

REPLY TO  
ATTENTION OF:DEPARTMENT OF THE ARMY  
HEADQUARTERS, US ARMY AIR DEFENSE ARTILLERY CENTER  
AND FORT BLISS  
FORT BLISS, TEXAS 79916

ATZC-JA

MEMORANDUM FOR Commanding General, U.S. Army Air Defense Artillery Center and  
Fort Bliss, Fort Bliss, Texas 79916SUBJECT: Supplemental Addendum to Staff Judge Advocate's Recommendation in the General  
Court-Martial of U.S. v. PFC Willie V. Brand.

1. This addresses the latest post-trial submissions of the accused in the General Court-Martial case of PFC Willie V. Brand, U.S. Army. The submission is dated 27 April 2006.
2. PFC Brand and his defense counsel again ask that you disapprove the findings of guilty and the sentence, or, in the alternative, that you disapprove the reduction in rank. The defense asserts that a suitable punishment for this case would be no more severe than a reprimand. The defense also requests that you order production of a verbatim transcript of the court-martial, or that copies of the tape recordings be attached to the record of trial. The defense has submitted copies of the tapes as an attachment to its 1105 submission. You must consider all matters submitted by the defense before taking action.
3. The accused, by and through his defense counsel, alleges error in the Staff Judge Advocate's Post-Trial Recommendation (SJAR) and asserts a number of legal errors that purportedly occurred during the trial and in the post-trial process. He also submits matters in clemency.
  - a. SJAR. The SJAR, the defense contends, is deficient because it "does not make any reference to the disposition taken in any of the numerous companion cases." The evidence of the disposition of other cases, according to the defense, raises serious issues of selective prosecution
  - b. I disagree that the SJAR is deficient. I also disagree that any alleged disparity between results in the various cases raises issues of selective prosecution. Finally, I disagree that selective prosecution occurred.
4. Legal Issues.

- a. The defense asserts that the evidence against the accused is legally insufficient to support his conviction. The defense further asserts that the military judge erred by not compelling the government to procure immunity for CPT Christopher Beiring and CPT Carolyn Wood to make possible the testimony of these officers, who had previously invoked their right to remain silent. The defense also contends the military judge and the Convening Authority erred in failing to order a verbatim transcript of proceedings. Finally, the defense contends that this office and PAO have prevented the public from having a complete record of the trial proceedings (i.e., a verbatim transcript). The defense renews its request for a verbatim transcript or, in the

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SUBJECT: Supplemental Addendum to Staff Judge Advocate's Recommendation in the General Court-Martial of U.S. v. PFC Willie V. Brand

alternative, asks that the trial audio tapes incorporated with the defense's RCM 1105 submission, be considered during appellate review.

(1) I disagree with the defense that the evidence was legally insufficient. I disagree that the rulings concerning CPT Wood and CPT Beiring constitute legal error or warrant modification of the result of trial. I further disagree that a verbatim transcript is warranted. On 9 March 2006 you denied defense's initial request for a verbatim transcript. I recommend that you deny the renewed request for a verbatim transcript.

(2) Under RCM 1105(b) and RCM 1107(b)(3), you are only required to consider written matters submitted by the defense before taking action. You are not required to listen to the trial audio tapes. You are also not required to review the summarized record of proceedings, but that is available for your consideration if you wish to review it. Recommend that you direct that the audio tapes appended to the defense submissions be forwarded to the appropriate appellate authority along with the record of trial.

b. The defense contends the military judge erred in failing to dismiss the assault charge contained in Specification 1, Charge I, as a lesser included offense of the Additional Charge (maiming) or Specification 1, Charge II (maltreatment). This legal issue was raised by a pre-trial motion, which the military judge denied on 23 June 2005. After findings were entered, the military judge instructed the panel that they were to consider maiming and aggravated assault as multiplicitous for purposes of sentencing. I disagree that legal error occurred.

c. The defense contends the military judge and the Convening Authority erred in denying the defense request for a post-trial hearing under Article 39(a), UCMJ. The defense states that such a post-trial session was essential to secure evidence to establish that you as the Convening Authority are disqualified from acting in *US v. Brand* because of the disparate disposition in companion cases. The defense renews its request that the charge sheets and final disposition of all cases handled by the Bagram Prosecution Team be attached to the *Brand* record of trial. I disagree that any legal error occurred. I note that, on 9 March 2006, you denied the defense request for copies of the charge sheets and final disposition in all other cases handled by the Bagram Prosecution Team. I recommend you deny their request that those documents be appended to the accused's record of trial. I further disagree that your actions in this or companion cases disqualify you from taking action this case.

d. The defense contends the military judge erred by failing to grant a new Article 32, UCMJ, pre-trial investigation or re-open the pre-trial investigation. The defense also contends that the military judge erred by refusing to produce defense-requested witnesses for trial and by admitting evidence over defense objection. I disagree that legal error occurred.

e. The defense further asserts that erroneous evidentiary rulings by the military judge precluded the defense from demonstrating that the accused lacked proper leadership, training and guidance. The defense refers to a reprimand you issued to the accused's company commander,

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as well as media reports, as evidence that others were responsible for PFC Brand's misconduct. I disagree.

f. The defense asserts the military judge erroneously denied the defense the opportunity to demonstrate that the underlying conditions of the alleged maltreatment (e.g., chaining, hooding, sleep deprivation) were part of the officially-sanctioned interrogation techniques. The defense also cites to the pre-trial investigation in *US v. Beiring*, in which the investigating officer determined that the accused's unit had a poorly defined mission and was inadequately trained. I disagree that legal error occurred.

g. Lastly, the defense contends there was a wide range of disparity in the dispositions and sentences among detainee abuse cases handled by the "overly zealous prosecutors assigned to the Bagram Prosecution Team." I disagree that any alleged disparity between the dispositions in cases reviewed by the Bagram Prosecution Team constitutes legal error.

5. Clemency issues.

a. The defense requests that you disapprove the findings of guilty or, in the alternative, that you disapprove the reduction in rank.

b. The defense asserts clemency is further warranted based on the following:

(1) PFC Brand served the U.S. Army and his country on several deployments;

(2) PFC Brand and his family have suffered terribly while awaiting disposition of this case; and

(3) PFC Brand continues to enjoy the respect and confidence of many individuals. The defense has attached a number of letters of support for the accused.

c. I disagree that the matters discussed above warrant granting clemency in this case.

6. I have considered all of the defense submissions. I disagree that legal error occurred. Further, none of the allegations of error or the matters submitted in the request for clemency warrant altering the findings and sentence. I adhere to adopt my recommendation in the SJAR that you approve the sentence as adjudged.

21 Enclosures

1. Memo from Defense Counsel,  
dtd 27 Apr 06

MARK A. RIVEST  
COL, JA  
Staff Judge Advocate

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SUBJECT: Supplemental Addendum to Staff Judge Advocate's Recommendation in the General Court-Martial of U.S. v. PFC Willie V. Brand

- 21 Enclosures (cont'd)
2. Memo from Defense Counsel,  
dtd 3 Feb 06
3. SJAR
4. Article, Afghan Abuse Cases,  
dtd 31 Dec 05
5. Article, Abuse Charges Should be  
Dropped, dtd 22 Dec 05
6. Defense Request for Post-Trial 39(a)  
and CG Response, dtd 19 Jan 06
7. Wikipedia, Christopher M. Beiring,  
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8. Article, From Bagram to Abu  
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10. Defense Request for Post-Trial 39(a)  
and fax cover sheet, dtd 6 Mar 06
11. Memo, CJTF 180 Interrogation  
Techniques, dtd 24 Jan 03
12. SJA's Pretrial Advice, CG's Dismissal  
of Charges in *US v. Beiring*; Beiring  
GOMOR, dtd 6 Jan 06
13. Article 32 Investigating Officer's  
Report, Article 32 transcript, supporting  
documents in *US v. Beiring*
14. Letter from Milton Lee Lowe, Jr., dtd  
31 Oct 05
15. Letter from Cindy C. Buis, LPN, dtd  
29 Oct 05
16. Letter from Edward W. Buis, dtd  
1 Nov 05
17. Letter from Bettie Siffel, dtd 1 Nov 05
18. Letter from Diane Elaine Lowe, CRI,  
dtd 1 Nov 05
19. Letter from Steven K. Clerk
20. E-mail
21. SJAR Addendum

REPLY TO  
ATTENTION OF:DEPARTMENT OF THE ARMY  
HEADQUARTERS, US ARMY AIR DEFENSE ARTILLERY CENTER  
AND FORT BLISS  
FORT BLISS, TEXAS 79916

ATZC-JA

09 MAR 2006

MEMORANDUM FOR Commander, U.S. Army Air Defense Artillery Center and Fort Bliss,  
Fort Bliss, Texas 79916SUBJECT: Addendum to Staff Judge Advocate's Recommendation in the General Court-Martial  
of U.S. v. PFC Willie V. Brand

1. This addresses the post-trial submission of the accused in the General Court-Martial case of PFC Willie V. Brand, U.S. Army,
2. PFC Brand and his defense counsel ask that you disapprove the findings of guilty or, in the alternative, that you disapprove the reduction in rank. The defense asserts that a suitable punishment for this case would involve nothing more severe than a reprimand. The defense also requests that you direct a verbatim transcript of his court-martial case, or that copies of the tapes be attached to the record of trial.
3. The accused, by and through his defense counsel, alleges several errors and omissions affecting the Staff Judge Advocate's Post-Trial Recommendation (SJAR) as well as numerous legal errors that purportedly occurred during the trial process. He also submits matters in clemency.
4. The SJAR.
  - a. The defense contends the SJAR fails to make any recommendation concerning the disposition of the case. The defense is correct. The SJAR should have stated my recommendation as follows: I recommend you approve the sentence as adjudged.
  - b. The defense asserts that you are legally disqualified from acting as the General Court-Martial Convening Authority (GOMCA) in this case because of your past involvement in companion cases. I disagree.
  - c. The defense states the SJAR does not correctly identify the victims. The defense is correct. Charge I, Specification 4, and Charge II, Specification 4, incorrectly list "Dilawar" as the victim rather than "Habibullah." The accused was found not guilty with respect to both of these offenses with respect to Habibullah.
  - d. The defense contends that the SJAR errs in failing to acknowledge that both of the alleged victims were terrorists and Islamic extremists apprehended during the War on Terror in Afghanistan. I disagree.

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SUBJECT: Addendum to Staff Judge Advocate's Recommendation in the General Court-Martial of U.S. v. PFC Willie V. Brand

e. The defense states that a new SJAR is required in order to remedy the defects noted above. I disagree. Such corrections may be made via Addendum and the defense will be afforded the opportunity to examine all new matter presented and respond accordingly in accordance with RCM 1106(f)(7).

5. Legal Issues.

a. The defense notes that the accused was acquitted of most of the charges preferred against him and contends that the evidence was legally insufficient to find the accused guilty of the remaining charged offenses. The defense further contends that the military judge erroneously precluded the defense from presenting evidence that would have ensured the accused's full acquittal (e.g., testimony from CPT Beiring and CPT Wood). The defense also contends that this office worked with PAO to prevent the public from having a complete record of the trial proceedings (i.e., a verbatim transcript). The defense renews its request for a verbatim transcript of the trial proceedings. In the alternative, the defense requests that copies of the trial tapes be attached to the record of trial. As noted below, I disagree with each of these assertions.

(1) The ruling precluding CPT Wood's testimony was not error. The military judge properly concluded that the defense failed to demonstrate that the proffered testimony of CPT Wood was material, clearly exculpatory, not cumulative, not obtainable from any other source, or did more than merely affect the credibility of other witnesses.

(2) CPT Beiring was requested as a defense witness. CPT Beiring stated that he would not testify because of 5<sup>th</sup> Amendment considerations. The Brand defense did not request immunity for CPT Beiring. He was unavailable.

(3) PFC Brand was convicted at a General Court Martial and sentenced to a reduction from Private First Class to Private, E-1. A summarized report of the proceedings was prepared pursuant to Rules for Court Martial, Rule 1103(b)(2)(C) and 1103(j)(2). A verbatim transcript is not required under R.C.M. 1103(b)(2)(b), nor is it warranted by the facts of this case.

(4) I disagree with the defense that there was insufficient evidence to support the remaining charges. While the accused was indeed acquitted of several charges, he was properly convicted of several serious offenses: Assault, maiming, maltreatment, and false swearing.

b. The defense contends the military judge erred in failing to dismiss the assault charge contained in Specification 1, Charge I, as a lesser included offense of the Additional Charge (maiming) or Specification 1, Charge II (maltreatment). I disagree. This issue was raised by a defense motion to dismiss charges based on multiplicity and unreasonable multiplication of charges in May 2005. The military judge properly denied the defense's motion on 23 June 2005. In any event, after findings were entered, the military judge in *US v Brand* instructed the panel that they were to consider maiming and aggravated assault as multiplicitous for purposes of sentencing. I disagree that legal error occurred.

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SUBJECT: Addendum to Staff Judge Advocate's Recommendation in the General Court-Martial of U.S. v. PFC Willie V. Brand

c. The defense contends the military judge and the convening authority erred in denying the defense request for a post-trial hearing under Article 39(a), UCMJ. The defense requests that the charge sheets and final disposition taken in all cases handled by the Bagram Prosecution Team be attached to the *Brand* record of trial. The defense further contends that the General Court-Martial Convening Authority is disqualified from taking post trial action in *Brand*. I disagree with these assertions.

(1) As you have previously advised civilian defense counsel, you have agreed to make a determination regarding the request for a post-trial Article 39(a), UCMJ, session at such time as you have the opportunity to examine the defense RCM 1105/1106 submissions. Consequently, I recommend that you deny the defense request for a post-trial Article 39(a), UCMJ, session at this time. While civilian defense counsel maintains the relevance of CPT Beiring's interview on 60 Minutes, the defense is free to submit a transcript of that interview in response to this Addendum if they so choose.

(2) I recommend denial of the defense request that copies of charge sheets and final disposition in all other cases handled by the Bagram Prosecution Team be attached to the record of trial. While the defense is free to challenge the propriety of a court-martial result, and the defense may engage in sentence comparison as part of their request for clemency, there is no requirement the government provide the defense with copies of the charges and disposition of all potentially related cases. You may determine the propriety of the sentence without reviewing the disposition of all other cases handled by the Bagram Prosecution Team. Considering the circumstances of this case, the result in this case is neither disproportionate nor outside the range of appropriate punishment for such offenses.

d. The defense contends the military judge erred by failing to grant a new pre-trial hearing or re-open the pre-trial proceedings under Article 32, UCMJ. The defense also contends that the military judge erred by refusing to produce defense-requested witnesses for trial and by admitting evidence over defense objection. Absent the military judge's erroneous rulings, the defense asserts, PFC Brand would have been acquitted. I disagree that legal error occurred.

e. The defense asserts the military judge's erroneous rulings precluded the defense from demonstrating that the accused lacked proper leadership, training and guidance. The defense refers to a reprimand you issued to the accused's company commander, as well as several articles, as evidence that officers were ultimately responsible for any abuse of detainees and that PFC Brand is a scapegoat. I disagree.

f. The defense states the military judge erroneously and prejudicially denied the defense the opportunity to demonstrate that the underlying conditions of the alleged maltreatment (e.g., chaining, hooding, sleep deprivation) were part of officially-sanctioned interrogation techniques. The defense also cites to the Article 32, UCMJ, investigation in *Beiring*, in which the investigating officer determined that the accused's unit had a poorly defined mission and was inadequately trained. I disagree that legal error occurred. PFC Brand was neither charged with

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SUBJECT: Addendum to Staff Judge Advocate's Recommendation in the General Court-Martial of U.S. v. PFC Willie V. Brand

nor convicted of a criminal offense in relation to chaining detainees. Hence, such evidence was irrelevant.

g. The defense contends there was an underlying disparity in the dispositions and sentences between cases related to allegations of detainee abuse at Bagram and that the trial counsel handling these cases were overzealous. In this regard, the defense submits several articles for your review. I disagree that any alleged disparity between the dispositions of the various allegations reviewed by the Bagram Prosecution Team were not justified by the facts of the cases concerned or that the varying outcomes constitute legal error.

6. Clemency issues.

a. The defense requests that you disapprove the findings of guilty or, in the alternative, that you disapprove the reduction in rank adjudged in this case. The defense maintains that an appropriate punishment would be no more severe than a reprimand. In support of this proposition, the defense cites CPT Beiring's receipt of a reprimand and the fact that CPT Wood has received no punishment.

b. The defense asserts clemency is further warranted based on the following:

(1) PFC Brand served the U.S. Army and his country on several deployments;

(2) PFC Brand and his family have suffered terribly while awaiting disposition of this case.

(3) PFC Brand continues to enjoy the respect and confidence of many individuals. The defense has attached a number of letters of support for PFC Brand.

c. The defense notes that PFC Brand should not be asked to pay the price for the failed leadership, defective Army doctrine, and inadequate logistical support which were found to exist in this case.

d. I disagree that the matters discussed above warrant granting clemency in this case.

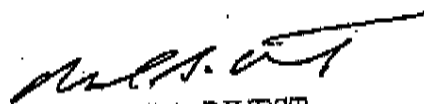
7. I recommend you deny the accused's request for a verbatim transcript and that you deny his request that copies of the tapes be attached to the record of trial. My office will provide a copy of the trial tapes to the defense for preparation of their appeal.



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SUBJECT: Addendum to Staff Judge Advocate's Recommendation in the General Court-Martial of U.S. v. PFC Willie V. Brand.

8. I have considered all of the defense submissions and I disagree that legal error occurred. Further, none of the allegations of error or the matters submitted as part of the request for clemency warrant altering the findings and sentence. I recommend you approve the sentence as adjudged.



MARK A. RIVEST  
COL, JA  
Staff Judge Advocate

19 Enclosures

1. Memo from Defense Counsel,  
dtd 3 Feb 06
2. SJAR
3. Article, Afghan Abuse Cases,  
dtd 31 Dec 05
4. Article, Abuse Charges Should be  
Dropped, dtd 22 Dec 05
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(cont'd)

ATZC-JA

SUBJECT: Addendum to Staff Judge Advocate's Recommendation in the General Court-Martial  
of U.S. v. PFC Willie V. Brand

19 Encls (Cont'd)

18. Letter from Diane Elaine Lowe, CRI,  
dtd 1 Nov 05

19. Letter from Steven K. Clerk

ATZC-CG

09 MAR 2006

## MEMORANDUM FOR RECORD

SUBJECT: Post-Trial Requests, *US v. Willie Brand*,

After considering the defense requests in the above-captioned case, I take the following actions:

- a. The defense request for a verbatim transcript is

☐ approved

☒ disapproved

- b. The defense request for a copy of the trial tapes to be attached to the record of trial is


☐ approved

☒ disapproved (A copy of the tapes shall be provided to the defense for preparation of their appeal) (☒)

- c. The defense request for copies of all charge sheets and final dispositions taken in all cases handled by the Bagram Prosecution Team at Fort Bliss is

☐ approved

☒ disapproved

  
ROBERT P. LENNOX  
Brigadier General, USA  
Commanding



DEPARTMENT OF THE ARMY  
HEADQUARTERS, U.S. ARMY AIR DEFENSE ARTILLERY CENTER  
AND FORT BLISS  
FORT BLISS, TX 79916-6816

REPLY TO  
ATTENTION OF:

March 9, 2006

Commanding General

Mr John P. Galligan, Esq.  
315 South Main  
Belton, Texas 76513

Dear Mr. Galligan,

Your enclosed motion dated March 6, 2006 requests that I direct a post trial hearing under Article 39(a), Uniform Code of Military Justice (UCMJ), in the case of *US v. Brand*, and that I grant you an extension of time in which to submit matters under Rule for Courts-Martial (RCM) 1105.

It is my understanding that the Staff Judge Advocate's Recommendation (SJAR) was mailed to you on December 2, 2005 and was received by your office on December 7, 2005. On December 12, 2005, Captain Slawinski requested that the defense be provided until January 6, 2006 to submit RCM 1105 matters. On January 16, 2006, the defense had not yet submitted matters under RCM 1105, however, on that date you requested that I order a post-trial Article 39(a) hearing and grant a further extension of time in which to file defense matters under RCM 1105. On January 19, 2006 I informed you that I would not act upon your request for a post-trial Article 39(a) hearing until such time as I could review the defense RCM 1105 submission. It is also my understanding that your RCM 1105 matters, dated February 3, 2006, were received by the Office of the Staff Judge Advocate on or about February 6, 2006.

Your enclosed submission renews your request that I direct a post-trial Article 39(a) hearing and also requests that I grant additional time in which to file matters pursuant to RCM 1105. I have been informed that, after reviewing your submission, the Office of the Staff Judge Advocate is preparing an addendum to the SJAR which will include new matter. Accordingly, you will have an additional 10 days from receipt of such matters in which to submit matters in accordance with RCM 1106(f)(7).

Based upon the facts above, and my previous correspondence on this matter, your request that I direct a post trial Article 39(a), UCMJ, hearing at this time is denied. As I noted in my correspondence of January 19, 2006 I will again consider your request when I review your final defense submissions under RCM 1105 and 1106. In addition, as you are being provided with additional time under RCM 1106 in which to submit post trial matters, I consider your request for additional time in which to submit matters pursuant to RCM 1105 to be moot. Accordingly, I have elected to not take action on that portion of your request.

Sincerely,

Robert P. Lemnox  
Brigadier General, U.S. Army  
Commanding

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BRAND, Willie V..  
PFC, U.S. Army,  
HHB,  
US ADA Center and Fort Bliss,  
Fort Bliss, Texas

DEFENSE REQUEST  
POST TRIAL ARTICLE  
39(a) SESSION  
AND CONTINUANCE

6 March 2006

The Defense in the above case requests that, pursuant to RCM 1102(d), the General Court-Martial Convening Authority direct a post trial Article 39a session in order to receive evidence from the Defendant's unit commander, Captain Christopher Beiring. To date, a legally correct Post Trial Review has not been served upon the Defense. Therefore, until appropriate action is taken on this request, the Defense respectfully asks that it be granted an extension of time in which to file post trial matters under RCM 1105.

On March 5, 2006, the Defendant's unit commander, Captain Christopher M. Beiring appeared on national TV (60 Minutes Sunday) wherein he acknowledged that the chaining of detainees at Bagram was a routine occurrence and, contrary to the representations of government representatives, was a practice known and sanctioned by superior authorities. During the trial proceedings, efforts to secure such exculpatory testimony of Captain Beiring was frustrated by the trial counsel and military judge. It should now be clear that the Defense theory advanced at trial - that the underlying conduct was known and approved by superior authority - is supported by none other than the Defendant's immediate commander.

The Defense agrees to stipulate to the above facts for the purposes of this motion.

The Defense relies on the following authorities in support of its motion:

R.C.M. 1102(d) – the convening authority may direct a post-trial Article 30a session before taking initial action.

### WITNESSES / EVIDENCE

The Defense requests the following witnesses/evidence be produced and present for this motion:

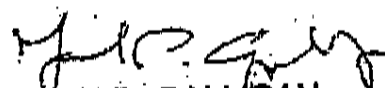
Colonel Mark A. Rivest, Staff Judge Advocate, HQS,  
US Army ADA Center and Fort Bliss, Fort Bliss, Texas.  
Captain Christopher Beiring

### ARGUMENT

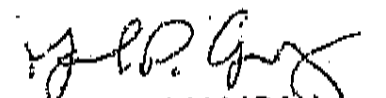
The Defense believes that a post trial Article 39a session is the proper mechanism to ensure that a complete and accurate record is prepared concerning this improper post trial treatment of the Defendant. In turn, those findings will be an essential part of any RCM 1105 matters submitted in this case.

### CONCLUSION

Based on the above, the Defense requests that the convening authority direct a post trial Article 39a session to take evidence from the Defendant's unit commander, Captain Christopher Beiring. Further, it is requested that the suspense date for submission of RCM 1105 matters be continued until 10-days after action is taken on the instant motion.

  
JOHN P. GALLIGAN  
Civilian Defense Counsel

I certify that I served or caused to be served a true copy of the above on the Staff Judge Advocate and Trial Counsel, via, facsimile, on March 6, 2008

  
JOHN P. GALLIGAN  
Civilian Defense Counsel

ATZC-CG

09 MAR 2006

## MEMORANDUM FOR RECORD

SUBJECT: Post-Trial Requests, *US v. Willie Brand*,

After considering the defense requests in the above-captioned case, I take the following actions:

- a. The defense request for a verbatim transcript is

☐ approved

☒ disapproved

- b. The defense request for a copy of the trial tapes to be attached to the record of trial is

☐ approved

☒ disapproved (A copy of the tapes shall be provided to the defense for preparation of their appeal) (☒).

- c. The defense request for copies of all charge sheets and final dispositions taken in all cases handled by the Bagram Prosecution Team at Fort Bliss is

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☒ disapproved



ROBERT P. LENNOX  
Brigadier General, USA  
Commanding

20051005

REPLY TO  
ATTENTION OF:DEPARTMENT OF THE ARMY  
HEADQUARTERS, US ARMY AIR DEFENSE ARTILLERY CENTER  
AND FORT BLISS  
FORT BLISS, TEXAS 79916

ATZC-JA

09 MAR 2006

MEMORANDUM FOR Commander, U.S. Army Air Defense Artillery Center and Fort Bliss,  
Fort Bliss, Texas 79916

SUBJECT: Addendum to Staff Judge Advocate's Recommendation in the General Court-Martial  
of U.S. v. PFC Willie V. Brand.

1. This addresses the post-trial submission of the accused in the General Court-Martial case of PFC Willie V. Brand, U.S. Army
2. PFC Brand and his defense counsel ask that you disapprove the findings of guilty or, in the alternative, that you disapprove the reduction in rank. The defense asserts that a suitable punishment for this case would involve nothing more severe than a reprimand. The defense also requests that you direct a verbatim transcript of his court-martial case, or that copies of the tapes be attached to the record of trial.
3. The accused, by and through his defense counsel, alleges several errors and omissions affecting the Staff Judge Advocate's Post-Trial Recommendation (SJAR) as well as numerous legal errors that purportedly occurred during the trial process. He also submits matters in clemency.
4. The SJAR.
  - a. The defense contends the SJAR fails to make any recommendation concerning the disposition of the case. The defense is correct. The SJAR should have stated my recommendation as follows: I recommend you approve the sentence as adjudged.
  - b. The defense asserts that you are legally disqualified from acting as the General Court-Martial Convening Authority (GCMCA) in this case because of your past involvement in companion cases. I disagree.
  - c. The defense states the SJAR does not correctly identify the victims. The defense is correct. Charge I, Specification 4, and Charge II, Specification 4, incorrectly list "Dilawar" as the victim rather than "Habibullah." The accused was found not guilty with respect to both of these offenses with respect to Habibullah.
  - d. The defense contends that the SJAR errs in failing to acknowledge that both of the alleged victims were terrorists and Islamic extremists apprehended during the War on Terror in Afghanistan. I disagree.

20051005



ATZC-JA

SUBJECT: Addendum to Staff Judge Advocate's Recommendation in the General Court-Martial of U.S. v. PFC Willie V. Brand.

e. The defense states that a new SJAR is required in order to remedy the defects noted above. I disagree. Such corrections may be made via Addendum and the defense will be afforded the opportunity to examine all new matter presented and respond accordingly in accordance with RCM 1106(f)(7).

#### 5. Legal Issues.

a. The defense notes that the accused was acquitted of most of the charges preferred against him and contends that the evidence was legally insufficient to find the accused guilty of the remaining charged offenses. The defense further contends that the military judge erroneously precluded the defense from presenting evidence that would have ensured the accused's full acquittal (e.g., testimony from CPT Beiring and CPT Wood). The defense also contends that this office worked with PAO to prevent the public from having a complete record of the trial proceedings (i.e., a verbatim transcript). The defense renews its request for a verbatim transcript of the trial proceedings. In the alternative, the defense requests that copies of the trial tapes be attached to the record of trial. As noted below, I disagree with each of these assertions.

(1) The ruling precluding CPT Wood's testimony was not error. The military judge properly concluded that the defense failed to demonstrate that the proffered testimony of CPT Wood was material, clearly exculpatory, not cumulative, not obtainable from any other source, or did more than merely affect the credibility of other witnesses.

(2) CPT Beiring was requested as a defense witness. CPT Beiring stated that he would not testify because of 5<sup>th</sup> Amendment considerations. The Brand defense did not request immunity for CPT Beiring. He was unavailable.

(3) PFC Brand was convicted at a General Court Martial and sentenced to a reduction from Private First Class to Private, E-1. A summarized report of the proceedings was prepared pursuant to Rules for Court Martial, Rule 1103(b)(2)(C) and 1103(j)(2). A verbatim transcript is not required under R.C.M. 1103(b)(2)(b), nor is it warranted by the facts of this case.

(4) I disagree with the defense that there was insufficient evidence to support the remaining charges. While the accused was indeed acquitted of several charges, he was properly convicted of several serious offenses: Assault, maiming, maltreatment, and false swearing.

b. The defense contends the military judge erred in failing to dismiss the assault charge contained in Specification 1, Charge I, as a lesser included offense of the Additional Charge (maiming) or Specification 1, Charge II (maltreatment). I disagree. This issue was raised by a defense motion to dismiss charges based on multiplicity and unreasonable multiplication of charges in May 2005. The military judge properly denied the defense's motion on 23 June 2005. In any event, after findings were entered, the military judge in *US v Brand* instructed the panel that they were to consider maiming and aggravated assault as multiplicitous for purposes of sentencing. I disagree that legal error occurred.

ATZC-JA

SUBJECT: Addendum to Staff Judge Advocate's Recommendation in the General Court-Martial of U.S. v. PFC Willie V. Brand.

c. The defense contends the military judge and the convening authority erred in denying the defense request for a post-trial hearing under Article 39(a), UCMJ. The defense requests that the charge sheets and final disposition taken in all cases handled by the Bagram Prosecution Team be attached to the *Brand* record of trial. The defense further contends that the General Court-Martial Convening Authority is disqualified from taking post trial action in *Brand*. I disagree with these assertions.

(1) As you have previously advised civilian defense counsel, you have agreed to make a determination regarding the request for a post-trial Article 39(a), UCMJ, session at such time as you have the opportunity to examine the defense RCM 1105/1106 submissions. Consequently, I recommend that you deny the defense request for a post-trial Article 39(a), UCMJ, session at this time. While civilian defense counsel maintains the relevance of CPT Beiring's interview on 60 Minutes, the defense is free to submit a transcript of that interview in response to this Addendum if they so choose.

(2) I recommend denial of the defense request that copies of charge sheets and final disposition in all other cases handled by the Bagram Prosecution Team be attached to the record of trial. While the defense is free to challenge the propriety of a court-martial result, and the defense may engage in sentence comparison as part of their request for clemency, there is no requirement the government provide the defense with copies of the charges and disposition of all potentially related cases. You may determine the propriety of the sentence without reviewing the disposition of all other cases handled by the Bagram Prosecution Team. Considering the circumstances of this case, the result in this case is neither disproportionate nor outside the range of appropriate punishment for such offenses.

d. The defense contends the military judge erred by failing to grant a new pre-trial hearing or re-open the pre-trial proceedings under Article 32, UCMJ. The defense also contends that the military judge erred by refusing to produce defense-requested witnesses for trial and by admitting evidence over defense objection. Absent the military judge's erroneous rulings, the defense asserts, PFC Brand would have been acquitted. I disagree that legal error occurred.

e. The defense asserts the military judge's erroneous rulings precluded the defense from demonstrating that the accused lacked proper leadership, training and guidance. The defense refers to a reprimand you issued to the accused's company commander, as well as several articles, as evidence that officers were ultimately responsible for any abuse of detainees and that PFC Brand is a scapegoat. I disagree.

f. The defense states the military judge erroneously and prejudicially denied the defense the opportunity to demonstrate that the underlying conditions of the alleged maltreatment (e.g., chaining, hooding, sleep deprivation) were part of officially-sanctioned interrogation techniques. The defense also cites to the Article 32, UCMJ, investigation in *Beiring*, in which the investigating officer determined that the accused's unit had a poorly defined mission and was inadequately trained. I disagree that legal error occurred. PFC Brand was neither charged with

ATZC-JA

SUBJECT: Addendum to Staff Judge Advocate's Recommendation in the General Court-Martial of U.S. v. PFC Willie V. Brand.

nor convicted of a criminal offense in relation to chaining detainees. Hence, such evidence was irrelevant.

g. The defense contends there was an underlying disparity in the dispositions and sentences between cases related to allegations of detainee abuse at Bagram and that the trial counsel handling these cases were overzealous. In this regard, the defense submits several articles for your review. I disagree that any alleged disparity between the dispositions of the various allegations reviewed by the Bagram Prosecution Team were not justified by the facts of the cases concerned or that the varying outcomes constitute legal error.

6. Clemency issues.

a. The defense requests that you disapprove the findings of guilty or, in the alternative, that you disapprove the reduction in rank adjudged in this case. The defense maintains that an appropriate punishment would be no more severe than a reprimand. In support of this proposition, the defense cites CPT Beiring's receipt of a reprimand and the fact that CPT Wood has received no punishment.

b. The defense asserts clemency is further warranted based on the following:

- (1) PFC Brand served the U.S. Army and his country on several deployments;
- (2) PFC Brand and his family have suffered terribly while awaiting disposition of this case.
- (3) PFC Brand continues to enjoy the respect and confidence of many individuals. The defense has attached a number of letters of support for PFC Brand.

c. The defense notes that PFC Brand should not be asked to pay the price for the failed leadership, defective Army doctrine, and inadequate logistical support which were found to exist in this case.

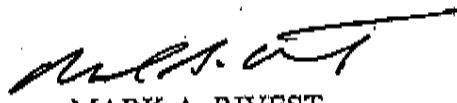
d. I disagree that the matters discussed above warrant granting clemency in this case.

7. I recommend you deny the accused's request for a verbatim transcript and that you deny his request that copies of the tapes be attached to the record of trial. My office will provide a copy of the trial tapes to the defense for preparation of their appeal.

ATZC-JA

SUBJECT: Addendum to Staff Judge Advocate's Recommendation in the General Court-Martial of U.S. v. PFC Willie V. Brand

8. I have considered all of the defense submissions and I disagree that legal error occurred. Further, none of the allegations of error or the matters submitted as part of the request for clemency warrant altering the findings and sentence. I recommend you approve the sentence as adjudged.



MARK A. RIVEST  
COL, JA  
Staff Judge Advocate

19 Enclosures

1. Memo from Defense Counsel,  
dtd 3 Feb 06
2. SJAR
3. Article, Afghan Abuse Cases,  
dtd 31 Dec 05
4. Article, Abuse Charges Should be  
Dropped, dtd 22 Dec 05
5. Defense Request for Post-Trial 39(a)  
and CG Response, dtd 19 Jan 06
6. Wikipedia, Christopher M. Beiring,  
dtd 1 Feb 06
7. Article, From Bagram to Abu  
Ghraib, dtd 11 Sept 05
8. Article, Senate Approves Treatment  
Rules, dtd 6 Oct 05
9. Defense Request for Post-Trial 39(a)  
and fax cover sheet, dtd 6 Mar 06
10. Memo, CJTF 180 Interrogation  
Techniques, dtd 24 Jan 03
11. SJA's Pretrial Advice, CG's Dismissal  
of Charges in *US v. Beiring*; Beiring  
GOMOR, dtd 6 Jan 06
12. SJA's Pretrial Advice, CG's Dismissal  
of Charges in *US v. Beiring*; Beiring  
GOMOR, dtd 6 Jan 06
13. Article 32 Investigating Officer's  
Report, Article 32 transcript, supporting  
documents in *US v. Beiring*
14. Letter from Milton Lee Lowe, Jr., dtd  
31 Oct 05
15. Letter from Cindy C. Buis, LPN, dtd  
29 Oct 05
16. Letter from Edward W. Buis, dtd  
1 Nov 05
17. Letter from Bettie Siffel, dtd 1 Nov 05  
(cont'd)

ATZC-JA

SUBJECT: Addendum to Staff Judge Advocate's Recommendation in the General Court-Martial  
of U.S. v. PFC Willie V. Brand.

19 Encls (Cont'd)

18. Letter from Diane Elaine Lowe, CRI,  
dtd 1 Nov 05

19. Letter from Steven K. Clerk

ATZC-JA

DEC 18 2005

MEMORANDUM FOR CPT Steven S. Slawinski, U.S. Army Trial Defense Service, Fort Bliss Office, Fort Bliss, Texas 79916

SUBJECT: Defense Request for Extension of Clemency under R.C.M. 1105 - U.S. v. PFC Willie V. Brand.

1. This trial was completed on 18 August 2005, and the post-trial recommendation was served on 7 December 2005 and the record of trial was served on 7 December 2005. In this case, the 10th day is 17 December 2005, and the 30th day is 6 January 2006.
2. I approve the extension of the deadline for submission of matters from 17 December 2005 to 6 January 2006.



MARK A. RIVEST  
COL, JA  
Staff Judge Advocate

20051005

UNITED STATES

v.

BRAND, WILLIE V.,  
PFC, U.S. Army,  
HHB,  
Garrison Command,  
Fort Bliss, Texas 79916


REQUEST FOR DELAY

12 December 2005

IAW R.C.M. 1105 and 1106, Defense requests an additional 20-day delay, until 6 January 2006, before action in the above matter. Due to current circumstances, PFC Brand's matters have not been completely finished. Specifically, PFC Brand's civilian attorney has not had an opportunity to contact PFC Brand regarding his post-trial submissions and it is unlikely that he will be able to do so before the holidays.

PFC Brand has instructed us to submit a request for clemency, and this we will do by the end of the request period of delay. Under no circumstances has my client instructed me to waive his clemency matters and no actions by me should be interpreted to indicate waiver of any sort.

Due to both defense attorneys' exceedingly heavy case schedules, we have not had the opportunity to obtain all of the materials we want from PFC Brand and several other people. The additional respectfully requested delay will allow the Convening Authority to make a fully informed decision about clemency and the delay's approval is therefore in the interests of justice.

  
STEVEN SLAWINSKI  
CPT, JA  
Senior Defense Counsel

20051005



DEPARTMENT OF THE ARMY  
HEADQUARTERS, U.S. ARMY AIR DEFENSE ARTILLERY CENTER  
AND FORT BLISS  
1733 PLEASANTON ROAD  
FORT BLISS, TEXAS 79916-6816

REPLY TO  
ATTENTION OF:

ATZC-JA

DEC 02 2005

MEMORANDUM FOR Commander, U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas 79916

SUBJECT: Staff Judge Advocate's Recommendation in the General Court-Martial Case of U.S. v. PFC Willie V. Brand.

1. This is my recommendation under R.C.M. 1106, MCM, in the General Court-Martial case of PFC Willie V. Brand, Headquarters and Headquarters Battery, United States Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas, 79916.

2. Personal Data Concerning Accused:

a. Date of Birth:

b. Marital Status: Married

c. Number of Dependents: 5

d. Military Service: 970101-Present, AD

e. Character of Service: Satisfactory

f. Awards and Decorations: ASR, ARCOTR, HSM-1, ARFAM w/"M" DEVICE (2), GWOT-E, NDSM, OVERSEAS TRAINING RIBBON w/DEVICE (2), KOSOVO CAMPAIGN MEDAL, AFGHANISTAN CAMPAIGN MEDAL, and AAM.

g. GT Score: 103

h. PMOS: 31B1

i. Education: High School Diploma

j. Nonjudicial Punishment: None

k. Prior Convictions: None

l. Pretrial Restraint: None

20051005



ATZC-JA

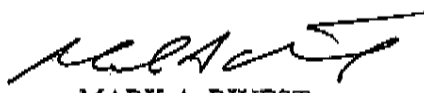
SUBJECT: Staff Judge Advocate's Recommendation in the General Court-Martial Case of U.S. v. PFC Willie V. Brand,

## 3. Summary of Charges:

Charge	Art	Spec	Gist of Offense	Plea/Finding
I	128	1	Unlawfully strike Dilawar between o/a 5 Dec 02 and o/a 10 Dec 02.	NG/G
		2	Unlawfully strike Dilawar between o/a 5 Dec 02 and o/a 10 Dec 02.	NG/NG
		3	Unlawfully strike Dilawar between o/a 5 Dec 02 and o/a 10 Dec 02.	NG/NG
		4	Unlawfully strike Dilawar between o/a 30 Nov 02 and o/a 4 Dec 02.	NG/NG
II	93	1	Maltreat Dilawar between o/a 5 Dec 02 and 10 Dec 02.	NG/G
		2	Maltreat Dilawar between o/a 5 Dec 02 and 10 Dec 02.	NG/NG
		3	Maltreat Dilawar between o/a 5 Dec 02 and 10 Dec 02.	NG/NG
		4	Maltreat Dilawar between o/a 5 Dec 02 and 10 Dec 02.	NG/NG
III	134	The	Wrongfully and unlawfully subscribe a false statement o/a 21 Dec 02.	NG/G
Add'l Charge	124	The	Maim Dilawar between o/a 5 Dec 02 and 10 Dec 02.	NG/G

4. The Court adjudged the following sentence: To be reduced to the grade of E-1.

5. This recommendation was served on the defense counsel who had ten days to submit a response. Their response, if any, will be attached to the addendum to this recommendation.

  
 MARK A. RIVEST  
 COL, JA  
 Staff Judge Advocate

20051005

UNITED STATES

v.

PFC Willie V. Brand  
U.S. Army) SERVICE OF RECORD OF  
) TRIAL AND POST-TRIAL  
) RECOMMENDATION OF THE  
) STAFF JUDGE ADVOCATE  
)  
)  
)Staff Judge Advocate, U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas  
79916

TO: John P. Galligan, PLLC, 315 S. Main, Belton, Texas 76513:

Attached is a copy of the recommendation of the Staff Judge Advocate and a copy of the authenticated record of trial in the case of PFC Willie V. U.S. Army. Pursuant to R.C.M. 1105 and 1106, you have ten days from date of receipt to submit any rebuttal to the matters contained in the recommendation of the Staff Judge Advocate, any omissions you consider pertinent to this case, or any clemency matters. If you desire additional time, you must submit in writing a request that the ten day period required by United States v. Goode, 1 MJ 3 (CMA 1975) and Article 60, UCMJ, be extended prior to the expiration of the ten day period. Failure to submit a rebuttal or other matters or request an extension will constitute a waiver thereof and the record of trial will be forwarded to the convening authority for action. You are requested to return the copy of the record of trial with the matters, if any, by the expiration of the time period for submission.

CHRISTOPHER D. CARRIER  
MAJ, JA  
Chief, Bagram Prosecution Team

20051005

# COURT-MARTIAL CHARGES TRANSMITTAL FORM

## PART I

**TO:** Cdr, 76<sup>th</sup> MP BN  
Fort Bliss, TX 79916

**FROM:** Cdr, HHB, USAADACENFB  
Fort Bliss, TX 79916

**DATE:**  
JAN 20 2005

Court-Martial charges against the following named individual are forwarded as Enclosure 1. Witness statements, any evidence of previous misconduct (to include properly certified DA Forms 2627 and the accused's DA Form 2-1 (USAR) and DA Form 2A are attached as Enclosure 2. Soldier is not pending chapter action UP AR 635-200.

**NAME:**  
Brand, Willie V.

**RANK:**  
SPC

**SSN:**

**UNIT:**

HHB, USAADACENFB, Fort Bliss, TX 79916

**Recommend:**

☐ Summary Court-Martial

☐ Special Court-Martial

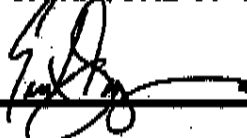
☐ BCD Special Court-Martial

☒ General Court-Martial

**NAME OF COMMANDER**

ERICK J. SEGARRA  
CPT, AD  
Commanding

**SIGNATURE OF COMMANDER**



20 JAN 05

## PART II

**TO:** Cdr, US Army Garrison  
Fort Bliss, TX 79916

**FROM:** Cdr, 76<sup>th</sup> MP BN  
Fort Bliss, TX 79916

**DATE:**  
20 JAN 05

I have reviewed the attached charges, documents and (recommend)(direct):

☐ Summary Court-Martial

☐ Special Court-Martial

☐ BCD Special Court-Martial

☒ General Court-Martial

**NAME OF COMMANDER**

THOMAS T. KOESTERS  
LTC, MP  
Commanding

**SIGNATURE OF COMMANDER**



## PART III

**TO:** CDR, USAADACENFB,  
Fort Bliss, TX 79916

**FROM:** Cdr, US Army Garrison  
Fort Bliss, TX 79916

**DATE:**  
15 Apr 05

I have reviewed the attached charges, documents and (recommend)(direct):

☐ Summary Court-Martial

☐ Special Court-Martial

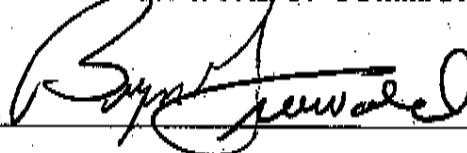
☐ BCD Special Court-Martial

☒ General Court-Martial

**NAME OF COMMANDER**

BYRON E. GREENWALD  
COL, AD  
Commanding

**SIGNATURE OF COMMANDER**



# COURT-MARTIAL CHARGES TRANSMITTAL FORM

## PART I

**TO:** Cdr, 76<sup>th</sup> MP BN  
Fort Bliss, TX 79916

**FROM:** Cdr, HHB, USAADACENFB  
Fort Bliss, TX 79916

**DATE:** 3 Feb 05

Additional Court-Martial charges against the following named individual are forwarded as Enclosure 1. Witness statements, any evidence of previous misconduct (to include properly certified DA Forms 2627 and the accused's DA Form 2-1 (USAR) and DA Form 2A are attached as Enclosure 2. Soldier is not pending chapter action UP AR 635-200.

**NAME:** Brand, Willie V. **RANK:** SPC **SSN:**

**UNIT:**  
HHB, USAADACENFB, Fort Bliss, TX 79916

**Recommend:**

☐ Summary Court-Martial

☐ Special Court-Martial

☐ BCD Special Court-Martial

☒ General Court-Martial

**NAME OF COMMANDER**

DAVID POLITE  
1LT, AD  
Acting Commander

**SIGNATURE OF COMMANDER**



## PART II

**TO:** Cdr, US Army Garrison  
Fort Bliss, TX 79916

**FROM:** Cdr, 76<sup>th</sup> MP BN  
Fort Bliss, TX 79916

**DATE:** 03 Feb 05

I have reviewed the attached charges, documents, and Article 32 (if applicable) and recommend:

☐ Summary Court-Martial

☐ Special Court-Martial

☐ BCD Special Court-Martial

☒ General Court-Martial

**NAME OF COMMANDER**

THOMAS T. KOESTERS  
LTC, MP  
Commanding

**SIGNATURE OF COMMANDER**



## PART III

**TO:** CDR, USAADACENFB,  
Fort Bliss, TX 79916

**FROM:** Cdr, US Army Garrison  
Fort Bliss, TX 79916

**DATE:** 15 Apr 05

I have reviewed the attached charges, documents, and Article 32 (if applicable) and (recommend)(direct):

☐ Summary Court-Martial

☐ Special Court-Martial

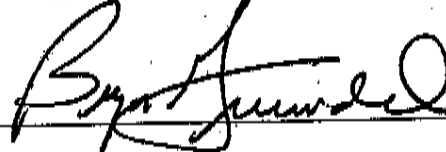
☐ BCD Special Court-Martial

☒ General Court-Martial

**NAME OF COMMANDER**

BRYON E. GREENWALD  
COL, AD  
Commanding

**SIGNATURE OF COMMANDER**



# ARTICLE 32 INVESTIGATION

# **INVESTIGATING OFFICER'S REPORT**

*(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)*

1a. FROM: (Name of Investigating Officer - Last, First, MI) <b>PENCE, Stephen B.</b>		b. GRADE <b>COL</b>	c. ORGANIZATION <b>150th JAG Detachment, Alexandria, Virginia 22310</b>	d. DATE OF REPORT <b>31 Mar 05</b>
2a. TO: (Name of Officer who directed the Investigation - Last, First, MI) <b>GREENWALD, Bryon E.</b>		b. TITLE <b>Commander</b>	c. ORGANIZATION <b>US Army Garrison Command Fort Bliss, Texas 79916</b>	
3a. NAME OF ACCUSED (Last, First, MI) <b>BRAND, Willie V.</b>		b. GRADE <b>PFC</b>	c. SSN	d. DATE OF CHARGES <b>4 Jan 05 3 Feb 05</b>
(Check appropriate answer)				YES NO
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)				X
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)				X
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)				X
7a. NAME OF DEFENSE COUNSEL (Last, First, MI) <b>GALLIGAN, John P.</b>		b. GRADE <b>Civ</b>	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) <b>SLAWINSKI, Steven G.</b>	b. GRADE <b>CPT</b>
c. ORGANIZATION (If appropriate)		c. ORGANIZATION (If appropriate) <b>US Army Trial Defense Service Fort Bliss, TX 79916</b>		
d. ADDRESS (If appropriate)		d. ADDRESS (If appropriate)		
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)				
a. PLACE		b. DATE		
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.				
c. SIGNATURE OF ACCUSED				
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)				YES NO
a. THE CHARGE(S) UNDER INVESTIGATION				X
b. THE IDENTITY OF THE ACCUSER				X
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31				X
d. THE PURPOSE OF THE INVESTIGATION				X
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE				X
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECT TO PRESENT				X
g. THE RIGHT TO CROSS-EXAMINE WITNESSES				X
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED				X
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION				X
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING				X
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)				X
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL				
NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c.") Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."				
<b>DD FORM 457, AUG 84 (EG)</b> EDITION OF OCT 69 IS OBSOLETE.				
12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)		GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES NO
<b>BIRT, Angela</b>		<b>CW4</b>	<b>HHD, 11th MP Bn (CID), Camp Victory, Iraq</b>	X
<b>CHIGI, George</b>		<b>SA</b>	<b>11th MP Bn (CID), 6th MP GRP(CID), Ft Hood, TX</b>	X

HAWKINS, Gerald	SFC	3d Bn, 338 <sup>th</sup> ( ), 80th Div	X
FLORES, Daniel	CW2	Ansbach RA ( ), 1002d MP Bn, 202d MP Grp, Ansbach, Germany	X
ROUSE, Elizabeth	LTC	AFME, AFIP, Rockville, MD	X
CURTIS, Thomas		Cincinnati, OH	X
CAMMACK, Brian	SPC	377 <sup>th</sup> MP Co, USAR, Cinn., OH	X

b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.

13A. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.

DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)	
Ex 1: Appointment Memos (20 Jan 05, 3 Feb 05) & Assumption of Command Memo (13 Jan 05)	OSJA, Ft Bliss, TX 79916	X
Ex 2: Notification Memos (25 Jan 05, 4 Feb 05, 25 Feb 05, 12 Mar 05) & Defense Request for Witnesses and Evidence (1 Mar 05)	OSJA, Ft Bliss, TX 79916	X
Ex 3: Requests for Delay (25 Jan 05, 2 Feb 05, 23 Feb 05) & Delay Approval Memos (26 Jan 05, 24 Feb 05)	OSJA, Ft Bliss, TX 79916	X
SEE CONTINUATION SHEET 1-2		

b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED

14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(h).)

15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)

16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL

17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM

18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED

19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d)(1).)

20. I RECOMMEND:

a. TRIAL BY ☐ SUMMARY ☐ SPECIAL ☒ GENERAL COURT-MARTIAL

b. ☐ OTHER (Specify in Item 21 below)

21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)

The Investigating Officer advises that ample evidence exists to support the specifications and the charges contained in the original charge sheet (dated 04 Jan 05) alleging violations of Article 128 (assault), Article 93 (maltreatment) and Article 134 (false swearing), and recommends that those specifications and charges are in proper form and should be forwarded to a General Court-Martial. The Investigating Officer advises that the evidence likewise supports the specification and additional charge II (dated 04 Feb 05) which alleges a violation of Article 124 (maiming), and recommends that that specification and charge are in the proper form and should be forwarded to General Court-Martial. Statements of the accused and the testimony of other witnesses clearly support a finding that the accused, an MP, and others in his unit, used common peroneal strikes (CPSs) against two detainees (PUCs 412 and 421) unnecessarily and in excess of any amount necessary for self-defense on or about the dates alleged in the charge sheet. When initially confronted about the use of CPSs, the accused falsely denied that he had used CPSs against the detainees. The accused later acknowledged that his initial statement was false. The Investigating Officer finds that the accused knew or should have known that repeated delivering CPSs to a detainee, specifically 15-30 strikes to the thigh of PUC 421, could lead to permanent and disabling injuries. (See CONTINUATION SHEET 2).

22a. TYPED NAME OF INVESTIGATING OFFICER	b. GRADE	c. ORGANIZATION
PENCE, Stephen B.	COL	150th JAG Det (LSO), Alexandria, VA 22310

d. SIGNATURE OF INVESTIGATING OFFICER /S/

31 Mar 05



## CONTINUATION SHEET 1, DD FORM 457, PERTAINING TO BRAND, Willie V.,

Item 13a, continued:

DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (if not attached)	YES	NO
Ex 4: Protective Order (17 Mar 05) & Defense Request for Classified Evidence (16 Mar 05)	OSJA, Ft Bliss, TX 79916	X	
Ex 5: Rights Warning & Sworn Statement of Willie Brand (24 Jan 04)	USACRC, Fort Belvoir, VA 22060	X	
Ex 6: Rights Warning, Sworn Statement of Willie Brand & Sketch (3 Feb 04)	USACRC, Fort Belvoir, VA 22060	X	
Ex 7: Rights Warning & Sworn Statement of Willie Brand (21 Dec 02)	USACRC, Fort Belvoir, VA 22060	X	
Ex 8: 10 Photos of Isolation Cell 1 (9a-9j)	USACRC, Fort Belvoir, VA 22060	X	
Ex 9: 2 Photos of Cell 7 Door (10a-10b)	USACRC, Fort Belvoir, VA 22060	X	
Ex 10: 2 In-processing Photos of BT 412 & 37 Photos of Simulated Chaining	USACRC, Fort Belvoir, VA 22060	X	
EX 11: Sworn Statements of Gerald Hawkins (4 Dec 02, 10 Dec 02, 5 Feb 04, 17 Jun 04) & Rights Warning (17 Jun 04)	USACRC, Fort Belvoir, VA 22060	X	
Ex 12: 4 A02-95 Autopsy Photos of Upper Leg	USACRC, Fort Belvoir, VA 22060	X	
Ex 13: A02-95 Autopsy Examination Report (25 Feb 03)	USACRC, Fort Belvoir, VA 22060	X	
Ex 14: Rights Warning & Sworn Statement of Thomas Curtis (4 Feb 04)	USACRC, Fort Belvoir, VA 22060	X	
Ex 15: Rights & Sworn Statement of Thomas Curtis (22 Dec 02)	USACRC, Fort Belvoir, VA 22060	X	
Ex 16: Rights Warning & Sworn Statement of Brian Cammack (29 Jan 04)	USACRC, Fort Belvoir, VA 22060	X	
Ex 17: Rights Warning & Sworn Statement of Brian Cammack (18 Jun 04)	USACRC, Fort Belvoir, VA 22060	X	
Ex 18: Sworn Statement of Brian Cammack (4 Dec 02)	USACRC, Fort Belvoir, VA 22060	X	
Ex 19: Sworn Statement of Brian Cammack (10 Dec 02)	USACRC, Fort Belvoir, VA 22060	X	
Ex 20: Rights Warning & Sworn Statement of Brian Cammack (16 Dec 02)	USACRC, Fort Belvoir, VA 22060	X	
Ex 21: Sworn Statement of Brian Cammack (23 Jan 04)	USACRC, Fort Belvoir, VA 22060	X	
Ex 22: Sworn Statement of Brian Cammack (30 Jan 04)	USACRC, Fort Belvoir, VA 22060	X	



CONTINUATION SHEET 2, DD FORM 457, PERTAINING TO BRAND, Willie V.,

Item 13a, continued:

DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)	YES	NO
Classified Doc 1: BCP SOP, para 5, RUF (Copies 1- 4) (SECRET)	USACRC, Fort Belvoir, VA 22060	X	
Classified Doc 2: Interrogator Report IN T421-03-1208 (SECRET)	USACRC, Fort Belvoir, VA 22060	X	
Classified Doc 3: Sworn Statement of Neil Berkley (2 Dec 02) (SECRET)	USACRC, Fort Belvoir, VA 22060	X	

CONTINUATION SHEET 3, DD FORM 457, PERTAINING TO BRAND, Willie V.,

## Item 21, Continued

The Investigating Officer advises that the evidence does not support the additional charge of involuntary manslaughter alleged in the specification of additional charge I, and recommends that that charge, alleging a violation of Article 119, be dismissed and not referred for court-martial. While ample evidence was presented that the accused and others wrongfully used CPSSs against two detainees, including PUC 421 (Dilawar), and that those strikes caused serious injuries to PUC 421, there is no evidence that the accused knew or should have known that CPSSs could lead to death. Nor would a reasonable person similarly situated with the accused's background and training have reason to believe that the use of CPSSs, as described by witnesses in this case, could lead to the death of PUC 421. In fact, evidence exists to the contrary. The accused and other members of the 377<sup>th</sup> MP Bn. were taught the technique of delivering CPSSs during training at Fort Dix. While in training, they were advised that such force could be used only in self-defense and not merely for compliance. However, they were not advised that the consequences of employing CPSSs would be anything other than temporarily disabling the victim by striking the peroneal nerve in the thigh region. It is significant that there were no strikes alleged to any other portion of the PUC 421's body. And while common sense might suggest that repeatedly striking the peroneal nerve could reasonably lead to permanent damage, the Investigating Officer can not conclude that common sense would dictate that death might ensue from such repetitious strikes. Certainly no evidence was presented at the hearing that would lead to such a conclusion. In addition, testimony from LTC Rouse, a forensic pathologist, indicated that PUC 421 had a preexisting heart condition which contributed to his death. However, his condition was not known or foreseen by the accused or other MPs. PUC 421's ability to physically exert himself by continually and sometimes violently resisting the MPs directives, including those of the accused, by kicking at doors, swinging at guards, etc., would not indicate that he was particularly susceptible to the trauma inflicted by CPSSs. Although LTC Rouse opined that PUC 421's death was a homicide, that medical conclusion is not inconsistent with this recommendation in that PUC 421's death from CPSSs delivered by the accused was not reasonably foreseeable and that probable cause does not exist to support the charge of involuntary manslaughter. The Investigating Officer has considered that other non-lethal techniques that are employed for compliance and self-defense might lead to a different conclusion. For instance, an MP might reasonably foresee that a choke-hold used to subdue an individual, which deprives the victim of oxygen, could lead to death if employed in excess. Likewise repeated strikes to a vital organ or use of an instrument to other regions of the body such as the head or trauma which results in a broken bone might reasonably be foreseen to cause death. But in the instant case a non-lethal technique was employed by accused and other MPs (albeit in violation of the UCMJ) which could not, under the circumstances, be reasonably foreseen to cause death to PUC 421 (Dilawar).

The Investigating Officer recommends that additional charge I and its specification which charges the accused with involuntary manslaughter in violation of Article 119 not be forwarded to Court-Martial. All other specifications and charges in the original charge sheet and the additional charge sheet are supported by the evidence, are in proper form, and should be forwarded to a General Court-Martial.

All objections occurring at the Article 32(b) hearing are noted in the transcript. All delay in the Article 32(b) hearing is attributable to the defense.

DEPARTMENT OF THE ARMY  
U.S. ARMY HUMAN RESOURCES COMMAND  
200 STOVALL STREET  
ALEXANDRIA, VA 22332-0470

14 JUL 2005

~~AHRC-PDE-RG~~  
ORDERS A-02-503609A01

BRAND WILLIE V

PFC  
WTYGA1

THE FOLLOWING ORDER IS AMENDED AS INDICATED:

SO MUCH OF: FORMAT: 460 A-02-503609 DATED 07 FEB 2005 IS FURTHER AMENDED.

PERTAINING TO: ORDER TO ACTIVE DUTY  
BRAND WILLIE V  
PFC

## AS READS:

RPT DATE/TIME: 04 JAN 2005  
ASG TO: WOVHAA USAADACENEB REPL ACT  
FT BLISS TX 79916  
END DATE: 01 JUL 2005

## HOW CHANGED:

IATR: RPT DATE/TIME: 02 JUL 2005  
IATR: ASG TO: WOVH01 HQ AND HQ BTRY US AD  
US ARMY AIR DEF CTR FT BLISS TX 79916  
IATA: DUTY AT: FT BLISS, TX  
IATR: END DATE: 27 DEC 2005  
IATA: ADDTL INSTR: DJMS-IN WILL PERFORM ACCESSION TRANS. SM WILL INPROCESS  
AT THE SVC FIN OFC AT DUTY LOCATION. SVC FIN OFC WILL ARRIVE SM & PERFORM  
ALL FINANCE TRANS

FOR ARMY USE: AUTHORITY: R.C.M. 202(C), AR 27-10 CH 21, AR 135-200 (7-4)

FORMAT: 700

BY ORDER OF THE SECRETARY OF THE ARMY:

\*\*\*\*\*  
\* AHRC \*  
\* OFFICIAL \*  
\*\*\*\*\*

RODGER L. SHUTTLEWORTH  
CW5, AG  
CHIEF, RC SPT SVC DIV

## DISTRIBUTION: 1 SOLDIER

1 USAADACENEB REPL ACT FT BLISS TX 79916  
1 HQ AND HQ BTRY US AD US ARMY AIR DEF CTR FT BLISS TX 79916  
1 377 MP CO (-) 1600 SEYMOUR AVENUE CINCINNATI OH 45237 3093

04/11/2005 16:53 FAX 5035 149

LT GOV OFFICE

REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
GARRISON COMMAND, FORT BLISS  
2 SHERIDAN ROAD  
FORT BLISS, TEXAS 79916

ATZC-GC

08 APR 05

## MEMORANDUM FOR RECORD

I direct to have the following statement placed into the Article 32 Transcript: I asked the accused if he had read and understood the charges against him. The accused and DC both acknowledged that he had read and understood the charges against him.

A handwritten signature in black ink, appearing to read "S B Pence", is written over a horizontal line.

STEPHEN B. PENCE  
COL, JA  
Investigating Officer