the interrogation. He was stepping away, staying back where he didn't have to have any interaction with the PUC.

Q: Why would someone think you kicked BT 412 in the genitals by what you were doing?

A: Because I was separating his knees by shoving his feet apart with my foot. It was minimal force. Enough to get him to comply.

Q: Did you punch BT 421 in the chest?

A: No.

Q: Did you grab BT 421 by the ears?

A: No.

Q: Did you use your knee to strike the back of BT 421's legs to force him to kneel?

A: Yes. With minimal force.

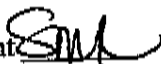
Q: When you grabbed BT 421 on the chin to get his attention, did you grab him by the beard?

A: Not by the beard. It was mostly the lower portion of the face. The jaw.

Q: When you grabbed his face in order to get his attention, how were your hands on his face?

A: I grabbed his head with both hands, one on each side of the head, with my fingers horizontal with the ground.

Initials of Person Making Statement



Page 2 of 3 Pages

DA Form 2823

FOR OFFICIAL USE ONLY

Exhibit: _____

0134-02-CID369-23533

Statement of SGT Selena M. RYAN, taken at Bagram Airfield, Afghanistan, APO AE 09354, on 17 Dec 02, continued:

Q: Who is Glen?

A: SPC WALLS, he's a team member who is on my team.

Q: Did you ever see Glenn step on the back of BT-421's knees?

A: No.

Q: Do you have anything further to add to your statement?

A: No ///End of Statement///

AFFIDAVIT

I, SGT Selena M. RYAN, HAVE READ OR HAD READ TO ME THIS STATEMENT WHICH BEGINS OF PAGE 1 AND ENDS ON PAGE 3. I FULLY UNDERSTOOD THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

WITNESS:

(Signature)

SA RICHARD P. POTTER

(Printed Rank, Name)

8th MP Det (CID) APO AE 09354

(Unit)

WITNESS:

(Signature)

(Printed Rank, Name)

(Unit)

Selena M. Ryan

(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 17th day of December, 2002, at Bagram Airfield, Afghanistan, APO AE 09354

Randy M. Lighty

(Signature of Person Administering Oath)

SA RANDY M. LIGHTY

87th Military Police Detachment (CID) (FWD)

Bagram Airfield, Afghanistan

APO AE 09354

Article 136, UCMJ

(Authority to Administer Oaths)

Initials of Person Making Statement

SMR

Page 3 of 3 Pages

DA Form 2823

FOR OFFICIAL USE ONLY

Exhibit: _____

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY:
PRINCIPAL PURPOSE:
ROUTINE USES:
DISCLOSURE:

Title 10, United States Code, Section 3012(g)
 To provide commanders and law enforcement officials with means by which information may be accurately identified.
 Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
 Disclosure of your Social Security Number is voluntary.

1. LOCATION CID Office Ft. Bragg NC.		2. DATE 15-Jan-04 <i>DMC</i>	3. TIME 1041 <i>DMC</i>	4. FILE NUMBER
5. Name (Last First MI) CORSETTI, Damien Marino		8. ORGANIZATION OR ADDRESS		
6. SSN	7. GRADE/STATUS E-3 PFC			

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

SECTION A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command and wanted to question me about the following offense(s) of which I am suspected/accused: Aggravated Assault; False Official Statement; Negligent Homicide *DMC*

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me or both.

-OR-

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have the right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Have you been advised of your rights in the last 30 days? *UNK DMC*
 Do you currently have legal counsel? *NO DMC*

SECTION B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (if available)		3. SIGNATURE OF INTERVIEWER	
1a. NAME (Type or Print) <i>Russell W. Hudson, SA 3164</i>	6. ORGANIZATION OR ADDRESS AND PHONE 1149 th MP Det (CID) (512) 782-5661	4. SIGNATURE OF INVESTIGATOR <i>James F. Walker</i>	
2a. NAME (Type or Print)		5. TYPE NAME OF INVESTIGATOR James F. Walker	
6. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR 1149 th MP DET (CID)	

SECTION C. Non-waiver

1. I do not want to give up my rights
☐ I want a lawyer
☒ I do not want to be questioned or say anything *DMC*
2. SIGNATURE OF INTERVIEWEE
[Signature]

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

DA FORM 3881, NOV 89 (AUTOMATED)

EDITION OF NOV 84 IS OBSOLETE

PART II - RIGHTS WARNING PROCEDURE**THE WARNING**

1. **WARNING** - Inform the suspect/accused of
 - a. Your official position.
 - b. Nature of the offense(s)
 - c. The fact that he/she is a suspect/accused.
2. **RIGHTS** - Advise the suspect/accused of his/her rights as follows:

"Before I ask you any questions, you must understand your rights."

 - a. "You do not have to answer my questions or say anything."
 - b. "Anything you say or do can be used as evidence against you in a criminal trial."
 - c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer

can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."

-or-

(For civilians not subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."

- d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

THE WAIVER

"Do you understand your rights?"

(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate right advisement. If the suspect/accused says "yes," ask the following question.)

"Have you ever requested a lawyer after being read your rights?"

(If the suspect/accused says "yes," find out when and where. If the request was recent (i.e., fewer than 30 days ago), obtain legal advice on whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"

(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)

SPECIAL INSTRUCTIONS**WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER**

CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED

IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed.

Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.

2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a Lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

COMMENTS (Continued)

REVERSE OF DA FORM 3881

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT 0134-02-C10369-23533

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION 87TH MP DET. (CICD), APO AE 09354	2. DATE 19 DEC 02	3. TIME 0740Z	FILE NO.
5. NAME (Last, First, MI) CORSETTI, DAMIEN M.	8. ORGANIZATION OR ADDRESS		
7. GRADE/STATUS SPC/ACTIVE			

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army CRIMINAL INVESTIGATION COMMAND and wanted to question me about the following offense(s) of which I am suspected/accused: AGGRAVATED ASSAULT III

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

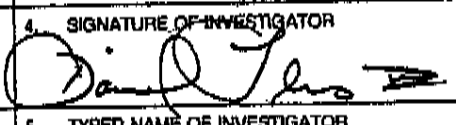
(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR 
b. ORGANIZATION OR ADDRESS AND PHONE		
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR SA DANIEL FLORES III
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR 87TH MP DET. (CICD) APO AE 09354

Section C. Non-waiver

1. I do not want to give up my rights:
☒ I want a lawyer.
 ☐ I do not want to be questioned or say anything.

SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED.

DA FORM 3881, NOV 89

EDITION OF NOV 84 IS OBSOLETE

For Official Use Only / Law Enforcement Sensitive

Encl 27

Statement of SSG Neil R. BERKLEY, taken at Bagram Airfield, Afghanistan, APO AE 09354, on 21 Jan 03,
continued:

0134-02-CID369-23533.

AFFIDAVIT

I, SSG Neil R. BERKLEY, HAVE READ OR HAD READ TO ME THIS STATEMENT WHICH BEGINS OF PAGE 1 AND ENDS ON PAGE 2. I FULLY UNDERSTOOD THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT. *NRB*

WITNESS:

(Signature)

(Printed Rank, Name)

(Unit)

WITNESS:

(Signature)

(Printed Rank, Name)

(Unit)

Neil R. Berkley
(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 21st day of January, 2003, at Bagram Airfield, Afghanistan, APO AE 09354

SA Richard P. Potter
(Signature of Person Administering Oath)

SA Richard P. POTTER
87th Military Police Detachment (CID)
Bagram Airfield, Afghanistan
APO AE 09354

Article 136, UCMJ
(Authority to Administer Oaths)

NRB
Initials of Person Making Statement
DA Form 2823

FOR OFFICIAL USE ONLY

Page 2 of 2 Pages

Exhibit: _____

For Official Use Only / Law Enforcement Sensitive

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY:
PRINCIPAL PURPOSE:
ROUTINE USES:
DISCLOSURE:

Title 10, United States Code, Section 3012(g)
To provide commanders and law enforcement officials with means by which information may be accurately identified.
Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
Disclosure of your Social Security Number is voluntary.

1. LOCATION Fort Carson, Colorado	2. DATE 18 Jun, 04 <i>02H</i>	3. TIME <i>1103</i>	4. FILE NO. 0134-02-CID369-23533
5. NAME (Last, First, MI) HAYDEN, David L.	8. ORGANIZATION OR ADDRESS		
6. SSN	7. GRADE/STATUS COL/O-6		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command as a Special Agent and wanted to question me about the following offense(s) of which I am

DA suspected/accused. Derelection of Duty///

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me or both.

- or -

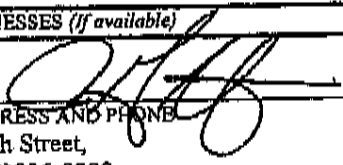
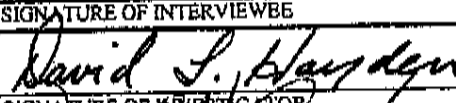
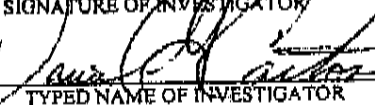
(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE	
1a. NAME (Type or Print) SA Angela G. Birt, 3615			
b. ORGANIZATION OR ADDRESS AND PHONE HQ, USACIDC, 6010 Sixth Street, Ft Belvoir, VA 22060 (703)806-0299		4. SIGNATURE OF INVESTIGATOR 	
2a. NAME (Type or Print)	5. TYPED NAME OF INVESTIGATOR SA Daniel G. Carton, 3609		
b. ORGANIZATION OR ADDRESS AND PHONE	6. ORGANIZATION OF INVESTIGATOR HQ, USACIDC, 6010 Sixth Street, Fort Belvoir, VA 22060		

Section C. Non-Waiver

1. I do not want to give up my rights:

☐ I want a lawyer.

☐ I do not want to be questioned or say anything.

2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA form 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

DA FORM 3881 NOV 80

EDITION OF NOV 84 IS OBSOLETE

For Official Use Only / Law Enforcement Sensitive

Final 28

SWORN STATEMENT

File Number : 0134-02-CID369-23533/0137-02-CID369-23534
Location : Fort Carson, Colorado
Date : 18 Jun 04 Time: 1735
Statement of: HAYDEN, David L.
SSN : Grade/Status: O6/COL
Org/Address :

I, David L. HAYDEN, want to make the following statement under oath:

Q: What is your functional area?

A: I'm a Staff Judge Advocate.

Q: How long have you been a lawyer? Briefly list what positions you have held.

A: Since 1984, I went Law School at the University of Texas, under the Fully Funded Legal Education Program (FLEP) and after college I returned to Fort Bragg and worked as a Trial Counsel in the 82nd Airborne Division, as a prosecutor for three years. I was Senior Defense Counsel at Fort Hood for a couple years. I was the Chief of Justice with 2nd Armored Division, then I went to the Faculty at the JAG School. I taught Criminal Law and was the Head of the Crim Law Department. I worked in Litigations Division in DC. I went back to Fort Bragg, NC and was the SJA for the 82nd Abn Div and then served on the Joint Staff for a year. I was in the J5 International Negotiations. Then I attended the Army War College. I was then the Head of the Government Appellate Division, overseeing all military courts martial for a year. I returned to Fort Bragg, in 2001 and became the SJA for XVIII Abn Corps.

Q: Briefly describe any other military experience you have.

A: I spent five years as a Combat Engineer, all of it in the same Battalion of the 82nd Airborne Division. I was a Platoon Leader twice, a Company XO and a Company Commander in the 307th Engineer Battalion.

Q: Had you ever been deployed prior to the Afghanistan deployment?

A: The only combat deployment I've been on was to Afghanistan.

Q: What dates were you deployed to Afghanistan?

A: I think it was from about 16 May 2002 and I left Bagram on 1 Apr 2003 and returned to the US on 3 Apr 2003. I left Afghanistan twice during my tour, once for mid-tour leave and then for my son's surgery. The leave was 3-29 Oct 2002, it also included a TDY for a military function. I also returned to the US from 13 Jan - 26 Feb 2003, for a surgery on my son's back.

Q: What were you duties while deployed to Afghanistan?

INITIA

17

T _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

A: I was the SJA for CJTF180, which was comprised of elements of XVIII Abn Corps and other augmentees. I was the senior legal advisor to the Commander CJTF180.

Q: What were your responsibilities regarding the BCP?

A: I don't think my specific duties were ever defined. I had a senior attorney from my office assigned to act as a liaison with the International Committee of the Red Cross. The person on the staff with primary responsibility for how that facility was run would have been COL Mike FLYNN or COL Ted NICHOLAS.

Q: Who worked in your office or whom did you supervise during the Afghanistan deployment? Provide names, rough dates of service, principle duties, and applicable chains of supervision or rating chains.

A: I had about six attorneys for the first six months and the same number for the second rotation. Initially, I had my Deputy (LTC Tom AYERS) on the ground and he was the BCP ICRC Liaison. Then Tom left and was replaced by LTC Jon GUDEN. I also had a MAJ VILA who served in that position (for roughly six months from May 02 to mid/late Nov 02), then MAJ BOVARNICK was there from Nov 02 until I PCS'd.

Q: What prompted the large rotation of personnel in CJTF-180 legal office in November 2002?

A: It was the normal six month rotation.

Q: Where did you normally perform your duties in Afghanistan?

A: We had a work station in the JOC tent and offices in the Headquarters Admin Building.

Q: Did anyone share office space with you? Whom?

A: It was an open area, we built cubicles with plywood. I was there, my Deputy (whether that was AYERS, GUDEN, or COTELL. There was also a CPT from Legal Assistance and my NCOIC.

Q: When you arrived in Afghanistan, whom did you replace? What unit was he/she with?

A: I replaced COL Kathleen STONE, the 10th Mtn Div SJA and now she is SOUTHCOM SJA.

Q: How much oversight did you personally provide to the Bagram Collection Point (BCP)?

A: I visited it about four times, usually when we had a key visitor. In fact that was the only time I visited it. When I first got there, I went over on an orientation tour with COL STONE. When it comes down to supervision role, the only time I would comment on it was when someone came to me with a question. It was a J2 operation. When there was a problem, like with some of the construction projects, I would get a call from my BCP

INITIALS _____

Page 2 of 17

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

Liaison Officer. They would request I assist them in getting a higher priority for construction projects and I think that happened twice while I was there.

Q: How often were you briefed on its operations and activities?

A: Usually post ICRC visit.

Q: Did you receive routine reports from the BCP Legal Advisor? What were they and from whom did you receive them?

A: He would just tell me items of interest. MAJ VILA or MAJ BOVARNICK prepared a report on the visit and it was posted on our website. Those reports were forwarded to the CENTCOM SJA (CAPT Shelly YOUNG, USN). I did see some written reports, but not all of them. I also received verbal updates.

Q: Who were the BCP legal advisors during your deployment?

A: LTC AYERS, MAJ VILA and MAJ BOVARNICK. I'm not sure that is an accurate description of their responsibilities. Originally, when we began advising on the BCP, it was primarily for the purpose of acting as the ICRC Liaison. There were no complaints and it was a very small fraction of the duties assigned to those officers, perhaps 10%. To say they were the BCP Legal Advisor may provide an impression that was their primary mission, it was not.

Q: What approximate dates were they assigned to those duties?

A: LTC AYERS was from 1 May 02 to 1 Jul 02; MAJ VILA from 1 Jul 02 to mid Nov 02; and MAJ BOVARNICK from Nov 02 to Apr 03.

Q: How often did you interact with them?

A: Daily, but not on issues surrounding the BCP. They also dealt with Operational Law issues, Use of Force and Rules of Engagement questions.

Q: Were the deputies (LTC GUDEN and LTC COTELL) included in all of your discussions with BCP legal advisors? If not, why not.

A: I would try to include them as much as I could. A lot of times, MAJ VILA or MAJ BOVARNICK would go to them before coming to me. And of course, when I was gone they were in charge. I wanted them to know as much about operations as I did.

Q: Prior to the deaths, were you aware of or did you direct any training in the BCP regarding rules for the use of force (RUF) with regard to detainees?

A: No. I did get a call from an Army SJA Diane (I can't recall her last name) from GTMO. She was looking for guidance on detainee handling. I asked MAJ VILA to look into what guidance was present, but I don't recall closing the loop on it. I remember the interrogators telling us, that the detainees expected to be treated badly and they just talked to them. We

INITIALS _____

Page 3 of 17

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

treated them better than they usually lived. They just were decent and patient with them and were getting great results. We fell in on an operation, which was running smoothly and there were no complaints. I don't remember ever reviewing or approving anything about detainee handling. I don't recall seeing anything in print, just briefings or verbal descriptions about in-processing practices and procedures and interrogations.

Q: What was your perception of the relationship or command structure of the BCP and that between the MPs and MI within the BCP?

A: I don't know how the BCP was structured under the CJTF180. I do know the J2 was overall responsible for the operation of the BCP. When I had a complaint registered about access to detainees by CITF, or construction projects, I went to the J2 and he handled it. So I can't say how the chain of command or command relationship within the BCP worked. My perception was the MPs controlled the detainees/PUCs and kept them safe, secure, fed and escorted to interviews. MI would interview the detainees. That was my perception from my limited contact with the BCP.

Q: When new units arrived were they trained on theater specific ROE or RUF? Why or why not?

A: They should have been trained before they arrived in country, at their home station. When they arrived, they also got a standard block of instruction from the command on ROE from Base Operations, Dragon Brigade personnel.

Q: Did the 377th MP Company get RUF training from your office? Who conducted it?

A: No, not from my office. The training came from Base Ops, Dragon Brigade. They could not leave the area and begin working until they got the in-processing instructions and training. It was very basic ROE, layout of the base, survival tips. It was not JAG Officers who gave the training.

Q: What was your understanding of applicable RUF for detainees, not only in the BCP, but from capture to detention to release?

A: Once you apprehended someone you applied the 5 S's and you treat them all the same. You are expected to treat them professionally, treat their wounds, cloth them, feed them, give them water. That standard is the same for all theaters and all personnel detainees. I would expect the same treatment within the BCP. It should have been within the spirit of the Geneva Convention. You want to treat them the way you'd like to be treated if you were ever captured.

INITIALS _____

Page 4 of 17

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

Q: Was that RUF different than the ROE? How?

A: That area is still open to much philosophical discussion. There were separate standards for within the wire and outside the perimeter. We were more restrictive on the rules for combat forces inside the perimeter, because it was a more controlled area. When soldiers were placed on perimeter guard, they got additional training on the more restrictive ROE.

Q: What about the RUF for handling detainees or PUCs?

A: My understanding was the MPs were using the same guidelines that they would use at Fort Leavenworth in the Disciplinary Barracks. In my earlier meetings, with the MI interrogators it was clear they knew they could not use force and did not need to. They were decent and it worked well for them.

Q: What was your role in relation to the International Committee for the Red Cross (ICRC) inspections of the BCP?

A: If the ICRC saw something, then MAJ BOVARNICK and MAJ VILA would bring it to me and I did meet with the Senior ICRC Rep in Afghanistan (Pierre WETTACH) on 1 Jul 02. He told me he liked the facility and we were treating folks well. The complaints were of the nature of asking for special dietary requests (tea, hot meals), showers and laundering their uniforms. I was very happy with our relationship and the ICRC seemed very satisfied with our facility and the treatment.

Q: Did you participate or were you briefed on every visit? Who briefed you? What information were you provided?

A: I did not participate in every visit. MAJ VILA and MAJ BOVARNICK brought any significant issues to me, then they prepared a report and I tried to read most of the reports. It would be unrealistic to say I read them all.

Q: Do you recall any significant issues, which were brought to you, by either MAJ VILA or MAJ BOVARNICK?

A: They asked about people they thought were being held and they could not find. They wanted progress on the winterization of the BCP for the cold weather in the Afghan winter. They wanted to see everyone, but during the first couple weeks, they were not afforded access, which we explained to them. They also made unspecific complaints about treatment of detainees at the forward field locations during post capture. ICRC could not or would not provide data to pursue the complaints, names, locations, etc. So LTG MCNEIL and I both asked for more detail and then since none was forthcoming, LTG MCNEIL decided to reinforce with all the front line units, the standards of

INITIALS _____

Page 5 of 17

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

treatment expected. It was the best we could do, based on the lack of specificity.

Q: Did you notice a change in the quantity or seriousness of ICRC complaints or allegations of detainee mistreatment during your tour? If so, describe when that change occurred and what the changes were?

Korean
A: Not until the fatalities. We had one guy die in early December 02. We thought it was a one time thing, the detainees were not in the best of health when they arrived. We knew that we needed to conduct an autopsy and we encouraged as much outside participation as possible. There was an Army pathologist from AFIP who did the autopsy. There was a German, ~~Jordanian, and~~ doctor present and I think MAJ BOVARNICK also went. It took a couple days, but when it was complete BOVARNICK told me that the results were homicide (a medical determination not a legal one). The pathologist flew out on the 9th of Dec 02 and shortly thereafter, maybe that same night, another detainee died. When the second death occurred, the interrogations were shut down and we suspended basically all operations in the BCP and let CID conduct their investigation. We also coordinated with CENTCOM to determine the appropriate level to initiate an AR 15-6. I talked with CW3 Randy LIGHTY about the preliminary findings, he was based out of Uzbekistan and he came down to run the investigation. We waited for him to finish his interviews, before we resumed interrogations.

Q: What did LIGHTY tell you about the results of the CID investigation?

A: He told me the first guy was very combative and athletic. He told me the MPs related to him they were treating the detainee in accordance with existing policy to strike a detainee ~~with a baton~~ in a fleshy portion of the body. I had never heard that before. LIGHTY produced a copy of picture, which depicted the human body and where on the body a blow could be delivered. I believe there was text associated with the picture. I had never seen anything like it before. The blows were delivered by MPs, (according to LIGHTY) over time and over multiple shifts, without advising other MPs about the previous blows. The second detainee was smaller, more frail, but also combative and he had some visible bruises. One of them you could see the bruising, but I can't recall which one.

Q: Did LIGHTY tell you the blows were delivered with a baton?

A: I'm pretty sure he indicated they used different things to administer blows, I also recall I'm pretty sure that he

INITIALS _____

Page 6 of 17

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

mentioned a baton was used. I also recall seeing batons, when I went through on VIP tours. I just know that the severity of the injury would have required a lot of force. It seems logical that batons were used. He said in the statements, they stepped on them, kneeled on them and used their fists. From what I know about the administration of force, knees, feet and fists were not sufficient to cause that level of damage.

Q: When LIGHTY briefed you on the case, did he show you statements he had taken?

A: I don't think I saw all of them. I did see some parts and I had MAJ BOVARNICK reviewing all of them. He is a real crackerjack attorney and he worked closely with CID throughout the preliminary inquiry.

Q: Were you aware of any misconduct in the case, by anyone?

A: There were a pair of interrogators who manhandled a detainee during an interview. One was a female E5 and the other was a male E4. I think they struck the detainee, kneed him, picked him up by the ears.

Q: Who was providing legal advice to the criminal investigation?

A: My understanding was that CID had to provide their results to CID command and CID's Chief Lawyer was LTC Susan GIBSON. I was told (by Susan GIBSON) the CID Commander himself was reviewing the investigation. I was very frustrated because the inclusion of CID Headquarters caused the investigation to take longer than I thought it should. I checked with LTC GIBSON in Feb (after I returned from leave) and then again before I left. It was not closed when I left. I understand the interest of CID in making sure the investigation was done well, but LIGHTY informed me he could not make any decisions without approval from CID Headquarters.

Q: Were you aware of the use of compliance blows prior to the deaths? How did you become aware of this practice?

A: No. To my knowledge, we never had a non-compliant prisoner and we never heard anything from ICRC about blows.

Q: After the deaths, what was your understanding of a compliance blow and its use?

A: It was only to be used if the MPs could not control a prisoner using less forceful means. That was the understanding I derived from SA LIGHTY's interviews with the MPs.

Q: In your opinion was a compliance blow a lawful use of force?

A: I will tell you I was never asked, but if you asked me today, I would say yes. In self-defense or to control a

INITIALS _____

Page 7 of 17

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

detainee when less forceful means are insufficient to maintain control.

Q: How did you derive your opinion?

A: Primarily from my discussions with SA LIGHTY and the documentation and expertise he provided. LIGHTY told me that the use of baton blows was MP doctrine and accepted practice. I did not have the background or training in corrections.

Q: Who did you assign to advise CID on their criminal investigation into the two detainee deaths in December 2002?

A: LTC COTELL was responsible. Although I was of the opinion, when I left that CID was getting their own internal advice from LTC Susan GIBSON and later LTC Kevin JONES.

Q: Were you aware CID was provided an opinion the case should be sent to be closed without titling any soldier with an offense?

A: No. I thought we at least titled the two MI interrogators. That decision was not made when I left.

Q: Based on the knowledge you had at the time, would closing this investigation without titling be appropriate?

A: I relied on the information CID gave me. I was not making the call, because I was the advisor to the commander, so I did not make those decisions. It was not appropriate for me given my role as command advisor. Nor was it appropriate for BOVARNICK because of his involvement in the BCP as the ICRC Liaison. LIGHTY was also talking to COTELL and BOVARNICK, but we all would have relied upon what CID advised they had evidence to support. I told LIGHTY that I would support any additional assets they needed to conduct the investigation. I'm not sure if he had any assistance with these cases, but he did get some with another case involving some SF soldiers involved in a shooting.

Q: Who should have provided CID with the titling opinions?

A: LTC COTELL. But again, I had several talks with LTC Susan GIBSON and felt very frustrated that CID was withholding our ability to take action in what I felt was our case in our theater.

Q: Was there any discussion about whether or not courts martials would be conducted in Afghanistan?

A: I had made the decision that we would not conduct a courts martial in Afghanistan because there was a cap on the number of forces in theater and trying to conduct a courts martial there would have been almost impossible. We did due courts martials on cases from Uzbekistan, but they were conducted in CONUS.

INITIALS _____

Page 8 of 17

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

Q: Prior to the deaths, were you or your attorneys aware of the use of enforced standing (by chaining detainee in a standing position) for punishment within the BCP? How did you become aware of it?

A: I think BOVARNICK raised that with me. I think it came to my attention after the deaths, because one of the men was found hanging in restraints. When we discussed why he was like that, it was explained to me that was done to keep them awake. I never realized it happened before the man died. I never recall seeing an uncooperative detainee in the facility during my visits. I did see men standing the airlock with handcuffs on, but not chained to anything. I saw men put their hands through the wire for cuffing to move them somewhere.

Q: Were you aware of chaining to effect standing in the execution in courses of sleep deprivation? How did you become aware?

A: I heard about it, I don't remember when. When the second guy was found chained, I know I knew about it then. It did not seem like a good way to treat someone. I just can't recall if it was briefed to me, or how I found out sleep deprivation was being used.

Q: Who authorized chaining to effect sleep deprivation?

A: I don't know.

Q: Describe your understanding of enforced standing or standing restraint? How was it employed? *enforced standing*

A: The only time I heard about that was when I went on VIP visits. I know I discussed it with either MAJ VILA or MAJ BOVARNICK, but I don't recall when. I understand that's a critical factor, but I honestly don't recall when it was discussed. I do know they (MPs) wanted to keep the detainees awake. If they would not stay awake, the MPs would direct them to stand. At some point,

Q: If MAJ VILA said he discussed it with you, would you have any reason to doubt him? *I don't know what to say to this question.*

A: ~~No. If he told me about it, it would not surprise me.~~ The fact that the one man was found chained when he was dead did not look good and you don't know if it was a contributing factor in his death. It meant no one was watching him, there was no one keeping an eye. It was just a technique that we don't need to have them doing.

Q: CID has provided a sketch authored by SPC BRAND, 3 Feb 04. After reviewing the sketch, did you know detainees were restrained in this manner for any reason?

INITIALS _____

Page 9 of 17

FOR OFFICIAL USE ONLY

BIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

A: No. I only visited the Isolation Cells once and I don't even recall them having ceilings at that time.

Q: Did the manner in which the detainee is restrained in the sketch disturb you in any way personally or professionally?

A: Yeah.

Q: Did you observe detainees restrained to fixed objects in any other way or for any reason?

A: No. I never saw it but I did hear about it and I can't recall if it was MAJ VILA or MAJ BOVARNICK who told me. I can't recall if the conversation was before or after the deaths. But I recall being told that if a detainee refused to stand, he was instructed to place his hands through the bars on the airlock and was handcuffed so that he could not sit down.

Q: Under what circumstances would restraint to fixed objects be legally authorized or justified?

A: When you want to maintain control, I've never been asked to render a legal opinion with regard to that. I can conceive of hypothetical situations where it would be authorized and others where it is not.

Q: Did any aspect of AR 190-8 apply to detainee operations in Bagram? Why or why not?

A: I think we used it as a reference or guide. I think that is what MAJ VILA and MAJ BOVARNICK used as a guideline. I don't remember personally having to go in there and pull something out.

Q: Review AR 190-8, paragraphs 1-1b, 1-5b and 1-5c. In hindsight, would any of these paragraphs apply to the BCP during your tour there?

A: I would think so. I think if the reg was determined not to apply then we would try to act in accordance with these policies.

Q: Who made the determination regarding whether AR 190-8 applied to the BCP? *I don't know.*

A: ~~The personnel running the BCP.~~

Q: Who would that be in your mind?

A: Technically you could make the argument that it is the Commander in the Theater. I was his legal advisor, but I would defer to my subject matter experts on the area, which were MAJ VILA and MAJ BOVARNICK.

Q: Would these paragraphs prohibit using knee or baton strikes (sometime called compliance blows) against detainees for punishment or for any reason other than self-defense?

INITIALS _____

Page 10 of 17

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

A: Arguably if the guy is just resisting then it's corporal punishment. Blows in self-defense would be authorized. Hitting someone because they spit on you would not be authorized.

Q: Would these paragraphs prohibit hooding of a detainee for punishment?

A: I think that is a question of fact that would depend on the circumstances.

Q: Would these paragraphs prohibit chaining a detainee to a fixed object? Why or why not?

A: Not ~~in~~ⁱⁿ all circumstances, I think that would be too restrictive an interpretation. You would have to examine each individual case.

Q: If AR 190-8 was not the standard, why is it so heavily referenced and quoted in the AR 15-6 Investigative Report?

A: If you don't have guidance to go from, you go to the closest applicable regulation you have to use as a guide.

Q: Have you reviewed AR 190-47 Army Corrections?

A: I've heard of it and probably read portions of it, again as it is referenced in the 15-6.

Q: Prior to the deaths in Dec 02, were you aware of any limitations placed on the use of standing restraint? If so, who imposed them and what were they?

A: I don't remember. I don't remember approving those techniques.

Q: Did you or anyone from the SJA office provide any guidance on limitations for the use of standing restraint for punishment or sleep deprivation? *I don't remember*

A: ~~I would say probably. If it was asked or either MAJ VIBA or MAJ BOVARNICK they would have given advice and if they came and asked me I would have provided guidance. I'm not sure that anyone ever asked about it.~~

Q: To your knowledge, what was the maximum length of time a detainee could be restrained in a standing position?

A: I don't remember.

Q: Prior to the deaths, did any other staff sections, to include medical personnel or the Command Surgeon provide input or opinions on the health implications of standing restraint?

A: I don't remember.

Q: Did anyone (MI or MP) discuss with you the legality of the practice of standing restraint for the purpose of sleep deprivation?

A: No, not that I can recall.

INITIALS _____

Page 11 of 17

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

Q: Were did the use of standing restraint or enforced standing originate?

A: That's a good question, I recall when the second death occurred it came up but in the CID investigation and the 15-6, I can't recall it ever having been asked before.

Q: Were you aware of the use of standing restraint for punishment or sleep deprivation at any other location?

A: No.

Q: Prior to the deaths in Dec 02, were you ever aware that detainees were being subjected to standing restraint for periods in excess of 2 hours without being let down at all to rest and recover?

A: I knew based on the briefings from interrogators that they were kept awake and that involved being up for a period of time and down for a period of time. It could have been a couple hours.

Q: Did you see any legal problems with sleep deprivation? By chaining?

A: It did not shock me that they were kept awake the first couple days of captivity, but I just don't remember if I knew it was being achieved by chaining them standing up.

Q: On 1 Dec and 2 Dec 02, the ICRC visited the BCP and reported to MAJ BOVARNICK a complaint by a detainee that another detainee was chained to the ceiling for more than a day. Did you know about this complaint?

A: No. This is the first I have heard of it.

Q: Did you see the ICRC notes and response from 1 Dec and 2 Dec 02 visit? When?

A: I don't remember seeing it. I think that anyone who read it (at my level or CENTCOM's level) would have asked questions.

Q: Did you ever recommend against an investigation into any allegations of detainee mistreatment?

A: No.

Q: Are you aware of AR 190-47's restriction against restraining inmates to fixed objects? Did this restriction apply to the BCP? Why not? *NO*

A: No. *Maybe*

Q: Did anyone on the CJ2 staff ever seek formal or informal legal review of interrogation techniques being used in the BCP?

A: I don't remember that, but I don't think so.

Q: Did anyone else seek your guidance regarding the legality of interrogation techniques being used in the facility?

A: No.

INITIALS _____

Page 12 of 17

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

Q: What was your understanding of the TTPs for interrogations being applied by MI personnel inside the BCP?

A: The only knowledge I had was what they briefed when the VIPs visited.

Q: Were you aware of the interrogation techniques identified in Para 7 a thru h of COL NESBITT's AR 15-6 investigation prior to the deaths in Dec 02?

A: The only one I recall specifically was sleep deprivation.

Q: When and how did you become aware of these procedures?

A: I can't recall specifically.

Q: To your knowledge, were you or any other judge advocate asked to review them or provide legal advice regarding them prior to Dec 02?

A: I don't remember.

Q: Were you aware of the categories of interrogation techniques referenced in COL NESBITT's report of investigation? Can you provide your general understanding of what they are?

A: I don't recall them.

Q: What was your understanding of safety positions?

A: I derived my understanding from SA LIGHTY. The only one I recall is kneeling and having them cross their feet. The purpose was described to me as for the safety of the interrogator.

Q: When did you become aware of interrogators using safety positions?

A: During the conduct of this investigation, when SA LIGHTY briefed me.

Q: What is your opinion as to the legality of safety positions?

A: Under certain circumstances they could be appropriate.

Q: Would that opinion change if they are not being used for safety?

A: I believe and I was told that safety positions were used for the safety of the interrogator.

Q: Did you ever meet with the ICRC representative, Ms. Giovanna SCHMID, regarding detainee treatment issues? How often? What issues do you recall discussing?

A: Yes, I met her a couple times, but I can only be very generic about the complaints (green tea, blankets, showers, clean clothes, letters to write, etc). I don't recall anything about physical abuse in Bagram.

Q: Did you meet with SCHMID regarding whether chaining detainees to fixed objects to enforce standing was humane?

A: I don't remember that.

INITIALS _____

Page 13 of 17

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

Q: Did SCHMID make any complaints to you about chaining people to fixed objects to make them stand was humane?

A: I don't remember that.

Q: Did you inform SCHMID AR 190-8 did not apply to detainee operations in Bagram?

A: No, I don't recall any discussion with Giovanna SCHMID about handcuffing in the airlock

Q: Do you know on what information COL NESBITT based his conclusion the MPs knew, were following and strictly applying the RUF?

A: No, I would have to see the 15-6 or even ask him about that. I may have known at the time, but I do not recall now.

Q: Did you see evidence to support NESBITT's conclusion in his investigative report? *conduct the legal review*

A: I didn't ~~review~~ it. I think I looked at it after I got back. I don't remember reviewing it until I got back and I briefed LTG McNEIL on the findings.

Q: Do you recall a discussion regarding an MP who repeatedly punched a shackled detainee in the chest in order to subdue him?

A: It sounds like something LIGHTY shared with me, I seem to recall hearing a detainee resisted in the airlock and had to be pulled out. I don't recall the specifics of the incident.

Q: At any point, were you aware of potential misconduct on the part of any MI soldier?

A: Yes, the female E5 and the male E4.

Q: Of what did you become aware? When and how did you become aware of it?

A: Assaulting the detainee they were interrogating, stepped on his legs, pushed him against the wall, kneed him, grabbed him by his ears. LIGHTY said the interpreter told CID about it and then the soldiers admitted to it.

Q: Did this misconduct warrant titling?

A: Yeah at least for assault.

Q: Do you know why there was no proposal to title this misconduct when the CID field office submitted this investigation for closure?

A: No, I was under the impression they were going to be titled, based on my discussion with SA LIGHTY during the preliminary investigation, before he had to forward everything to CID Headquarters

Q: Are you aware of the requirement to report any potential MI misconduct or failure to follow procedural rules for an investigation - sometimes referred to as a Procedure 15?

INITIALS _____

Page 14 of 17

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

A: No.

Q: Are you aware of the requirement to report derogatory information to the CCF for security clearance determinations?

A: No. I don't.

Q: Did you advise or recommend either of these actions by MI leadership in relation to evidence in the investigation surrounding the deaths of the detainees in Dec 02?

A: I don't think I did, if I did not know about the requirement, then I don't think I would have. COL Ted NICHOLAS knew about the misconduct and he would have given direction in this regard. *I talked with*

Q: Did you or any of your attorneys recommend any commander take any adverse action against any soldier based on the results of the criminal investigations into these deaths? Why or why not?

A: The only person that I thought there would have been a recommendation against would be the two interrogators. Based on the information provided to me by SA LIGHTY, I don't recall anyone making any recommendation to take action against any of the MPs regarding the deaths. LIGHTY told me that many MPs were delivering blows, but that in each case the blows were justified as self-defense or as a control measure. He also told me that no "one" blow could be determined to have caused the death. I got the impression from him that he thought the use of force was justified. I asked him about appropriateness and whether any of it appeared excessive, but that was during the preliminary phase of the investigation. Then I left country for the purposes described above, when I returned nothing substantive changed in his findings.

Q: Did your office recommend SGT Selena SALCEDO (formerly Selena RYAN) be removed from the BCP in January 2003? Who recommended that action? Why was that action recommended?

A: I think COL NICHOLAS made that decision. I thought they took action against her based on what was developed so far. I thought both soldiers were to receive Article 15s

Q: In your video taped comments to The Center for Law and Military Operations, you implied MPs were using batons to strike detainees and the use of batons may have accounted for the injuries in both deaths. Where did you derive this opinion?

A: Based on LIGHTY's conversation with me. He told me they used batons among other things to strike these guys. I could be mistaken, but it really sticks in mind that I got that from him.

INITIALS _____

Page 15 of 17

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

Q: There was no evidence of baton use in either the AR 15-6 investigation or in the initial criminal investigation. Did you ever direct (or recommend the CG direct) CID to thoroughly question MPs about the use of batons and other potentially excessive uses of force by MP or MI personnel? Why not?

A: I thought the 15-6 would have done that. It was part of the charter for the 15-6. *I would have to review the 15-6.*

Q: Based on the severity of the injuries, documented in the medico-legal autopsy, is it your professional opinion excessive force was used?

A: Based on what I was told ^{by} LIGHTY I can't say that. If you wanted to call anything excessive it would have been the repeated blows over time. However, at the time, it was reasonable to conclude at the time that repetitive administration of legitimate force resulted in all the injuries we saw.

Q: What advice did you provide then MG McNEIL regarding the criminal investigation and any potential wrong-doing by US soldiers?

A: I told him what LIGHTY communicated to me. That ^{or persons} we were not going to be able to identify ^{at} particular person as responsible for the injuries. I did tell him about the interrogator's assaults. *at that time but the investigation was ongoing*

Q: Did you support closure of the criminal cases without finding out what happened because it would be too difficult to discover who might be responsible for the deaths?

A: No.

Q: Did your pre-determination not to conduct a courts martial in Afghanistan effect your legal advice or judgment with regard to the criminal investigations into these two detainee deaths?

A: No, as evidenced by the other courts martials that were conducted. It was only a venue issue, not whether one should be conducted.

Q: In regard to AR 190-8, was there a conflict between you and any of your attorneys about the applicability of the regulation?

A: I don't recall having a discussion about which provision applied or did not apply.

Q: What did your contact with or visits to the US Disciplinary Barracks at Fort Leavenworth, KS consist of?

A: One visit to a client on death row and observations on that occasion.

Q: Earlier today, you stated MI Interrogators knew they could not and did not use force, on what did you base that impression?

INITIALS _____

Page 16 of 17

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF COL David L. HAYDEN, TAKEN AT Fort Carson, CO,
DATED 18 Jun 2004, CONTINUED:

A: During a briefing by MI, the briefer told the VIP that they were gaining good results by treating the detainees nicely and just talking with them. The VIP then asked the MI briefer if any force was used during interrogation. His reply was no, it was not permitted.

Q: Is there anything you wish to add to this statement?

A: No.

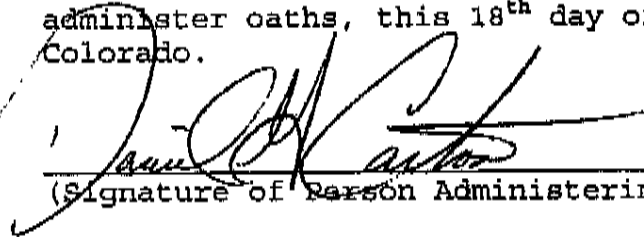
////////////////////End of Statement////////////////////

AFFIDAVIT

I, David L. HAYDEN, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 17. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

REFUSED BY TO SIGN
(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 18th day of June 2004 at Fort Carson, Colorado.


(Signature of Person Administering Oath)

SA Daniel G. CARTON, 3609

(Typed Name of Person Administering Oath)

Article 136 (b) 4 UCMJ

(Authority to Administer Oath)

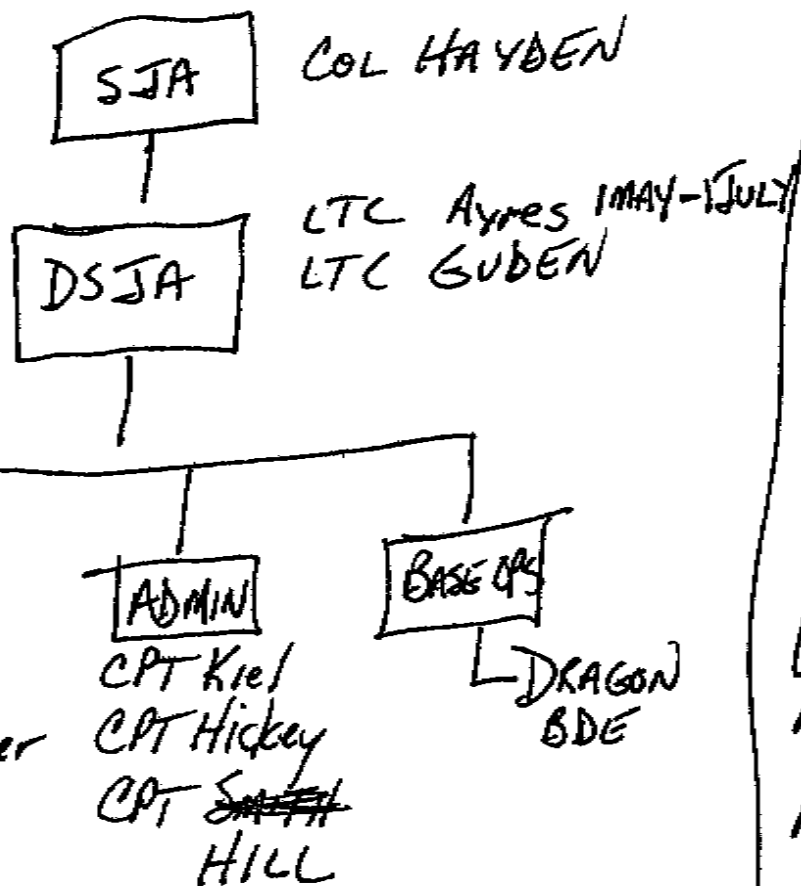
INITIALS _____

Page 17 of 17

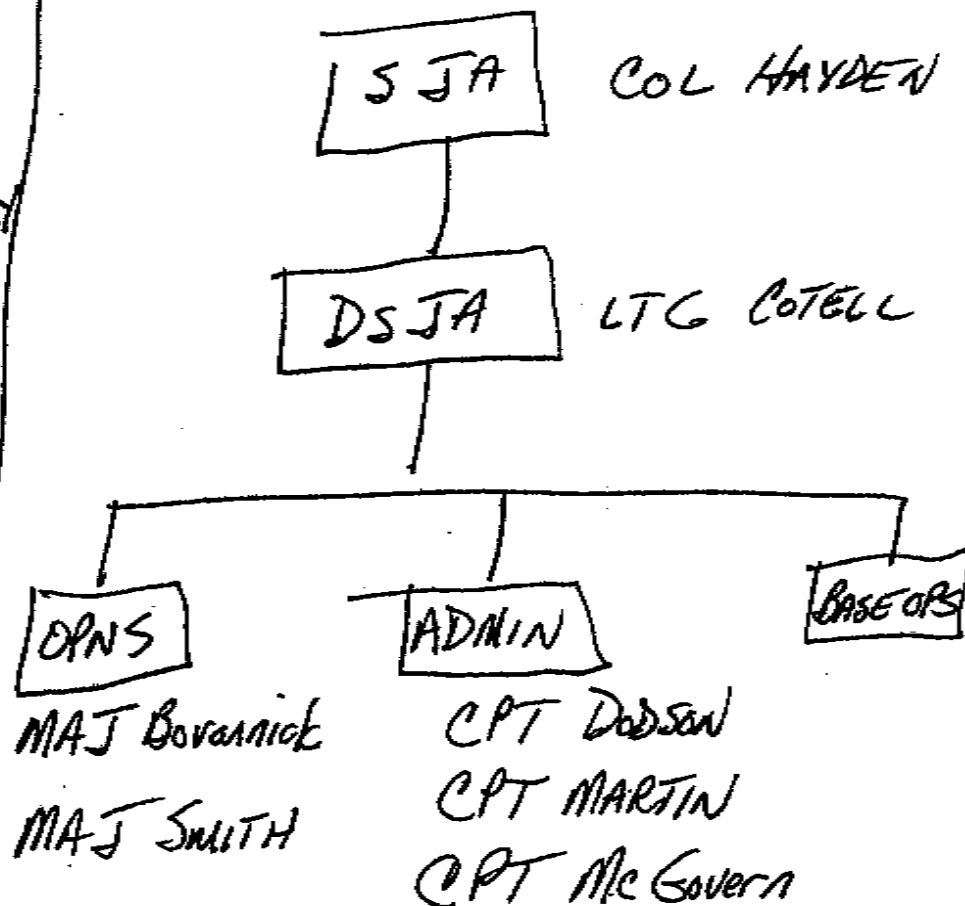
FOR OFFICIAL USE ONLY

EXHIBIT _____

MAY - NOV 02



NOV 02 - APR 03



ORGANIZATIONAL CHART OF BAGRAM SJA
 PROVIDED BY: COL DAVID L. HAYDEN

18 JUN 04

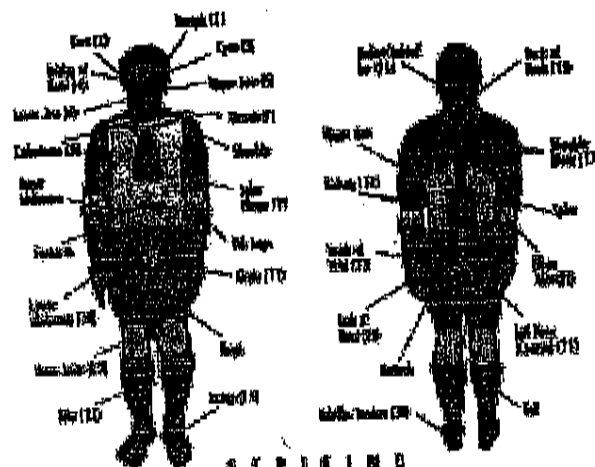
David L. Hayden
 SA DANIEL G. CARTON, 3609.

0137-02-010369-235

WINTERBORN
A. J. Winterborn & Co.

BATON CHART

Comparison of Features to View
And Measure Body Measurements



STANDARD

STANDARD	STANDARD	STANDARD
STANDARD	STANDARD	STANDARD
STANDARD	STANDARD	STANDARD

STANDARD

SHOWN TO COL HAYDEN ON 18 JUN 04

"NOT THE SAME ONE LIGHTY STRUCK IS THAT"

[Signature]

SA ANGELA G. BIA, 3015
18 JUN 04, FORT CARSON, CO

Encl 30

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPLE PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security is used as an additional/alternative means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

LOCATION: Fort Bragg, NC

DATE: 26 May 04 JAB

TIME: 1640 JAB

FILE NUMBER: 0134-02-CID369-23533/0137-02-CID369-23534

NAME (Last, First MI): BOVARNICK, JEFF A. SSAN:

GRADE / STATUS: MAJ/O4

ORGANIZATION OR ADDRESS:

RIGHTS WAIVER/NON-WAIVER CERTIFICATE

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command as a Special Agent and wanted to question me about the following offense(s) of which I am suspected/accused: Reliction of Duty

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with, or without a lawyer present, I have the right to stop answering questions at any time or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. **COMMENTS:** Are you currently represented by legal counsel for any reason? Yes ☐ No ☒ JAB

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

Witness# 1

Signature of Witness

SA ANGELA G. BURT
HQ, USACIDC, Inv Ops Div
Fort Belvoir, VA 22060

Witness# 2

Signature of Witness

Signature of Interviewee

Signature of Investigator/Special Agent

DANIEL G. CARTON, 3609, SA
HQ, USACIDC, Inv Ops Division
Fort Belvoir, VA 22060

NON-WAIVER CERTIFICATE

I do not want to give up my rights: I want a lawyer: ☐ I do not want to be questioned or say anything: ☐

Signature of Interviewee: _____

DA Form 3881-E

FOR OFFICIAL USE ONLY

For Official Use Only / Law Enforcement Sensitive

And 31

SWORN STATEMENT

File Number : 0134-02-CID369-23533/0137-02-CID369-23534
Location : Fort Bragg, North Carolina
Date : 26 May 2004 *JAB* **Time:** 2239 *JAB*
Statement of: BOVARNICK, Jeff Allan
SSN : **Grade/Status:** MAJ/O4
Org/Address :

JAB I, Jeff A. BOVARNICK, want to make the following statement under oath:

Q: What dates were you deployed to Afghanistan?

A: We left here on the 6th of Nov 02, but we took a few days to travel through Germany and arrived at Bagram. I was on the ground in Afghanistan from approximately 12 Nov 2002 to 5 Jun 2003. I arrived back at Bragg on 6 Jun 2003.

Q: What were your duties while deployed to Afghanistan?

A: I was the Chief of Operational Law on the CJTF180 Staff. I was also the BCP Legal Advisor and I was the Staff Liaison with the International Committee Red Cross (ICRC). I was the legal advisor for the Leadership Targeting Cell.

Q: What is your functional area?

A: I'm a lawyer, Judge Advocate. I think the branch designator just changed from 55A to 27A.

Q: How long have you been a lawyer? What positions have you held?

A: I've been a lawyer since 1992, when I passed the bar in Massachusetts. I've been an Army lawyer since 1993. I went to the JAG Course in 1993 (Jul 93-Sep 93). I was a trial counsel with 101st Airborne Division, Fort Campbell, KY from Jan 94 to Aug 95. I did about 32 prosecutions. I was then the Chief of Operational Law, Fort Campbell, KY from Aug 95 to Jun 96. I then moved to Fort Bragg, NC where I was a Trial Defense Counsel from Jul 96 to Dec 97. I did about 60 court cases, but I had over a hundred clients. I was then assigned to the Joint Readiness Training Center (JRTC) at Fort Polk, LA for most of 1998. Then I was the Chief of Criminal Law at Fort Sam Houston, TX from Jan 99 to Dec 00. My last six months I was at Fort Sam, I was the Chief of Client Services. I was promoted to MAJ, in Dec 00, that was when I moved to client services. From Aug 01 to May 02 I attended the Graduate Course at The Judge Advocate General (JAG) School, Charlottesville, VA. I returned to Bragg and became the Chief of Operational Law for XVIII Airborne Corps and then I deployed in Nov 02 to Afghanistan.

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB Q: Had you been deployed prior to the Afghanistan deployment?

A: No.

Q: Have you previously discussed the events related to this investigation with any one since leaving Bagram?

A: Yes, COL MAHER, the FORSCOM SJA called me last week to ask me the name of the ICRC representative and he asked me what we did right after the first guy died and why certain actions were not taken.

Q: Was that the only discussion you had with COL MAHER, relative to this investigation? Did you talk with anyone else about the investigation recently?

A: I don't know what prompted the call, but he used to supervise me at Fort Polk, LA. I knew from someone, I think it was LTC COTELL told me a MAJ DEHN from FORSCOM was visiting. I knew MAJ DEHN was from FORSCOM and COL MAHER was the FORSCOM SJA. I heard yesterday that LTC COTELL was talking with CID. I just informed COL DUNN I was coming to talk with CID.

Q: Where did you normally perform your duties in Afghanistan?

A: My office was a chair and desk in the Joint Operation Center (JOC), which was a tent outside the Headquarters Building. That was my primary daytime duty location.

Q: Where was that in relation to the BCP?

A: It was about a ten-minute walk, maybe $\frac{1}{4}$ of a mile.

Q: How much of your time did you spend at the BCP?

A: In a week on average, not more than ten hours. My visits were for a particular purpose, not to hang out. Before the deaths, I had a tour by the MP Company Commander (CPT BEIRING), two ICRC visits and I think I observed one in-processing session. Primarily I went to the BCP for just for ICRC visit. The ICRC visited every ten days, but the visits lasted two days. I took them (ICRC) down there and stayed for about an hour to talk about previously raised issues, made sure they had everything they needed and then I left them to do their interviews. Then I would come down at the end of their visit and discuss issues, which came up during that visit. Prior to the deaths I think there were two ICRC visits, one I attended with the JAG I was replacing (MAJ Frank VILA) and one I handled on my own. I also took other judge advocates on OPD sessions.

Q: Were you the primary point of contact for legal matters for the facility known as the Bagram Collection Point (BCP), AKA Bagram Control Point and Bagram Detention Facility?

A: Yes.

Q: Who was the ICRC representative you dealt with?

INITIALS **JAB**

Page 2 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB A: Giovanna SCHMIDT worked for the ICRC out of the ICRC office in Kabul, Afghanistan. She departed Afghanistan about July 2003.

Q: What documentation would you receive from the ICRC?

A: They prepared reports on ICRC letterhead, which are maintained at the CJTF180 Headquarters, but I regurgitated the entire content of any issues raised in my response letters, and notes, which I gave a copy of to CID this morning.

Q: Did anything come up with ICRC during the two visits prior to the deaths that you specifically recall were serious complaints?

A: I can't recall specifics, but I kept copies of all the notes from my meetings with ICRC and a copy of the notes and correspondence is maintained at XVIII Abn Corps. Some of the complaints were living conditions or diet issues. But the ICRC consistently complained about the handcuffs, and the hooding and we changed that.

Q: How did you document what occurred during the ICRC visits?

A: We knew about their next visit from the previous visit. The ICRC representative informed us when she would be returning. In preparation for the visit, I reviewed the last visit's documentation and see what issues remained for follow up and the progress of ongoing projects. It could require me to make a visit to the BCP to check on the status of the projects. I also checked the status of the ICRC note cards from family members and outgoing note cards from detainees, which had to be screened by the MI interrogators. I prepared an ICRC information sheet, which listed the detainees. I checked the sheet to identify those detainees, who arrived at the facility within the last 10 days. Those names were not released to the ICRC based upon Army directives which stated we would not release the names of detained personnel for a period of two weeks, during which time the individuals would be screened and interviewed to determine their exact status. This was the period prior to their receipt of their ISN.

Q: How long after you arrived did you have your first meeting with the ICRC representative and what did you discuss?

A: Within the first week with MAJ VILA and 19 Nov 02 on my own.

Q: What specific changes were instituted prior to the deaths?

A: None from me as I was still learning the details of the process. There was a meeting on 26 Nov 02 to identify changes.

Q: What observations did you make relative to changes, which were instituted pursuant to ICRC complaints?

INITIALS **JAB**

Page 3 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB A: I remember a lot of friction between CPT WOOD, MI Commander and myself and CPT BEIRING, MP Commander, when I directed changes. CPT BEIRING was a very weak commander, but he did not want responsibility for warming their food, getting them clean clothes, simple stuff that made sense. He was very resistant to changing anything. I worked with a couple of the MP Lieutenants, whose attitude was much better. 1LT BUELTERMAN was very receptive to making changes, which related to the humane treatment of detainees. CPT BEIRING's attitude was they were "just detainees". I tried to explain that keeping the detainees in the same clothes all the time was unclean and could create problems with disease (because they have a high tuberculosis rate in Afghanistan). He did not see the hygiene issue as important and in some cases, with both of them I had to remind them I was speaking on behalf the CJTF180 Commander. Something they just had to be directed to do (or not do), but it was often a struggle.

Q: During your liaison trips with ICRC representatives, what areas of the BCP were accessible to them? Were they restricted from any areas? If so, explain what they couldn't see and why they couldn't see it.

A: Everything except for the MI portion of the BCP, where they did DOCEX, the JIF. The first two or three rooms on the second floor. They were permitted in the Isolation Rooms, but not the billets of the Iraqis neither of which were detainees. The Iraqis were later released to UNHCR. They also did not talk with the High Value Target (HVT), they were not even supposed to know they were there. The HVT's were not even listed on the ICRC info sheet, based on directives from CENTCOM.

Q: Referring to your notes, what complaints did ICRC lodge relative to the treatment of detainees at the BCP?

A: Not about treatment, during my first visit, according to my notes. On my second visit (which occurred 1 Dec/2 Dec 2002), SCHMIDT and myself observed a PUC being punished by having him chained in the airlock, with his hands cuffed to the bars at eyelevel. The guard (as referenced in my notes) gave two explanations. The first was that the detainee was kicked by another detainee. Then the MP corrected himself and said the detainee fell asleep on the toilet. In my seven page ICRC AAR, dated 1 Dec - 2 Dec 02, there is a complaint raised by SCHMIDT, wherein she reported a detainee was kept chained to the ceiling for over a day. I confronted CPT BEIRING with the accusation and he told me categorically that did not happen.

INITIALS JAB

Page 4 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB On 26 Nov 2002, I convened a council of personnel (including PMO, BCP Ops, J2, JIC, OGA, 377th MP Company rep and others) to discuss the findings in the ICRC Six Month report, which covered the period prior to my arrival. Within the six-month report, there is discussion of concern over the use of "safety positions" and "punishment". There is a response to this ICRC report, dated 5 Dec 02, which documents comments by 1LT COLLINS, the BCP OIC who reported chaining was used to enforce the punishment of standing. He further explains and I understood that since standing was a method used to achieve sleep deprivation, they also chained people to keep them awake.
Q: Was prior notification to the BCP required for all ICRC visits?

A: Their visits were cyclical and programmed. They told us when they were coming again, at the end of each visit. It was typically about ten days between visits. Some times she (SCHMIDT) would email me and adjust the date, this often disturbed the MPs and MI. They complained about it. My perception was that CPT WOOD had to adjust her interrogation schedule. When I took over, MAJ VILA checked the programmed interviews on the status board and worked around MI's schedule. When I took over, I told MI they would have make any one with an ISN available for ICRC interviews when they came. It created friction between us at first but after awhile they adjusted.

Q: Was any information withheld from ICRC or were practices modified during their visits? If so, explain what the information was and why it needed to be withheld.

A: The identities of certain HVTs was withheld on directions from CENTCOM, sometimes based on their cooperation with Coalition Forces, but it varied and it was just isolated cases. I think of the 500 detainees who processed through the BCP, about 10 of them were HVTs. I can really only comment about after the death, because before that no one knew there was a problem with it. To my knowledge, no practices were modified. I never gave any direction to them to change anything. But after the 15-6 findings and recommendations were instituted I did training with the MPs and I made certain they knew if they (meaning the MPs) stepped over the line and violated an order I would make certain they were held accountable. Of course, this was after both men died.

Q: Who selected the detainees the ICRC would be allowed to interview?

INITIALS *JAB*

FOR OFFICIAL USE ONLY

Page 5 of 23

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB A: To a certain extent, it would be MI. It was detainees with ISN(s). ICRC knew they were not allowed access to detainees without an ISN. Prior to my arrival, CPT WOOD (MI Commander) had a program of interviews and if there was a conflict, ICRC would not be permitted to talk with them. When I took over, I changed that and anyone with an ISN was made available to ICRC.

Q: Could or did the ICRC ever visit a detainee that didn't have an international serial number (ISN)?

A: I would say they probably did, by accident. Sometimes, the MP brought down the wrong detainee or on occasion when ICRC was visiting detainees with an ISN in Isolation Cells, they would see people in Isolation without ISNs. CPT BEIRING complained that this was not allowed, but I saw no harm in it. It was usually chitchat for a couple minutes in full view of the guards.

Q: About what percentage of the detainees in the facility did not have an ISN at any given point in time?

A: About 5-10%, but the exact numbers are in the reports I provided. Within a two-visit cycle, ICRC saw 99% of our detainees. If they did not see someone, it would be a function of timing, rather than an effort to prevent someone from seeing the ICRC. ICRC also had the raw numbers of persons in the facility, but for the first two weeks they did not get ISNs so they did not have names.

Q: Were you aware that the Military Police removed certain information from their status boards regarding detainees in isolation cells or on sleep deprivation when the ICRC visited?

A: No. I always went into Isolation Cells with ICRC and I saw the status board. Once I observed writing on the board, which noted removal of a Koran from a detainee noted on the boards. The book was sitting on the desk and I think I remember the MPs told me the detainee could not read. I confronted the MPs with it, I told them I did not care, to give it back. Maybe based on that, they started erasing it when I was coming.

Q: Were you the sole legal advisor to the entire BCP? Was there a separate advisor to the MI or MP BCP or staff counterpart elements?

A: I was the advisor for all detainee matters. I provided guidance, direction and training to the MPs and MI.

Q: Within your role as the BCP legal advisor, did you ever meet or discuss with the MP or MI Chains of Command related to the operating procedures and standard practices within the BCP?

INITIALS JAB

Page 6 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB What types of practice or procedure issues were raised to your attention and what did you do about them?

A: Yes, this would definitely be after the deaths. Prior to the deaths, I would have to honestly say no, based on the timing of when the deaths occurred as to when I arrived in Afghanistan and began my duties. I would have to presume that MAJ VILA, my predecessor, would have had conversations with them. Prior to the deaths, I would have to say probably no, I did not have conversations with the MI and MP commanders related to operating procedures and practices. Any of the initial meetings with them would have been orientation meetings to familiarize myself with the functions of the BCP as well as the functions of the MP and MI units themselves within the BCP. After the deaths, I had lengthy meetings with them discussing their understanding of the BCP SOP, which had been in place since I got there. One of the complaints, which I seem to recall, was the MPs complaining that MI was directing them to follow a particular sleep deprivation routine. The MPs would have to track on a status board the progress of the MI directed sleep deprivation protocol. The MPs would have to physically go into the cells and tell the detainees to wake up. The ICRC had made complaints about the sleep deprivation. We informed the ICRC that sleep deprivation was an approved interrogation technique as long as there was no physical force used to keep the detainees awake. The resolution for this issue was that if MI wanted to continue to use this technique, they had to be the facilitators of the technique. The MI would have to come and keep the individual awake, not the MP's.

Q: Did you have occasion to mitigate differences of opinion between MI and MPs over the operation of the BCP or the roles of the respective units and personnel? What types of issues were raised to you by either unit?

A: After the deaths of the two detainees, it was not so much an issue of either the MP or MI Commander's raising issues with me, as it was myself reviewing the BCP SOP and higher headquarters authorized techniques, regulations and procedures related to MP handling techniques and MI interrogation techniques which I reviewed with them in detail.

Q: Were you ever aware of the MPs carrying batons in the BCP? If so, how were you aware? Did you ever personally see them with batons inside the facility or other than at in processing?

A: Prior to the deaths, I was not aware of them carrying batons. After the deaths occurred, there was discussion about

INITIALS *JAB*

Page 7 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB the use of the batons and what training they had with them. We reviewed the Monadnock baton chart and the corresponding differences between the red, yellow and green baton strike areas. I don't have any specific recollection of the MP's carrying batons within the facility, if I had seen them, I would not have thought it was odd, as the baton is part of the MP basic issue equipment. I seem to recall when the Active Duty MP's from the 3rd Infantry Division were assigned to the facility after the 377th MP Company, that they conducted training with their MP riot shields, helmets and batons. I cannot recall the 377th MP Company carrying batons within the facility. It would not have surprised me if they had carried a baton on their belts along with their other equipment. During the occasions when I observed the in processing of the detainees into the BCP, I believe I recall the MP's having batons at that time, however, I cannot be absolutely certain.

Q: Prior to the deaths in Dec 02, were you aware of the use of enforced standing/standing restraint for punishment?

A: Yes. At the first ICRC session and during my walkthrough with MAJ VILA, the MP's were definitely using enforced standing and standing restraint for punishment. Also I knew that the MP's were handcuffing the detainees to the bars, which formed the walls of the airlock of the general population cells. I know I observed this activity during my visits to the BCP.

Q: Prior to the deaths in Dec 02, were you aware of its use in the execution of courses of sleep deprivation?

A: I was aware of forced standing in the execution of sleep deprivation. As to how the MP's made detainees stand for the purpose of sleep deprivation, I am uncertain. I am not as uncertain that one of the methods used to make them stand would have included handcuffing the detainees. I am not sure to what objects if any the MP's fastened the handcuffs to enforce the standing.

Q: What was your complete understanding of enforced standing or standing restraint practices? How was it employed? Explain in detail.

A: An approved technique for MI included sleep deprivation. At the time, prior to the conflict with the MP's executing the mission of sleep deprivation, the MP's would actually execute the mission for the MI. The MP's would be authorized to keep the detainees awake based on the direction of MI. During the execution of the mission, the MP's would employ various techniques to keep someone awake. That would include yelling at

INITIALS AAB

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB the individual, keeping the lights on; forced standing; and ultimately to enforce the forced standing, handcuffing the individual to something to keep them from sitting down. That would require the individual to be cuffed at waist level or higher, but not higher than eye level.

Q: Prior to the deaths in Dec 02, did you ever observe any detainee in standing restraint? Explain exactly how the detainee was restrained when you observed this.

A: I think so. I think it was in the air lock, people were consistently shackled in the airlock, even during the ICRC visits. No effort was made to hide it. They were restrained with their hands cuffed together and the cuffs were affixed to the airlock at about waist level. I also observed detainees secured to a pipe by handcuffs with their hands over their head, during in-processing sessions, but this was only for a short period during in processing and not for punishment.

Q: Did the manner in which the detainee was restrained disturb you in any way personally or professionally? If not, why not?

A: No, I don't think I found it disturbing because I never saw it, I heard it described very clinically as a procedure and I did not have a reaction to it at the time. I felt the MPs were professional and they were doing the right thing. Later, when I saw it in practice, it bothered me to learn they were cuffed over their heads. It was SOP, which was designed under other folks, but it was approved and disseminated.

Q: What was the legal justification for chaining people in this manner?

A: There was no precedent. AR 190-8 did not apply because they were not EPWs and AR 190-47 did not apply because they were not US forces in a correctional setting. The bottom line was humane treatment. My personal question then was "is it inhumane to handcuff someone to something?" Giovanna and I had several discussions about whether or not it was humane. In my opinion, and in discussions in which LTC COTELL and COL HAYDEN were present, it was our opinion that it was not "inhumane". It was SOP and a practice that was being done when I arrived. We agreed to disagree, because Giovanna felt it was inhumane, although she could cite no particular source.

Q: Did you review the SOP?

A: Yes.

Q: Where in the SOP does it say that handcuffing to a fixed object is permitted?

INITIALS NAB

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

fnb A: It doesn't. I just looked at it and there's nothing in there that references that.

Q: CID has shown you drawn by an MP (SPC Willie V. BRAND, dated 3 Feb 04), he says this represents how one of the detainees who died was restrained at one time when he was assaulted. Did you ever see a detainee shackled in this manner?

A: No, absolutely not. It came to light, my knowledge of this chaining with the hands overhead, when the first death occurred. That was how the detainee was found. When COL MAHER called and talked with me last week that was one of the big questions he asked me "What did you do between the first and second deaths?" I remember walking the autopsy team through the facility and I absolutely remember telling CPT BEIRING and the Platoon Leaders that there would be no shackling to the ceiling ever again. I did not talk personally with each and every MP, but when the second detainee died, I did hold a briefing, which every MP was required to be at. I did this because I did not have confidence that CPT BEIRING briefed his unit.

Q: Are you aware of AR 190-47 (Army Corrections)'s restriction on restraining inmates to fixed objects?

A: Yes.

Q: Did the AR 190-47 restriction apply to the BCP? Why not?

A: No. It was discussed amongst the senior lawyers in country and COL HAYDEN, LTC COTELL and myself arrived at the decision that 190-47 did not apply. We also determined that AR 190-8 did not apply because of the determination that these were not EPWs. The only standard was humane treatment consistent with the Geneva Conventions.

AT 1640 hrs, 26 MAY 2004, I ACKNOWLEDGED I WAS AWARE OF MY LEGAL RIGHTS, BY COMPLETING A DA FORM 3881.

Q: In the 15-6, Finding #4 (Disciplinary Procedures) cite and would seem to indicate that AR 190-8 and AR 190-47 do apply. How do you explain that before the deaths those regulations did not apply and after it did not?

A: I don't read it to say that at all. It references the AR(s) but it does not say that they are applicable. I do not believe there is a document anywhere which states that the either regulation applies and there is clear guidance by the Secretary of Defense that detainees were NOT EPW(s).

Q: Why was the practice then changed?

A: Because of how it appeared. Both men were shackled, standing, and hooded when they died and we stopped it because of

INITIALS

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB the appearance, but not because we believe it violated the regulations. It just didn't look very good.

Q: Explain why then the BCP SOP cites AR 190-8 in it's text with specific regard to the reference to Appendix B.

A: I don't think it's inconsistent to say that not all portions of AR 190-8 apply. I did not write or provide the legal review to the BCP SOP, but in my opinion, some portions of AR 190-8 were used because they applied to the practice of assigning ISN. However, other portions do not apply because they were clearly designated as NOT an EPW. We used the procedure in Apdx B because it applied, but the rest of it I don't believe applies to the treatment of detainees (afforded EPW status).

Q: Was that a conscious legal decision on your part or adherence to the standard of practice in place when you arrived?

A: For me it was a practice in place when I arrived, but then I analyzed it myself when Giovanna discussed the standard of humane treatment. The next question is "is it humane?" in my opinion. CPT DODSON and CPT MCGOVERN and I researched whether handcuffing was inhumane. The treaties we located referenced talked about torture, handcuffing was not among the techniques listed as torture. So I took that information into a discussion with Giovanna and showed her both AR 190-47 and AR 190-8 and demonstrated they did not apply. I found handcuffing to be neither illegal nor inhumane.

Q: Based upon SPC BRAND's sketch, would that position of standing restraint be torture, in your opinion?

A: I would clearly say yes. Especially if they were hitting him as the sketch reflects.

Q: Did you give guidance or direction to the MPs and MI which clearly defined what was permissible handcuffing?

A: I had several discussions with CPT BEIRING and CPT WOOD about the limits of handcuffing in order to keep someone standing (for punishment or sleep deprivation), because of the ICRC objections. Clearly there were limits on the placement of the detainees hand, the discussion was could they be cuffed at the waist and still sit. Both officers were clear on the fact that cuffing overhead was not authorized. These discussions occurred before both deaths.

Q: Did both officers (CPT BEIRING and CPT WOOD) acknowledged the practice was used punishment and sleep deprivation?

A: Yes.

Q: Are you certain both officers understood your direction to not have detainee's hands cuffed over their head?

INITIALS JAB

Page 11 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB A: Yes. Both were very protective of their areas of operations. CPT WOOD tried to restrict my access to the JIF and I wouldn't stand for that because I can't advise on what I have no visibility over.

Q: Did it surprise you then that both men died with their hands cuffed over their head?

A: The second one definitely. The first, CPT BEIRING explained to me as an extremely combative person and this was the only way for the MPs to restrain him. This was explained to me by the MPs. He was reportedly, fighting, kicking, spitting his food and this was the first detainee that was combative with the MPs during my tour.

Q: Did you have confidence CPT BEIRING communicated your direction to his troops?

A: I had given him instructions initially and then reinforced those directions after the first death, but obviously it did not work. I don't know if he just didn't get it, his troops did not listen, or did not care. By the time the second man died, I did not care what the problem was, I knew how to fix it and make it clear to the MPs that chaining was not tolerated. I told each and every one of them myself.

Q: On what factors or assumptions did you base your conclusion in the 5 Dec 02 reply to the ICRC that standing restraint for punishment does not physically harm the PUCs.

A: That was based on observations of detainees who had been previously cuffed at waist level with no ill effects.

Q: With whom did you consult in making that determination?

A: No one. I talked with the pathologist later, when they did they re-enactment of the detainee's position (before the autopsy), about the position of overhead cuffing and the negative medical effects. She (Dr INGWERSEN) explained to me that chaining the detainees hands over his head, combined with the hood could cause airway obstructions, breathing problems and potentially causing them to hyperventilate due to excitement. We discontinued the practice immediately, despite the fact that the autopsy did not find the man died of asphyxia.

Q: When you directed changes to CPT WOOD and CPT BEIRING, did you follow up with their leadership (JIDC, BCP PMO and the J2) to ensure the changes were made and enforced?

A: I was in constant communication with MAJ ATWELL (PMO) and LTC LOFFERT/COL NICHOLAS (J2). Both were present at the 26 Nov 02 meeting where we discussed the issues raised in the six-month

INITIALS *JAB*

Page 12 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB prior ICRC report. They were well aware of issues and our proposed fixes for those issues.

Q: Did you to ensure unpopular changes were actually instituted? Did you check? How often?

A: The checks were done during every ICRC visit and corroborated by the fact the detainees did not make complaints to the ICRC about treatment.

Q: Prior to the deaths, were any limitations placed on the use of standing restraint? If so, by whom?

A: Just the time limit, first offense was 30 minutes and the maximum was an hour. After that it would have to be approved by the OIC of the MP. That limit was based upon and articulated in the BCP SOP. I also directed both CPT WOOD and CPT BEIRING that no detainees hands were to be cuffed higher than waist/eye level. It was decided that the cuffing would be no higher than was required to keep them on their feet and definitely was not to be done overhead. My guidance to them definitely preceded the deaths, the latest this guidance would have been put out was 26 Nov 02.

Q: What legal references did you consult in forming this advice?

A: We did research on what constituted torture, under previous case law. We could not find any reference to merely cuffing someone as torture. The practice was primarily based on established SOP.

Q: Was there a maximum length of time a detainee could be restrained in a standing position? Was there any discussion regarding the need to limit that?

A: One hour for punishment, I don't recall a limit placed on sleep deprivation.

Q: How was this maximum time determined? Who was consulted to determine it?

A: It was in the BCP SOP, which was in place prior to my arrival.

Q: Did any standing practice or procedure within the BCP change, or were any added or removed during your tour because of complaints from ICRC?

A: Quite a few, which were documented in the response to the six-month report covering the period of Oct 02 - May 03. There letter to use documents the changes. It ranges from elimination of handcuffing for punishment, denial of privilege based punishment, recreational visits outside, new uniforms, washing their uniforms, allowing the detainees books and games, allowing

INITIALS *JAB*

Page 13 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB celebration of Eid (to include the furnishing of mutton to the detainees), hot tea and showers for the detainees, ICRC note card were returned more quickly, ICRC access to everyone with an ISN, ICRC length of meetings were not limited, ICRC monitorship of GTMO transfer, notification to detainees of rules and punishments, a medic was placed on the staff of the BCP, we modified ICRC reports to provide more accurate record. There were a few issues I could not resolve, but we did a good job, everything is reflected in my responses through out my tour. They also wanted the information on numbers of people injured by mines, it was not related to detainees, but we provided to ICRC because they asked.

Q: Were you aware of the quasi senior-subordinate role of MI to MPs relative to the imposition and enforcement of sleep deprivation?

A: Absolutely and it's clearly documented in the 15-6. I saw both of the personalities and CPT WOOD was the definitely the dominant personality. The enforcement of sleep deprivation was directed by MI and carried out by the MPs. Even the "no talking" rules was the MPs enforcing an MI rule.

Q: If an MI SPC told an MP SGT to do something, would the MP have to do it?

A: Yes, there was always that friction. I told COL NESBITT about this friction and he included my observations in his report. The MI never wore rank and they definitely gave directions to the MPs regarding sleep deprivation. MI controlled that portion absolutely.

Q: Did anyone from the 377th MP Company or the MI detachment discuss with you the legality of the practice of standing restraint for the purpose of punishment? How about for the purpose of sleep deprivation?

A: Yes, there were detailed discussions with CPT BEIRING and LT COLLINS, LT BUELTERMAN, LT MUELLER, as well as the NCOIC of the MP's. SSG LORING and CPT WOODS were also present from the MI. These discussions were conducted on 26 Nov 02 and maybe less intensively after the first ICRC meeting I attended. The legality of the practices was based upon the findings of the ICRC in regard to detainees being secured within the airlock in handcuffs. They may have become concerned, because when I arrived, I was more restrictive than what they may have been doing prior to my arrival. There were other conversations with each of these people individually which occurred at different times related to the legality of this issue. In addition to

INITIALS *JAB*

Page 14 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JB speaking to them as a group, I believe I may have spoken to them individually as well, I cannot recall when these conversations may have been. I would have advised them that the punishment was standing. If the problem continued, they should be brought into the airlock to stand. If they refused to stand in the airlock, then they could be handcuffed to the airlock in a manner to keep them from sitting down. In regard to sleep deprivation, I believe we did have conversations related to the conduct of sleep deprivation. I would have told them that the use of sleep deprivation was a legal technique. The use of the handcuffs would have been authorized as a last resort, after other methods of keeping the detainee awake. This may have been the time when the issue related to the MP's having to enforce sleep deprivation in support of the MI. The MP's were concerned that due to them having to enforce the MI directives, they were being perceived in a negative manner by the detainees, whom they had a responsibility to protect and care for. To my knowledge I was the legal advisor to the BCP. I am not sure if the MI may have sought other legal advice that I am not aware of.

Q: Prior to the deaths in Dec 02, was the use of standing restraint to achieve sleep deprivation ever in fact officially authorized by anyone? Who? What was their name/position?

A: That I don't know the answer to, as "officially authorized". I would have to assume that it was, as it was a practice in place when I arrived. I may have justified the position after I arrived. The individuals who assembled the SOP, the legal advisor was MAJ VILA. I am certain that there was a group of individuals who were responsible for the compiling the SOP that became the approved document.

Q: Prior to the deaths in Dec 02, who within the BCP and JTF staff was aware that standing restraint was being used for long periods of time to enforce sleep deprivation?

A: Generically it would seem that we would have known they were using sleep deprivation. It would make sense that they would have used restraints to enforce sleep deprivation. It would have been common knowledge among the group of people that I spoke with on 26 Nov 02, identified previously. Additionally, the legal staff to include myself, the J2 and intelligence section as well as the Provost Marshal, would have known.

Q: How were the limitations or guidelines with regard to standing restraint disseminated and to whom were they disseminated?

INITIALS *MA*

Page 15 of 23

--- PAGE ONLY

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB A: There was nothing particular in writing. I did this orally to the leaders of the MP and MI sections explaining the limits. This was done during my meeting with them 26 Nov 02. After the deaths, I issued additional instruction to everyone who worked within the BCP that there would not be any handcuffs utilized.

Q: Did you also consult with MI personnel on their interrogation activities inside the BCP? Who?

A: Yes. This was more after the time of the deaths than before. After the deaths, I spoke with the entire staff of MI interrogation personnel. Prior to the deaths, the MI leadership would have attended my briefing on 26 Nov 02. My contact with MI prior to the deaths would have been minimal, due to me familiarizing myself with the policies and practices of the MI.

Q: What was your contact with and advice to MI interrogators on their tactics, techniques and procedures (TTPs) for interrogations prior to the deaths in Dec 02?

A: Minimal with any. It focused on the capture shock period during the initial in processing.

Q: Were you aware of the approved TTPs for MI as listed in FM34-52?

A: Not prior to the deaths.

Q: Prior to the deaths in Dec 02, are you aware of any guidance regarding specific or additional interrogation techniques issued or authorized by CENTCOM?

A: No, I did not have the time prior to the deaths to develop a complete understanding of the authorized techniques.

Q: Are you aware of any reviewed or un-reviewed internal guidance issued by CPT WOODS or anyone within the 519th MI Bn relative to the treatment or interrogation procedures for Afghan detainees?

A: Definitely not prior to the deaths of the detainees. I was involved in a working group during early Jan 03, during which MI provided input through the J2 related to techniques the MI had used; techniques the MI found effective and techniques the MI would request to be maintained by CENTOM and the Department of Defense.

Q: Did you provide or your predecessor perform a formal legal review or request higher approval of the BCP interrogation procedures prior to the deaths of the two Afghan detainees in Dec 02? If so, where is this documented?

A: I did not. I cannot speculate on what MAJ VILA did during his tenure.

Q: Did you ever personally observe any interrogations?

INITIALS *JAB*

Page 16 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB A: Yes, but it was well after both deaths and it was a CITEF interrogation.

Q: What was your opinion relative to the adherence to the guidance in FM 34-52 during any interrogations you observed?

A: CITEF is not subject to FM 34-52. My assessment of the interview is two fold: I thought the interrogator did a great job; it was almost too perfect. I'm not sure if it was that good because they knew I was watching.

Q: Any reason why you did not observe an MI Interrogation?

A: I can't think of any reason why I didn't. I don't think I was ever told I could not.

Q: Prior to the deaths in Dec 02, were you aware of the use of interrogation techniques identified in Para 7 a thru h of COL NESBITT's AR 15-6?

A: No, I did not observe any interrogations prior to the deaths.

Q: Did you consult with CID in Bagram about the criminal investigation into the death? If so, did you render a legal opinion for them?

A: Yes, absolutely I talked to SA FLORES & SA POTTER multiple times every day. I read every statement and asked about who was interviewed. We talked about bringing the pathologist in for the autopsy. I attended the autopsy and even escorted the body to the family. I briefed my bosses (LTC COTELL and COL HAYDEN) and prepared SIRs every day on the case. I remember digging up the presence of an events log kept by the MPs, I recall trying to de-conflict the timeline from the MP log, the morning following the first death. The statements I read were early on within the first two weeks.

Q: Did you form any opinions about the criminal culpability of any soldiers from your review of the CID investigation?

A: Yes, I think what we came up with SGT Selena RYAN's physical involvement with the detainee, putting her knee on a PUC as witnessed by the interpreter. The MPs looked justified based on their description of his combativeness and their description of force used to overcome his actions. I could never see any criminal intent on the part of the MP to cause the detainee to die. I could not draw a causal connection between what appeared to be a legitimate use of force on the detainee's leg and the death of the men caused by a blood clot in the heart. I was deriving facts as a function of my role for the ICRC Liaison.

INITIALS *JAB*

Page 17 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JB Q: Did you have an impression regarding what weight was given to the statements of interpreters, relative to their allegation of assaults by MI interrogators in interviews?

A: We reviewed it as credible. I put great weight behind it, he had no reason to make it up.

Q: Did you provide CID with titling opinion, relative to any misconduct uncovered in the death investigations?

A: I think I was present during a discussion SA FLORES had with LTC COTELL. My job was not Crim Law, LTC COTELL was the head Military Justice attorney and CID discussed that with him. The SJA, COL HAYDEN made it clear to me when I arrived in Bagram, I was not the criminal law attorney, as he knew I had extensive criminal law background. I was to devote my duties to operational law. He did not have to tell me twice.

Q: Do you know, or did you discuss with Bagram CID, how they arrived at the impression that compliance blows or common peroneal knee strikes were authorized?

A: I think it was based upon the impression of everyone from CID to SJA, the MP's description of events that justified the use of physical force. We believed the MP's story, that this was the most combative detainee ever. I also based a large part of my opinion on the CID Agent's opinion of the MP's credibility. I put a lot of weight in SA FLORES opinion. LTC COTELL, COL HAYDEN and myself all had a lot of discussion with SA FLORES.

Q: Based on your understanding of the BCP Standard Operating Procedures, were the MP authorized to deliver, kicks, blows or punches for anything other than self-defense?

A: The SOP says to maintain discipline and gain compliance. It had to be proportional. But I can't envision a scenario where it would have been justified to strike a detainee who was cuffed. If the detainee had full range of motion and freedom of movement and was fighting to escape or assaulting the MP, then they might need to use proportional force to gain control.

Q: Do you remember two MP statements (from SPC NICHOLS and SPC WATHEN) where a chained detainee was lifting his hood and the two MP asked for and received permission from the Sergeant of the Guard (SOG) to deliver 4-5 common peroneal strikes each to him for non-compliance?

A: I don't recall that. I view that description as illegal because he was chained up. I don't recall hearing that before. At the beginning of the investigation, I read everything for about the first week, after that I had less and less

INITIALS *JB*

Page 18 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB involvement. I certainly see that as a violation and don't recall this. Legal opinions on this case came from LTC COTELL.

Q: At any point, were you aware of potential misconduct on the part of any MI soldier? Of what did you become aware?

A: Yes, with regard to Selena RYAN. MI is strictly prohibited from having physical contact with detainees and she clearly did. I don't recall if there was an interpreter and another male MI soldier was with her and if he touched detainee it would also be prohibited

Q: Did you discuss the potential titling or disposition of allegations concerning misconduct by SGT Selena Ryan?

A: No, I made a conscious decision to stay out of the Crim Law lane. That was not my job and I needed to let them do their thing.

Q: What did you discuss and with whom?

A: I did have a talk with CPT HOPPER, MI Co Cmdr, who was looking for CPT DODSON, our Crim Law attorney. I told him at a minimum her conduct was suitable for an Article 15 or higher. I answered general questions for him and I viewed him as a new commander with very little to no experience with military justice. I remember LTC LOFFERT asking me as well. I discussed their options with them in general terms, but encouraged them to talk the specifics with CPT DODSON, the Crim Law Attorney.

Q: Did you perceive any conflict of interest in advising CID's criminal investigation given your intimate association with the facility and the potential that techniques of which you were aware might have contributed to the deaths? Did you seek the guidance of a supervisor regarding this potential conflict?

A: I was not advising the CID investigation. I had access based upon my position as the Bagram Legal Advisor. I made it clear to SA FLORES that he needed to be dealing with CPT DODSON or LTC COTELL. I needed to gather the facts to forward to CENTCOM and to relate to the ICRC. I did not comment on the criminal culpability to CID. I needed access to amend procedures within the BCP. Both my supervisors (LTC COTELL and COL HAYDEN) knew I was aware of my role and that I was staying clear of the criminal matters.

Q: Are you aware of the requirement to report any potential MI misconduct or failure to follow procedural rules for an investigation - sometimes referred to as a Procedure 15?

A: I heard the term, but not until after the deaths. When I did hear it, it was in reference to some other type of violation, like a disclosure of classified information.

INITIALS *JAB*

Page 19 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

JAB Q: Did COL Nesbitt, the AR 15-6 investigating officer appointed to look at BCP procedures ever consult with while he was conducting his investigation?

A: He interviewed me.

Q: What did he discuss with you?

A: We talked at length about everything I knew. I recall specifically alerting him to the MP/MI friction. I talked over much of the same issues with him, which I've talked with CID about today.

Q: What factual information did you provide?

A: I provided him with reconstructed timelines. If he requested anything and I had it I would give it to him, but I don't recall anything specific. If LTC COTELL needed assistance getting regulations I had my nightshift guys obtain it for him. I remember sending emails to Dr INGWERSEN asking about the autopsy report, but I don't know if that was for COL NESBITT. I also gave him any information he required in my position as the ICRC liaison.

Q: What, if any, legal information did you provide to COL NESBITT?

A: None.

Q: Who asked you to provide a legal review of the 15-6 investigation prior to COL Hayden's legal review and recommendations? Did you feel it was appropriate for you to provide a legal review under the circumstances? Why? or Why not?

A: We were shorthanded; LTC COTELL could not do the review because he was the legal advisor. COL HAYDEN was on leave in the states, so LTC COTELL asked me to do the legal review. I didn't see any conflict with it. LTC COTELL and I discussed it; I was familiar with the facts and the circumstances. I had the knowledge and as long as LTC COTELL did not see any reason why I could not, I didn't really consider it.

Q: In a memorandum attached to COL NESBITT's AR 15-6, with your office symbol (signed by LTC COTELL), it states that "safety positions" were only used for the safety of the interrogator (with dangerous PUCs). Did you in fact author this memorandum?

A: I reviewed it and had input. LTC COTELL authored the document and signed it. The Deputy SJA Billet is technically under the Ops Law Section, so it is his office symbol too. Ops Law was COTELL, myself, and CPT DODSON (Ops Law Plans/Military Justice) and CPT McGOVERN.

INITIALS *JAB*

Page 20 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

STATEMENT OF MAJ Jeff A. BOVARNICK, TAKEN AT Fort Bragg, NC,
DATED 26 May 2004, CONTINUED:

Q: Were you aware that MI used safety positions on occasion solely for the discomfort that they caused the detainees in order to elicit information?

A: The reason we articulated the way it is in the 24 Jan 2003 memo, was that MI insisted so vigorously it was needed. We made it very clear that it was to be used only for true safety. You lay out the rules for ethical conduct and hope they are going to follow the rules.

Q: Did you discuss the details of the CID investigation with COL HAYDEN and/or LTC COTELL?

A: Yes.

Q: What did you discuss?

A: Everything, when COL HAYDEN got back in Feb it included the interrogation techniques derived from the working group, the 15-6 report and the status of the CID investigation.

Q: During your discussions with COL HAYDEN, did he ever indicate that there would be no courts martial stemming from this case?

A: He did not say there would be no courts martial in this case. He said to everyone that there would none in the country of Afghanistan, because he did not think we could reasonably convene a panel there and it was easier for trials to be done at Bragg with all of the Crim Law support there and a judge.

Q: During the conduct of this interview, you provided the CID Agents with several computer files. Describe these files?

A: There are three folders I copied onto the hard drive of the CID computer. Those three folders are: "Detainee Ops"; "ICRC"; and "Historical Reports." These folders contain every document pertaining to my personal involvement and the CJTF180 SJA's office's involvement in every aspect of the investigation. It includes every ICRC AAR that details my meetings with the ICRC during every visit to the BCP. These AARs are included in the historical reports folder as embedded documents in the report under Ops Law (paragraph 6). The other documents include the ICRC Info Sheets that detail which detainees were in the facility at every ICRC visit. These are in the ICRC folder in the ICRC Info Sheet subfolder. Other documents included are the Interrogation Techniques working documents compiled in early January 2003, the approved techniques for GTMO, and all SIRs and Executive Summaries on the PUC deaths. I detailed every action, briefed my superiors, and kept the ICRC informed of all actions we took and this is all documented in the files. Finally,

INITIALS JAB

Page 21 of 23

FOR OFFICIAL USE ONLY

EXHIBIT _____

For Official Use Only / Law Enforcement Sensitive