

**Article 32 Investigation****PFC Brand, Willie****Record of Hearing**

The Article 32 (b) Investigation into the charges against PFC Willie V. Brand, Headquarters and Headquarters Battery, United States Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, TX 79916

The Article 32(b) Investigation was called to order in accordance with Article 32(b) UCMJ and DA Pam 27-17, at 1740 hours, 21 March 2005.

The following personnel were present:

**Investigating Officer (IO)**

**COL Stephen Pence**

**Trial Counsel (TC)**

**1LT David Trainor**

**Assistant Trial Counsel (ATC)**

**LTC Timothy MacDonnell**

**Defense Counsel (DC)**

**Mr. John Galligan**

**Assistant Defense Counsel (ADC)**

**CPT Steven Slawinski**

**Accused (ACC)**

**PFC Willie Brand**

**Recorder**

**SSG Trina Tyus**

The IO read the names of the witnesses.

The recorder was sworn

The IO informed the accused of his rights and the administrative matters relating to an Article 32 investigation.

The DC waived the reading of the charges.

The TC did not make an opening statement.

The DC did not make an opening statement.

The Article 32 session recessed at 1818 hours, 21 March 2005.

The Article 32 session reconvened at 0834 hours, 22 March 2005.

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<b>Investigating Officer (IO)</b>	<b>COL Stephen Pence</b>
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<b>Assistant Trial Counsel (ATC)</b>	<b>LTC Timothy MacDonnell</b>
<b>Defense Counsel (DC)</b>	<b>Mr. John Galligan</b>
<b>Assistant Defense Counsel (ADC)</b>	<b>CPT Steven Slawinski</b>
<b>Accused (ACC)</b>	<b>PFC Willie Brand</b>
<b>Recorder</b>	<b>SSG Trina Tyus</b>

The IO read the names of the witnesses.

The recorder was sworn

The IO informed the accused of his rights and the administrative matters relating to an Article 32 investigation.

The DC waived the reading of the charges.

The IO asked the accused if he had read and understood the charges against him. The accused and DC both acknowledged that he understood and read the charges against him.

The TC did not make an opening statement.

The DC did not make an opening statement.

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The Article 32 session recessed at 1818 hours, 21 March 2005.

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Special Agent Angela Birt, CW4, Iraq, was called as a witness for the Government, was sworn, and testified in substance as follows:

### DIRECT EXAMINATION

#### Questions by the trial counsel:

I am calling from LSA Anaconda in Basul, Iraq. I am stationed at HHD, 11th MP Bn at Camp Victory, Baghdad. I've been in the Army for 21 years. I've been in CID for 15 years. From 2002 - 2003, I was assigned to HQ, US Army CID Command, Fort Belvoir, VA. While there in 2003 I became familiar with the investigation of the deaths of two detainees at Bagram Air Base. I was the reviewer, and the forensic officer for the command. I later became the Task Force Commander to follow up on leads. I familiarized myself with the facts surrounding the deaths of the detainees. The case files, photographs, exhibits, Bagram BCP 15-6 and other documents. I have become familiar with PFC Brand. In Dec 2002, the BCP was located on Bagram AFB, outside of Kabul in Afghanistan. In Dec 02, the primary Mission of BCP was a collection point of short term holding facility for detainees picked up related to Al Queda or Taliban issues, and screened there and or transferred to Guantanamo Bay or released as appropriate. The BCP was a hanger styled bldg, being refurbished, and portions were occupied, other portions were not. The first floor had general population cells, which were primarily triple strength concertina wire and an opening that was metal. The first floor had a set of holding cells that were isolation cells with plywood walls, an entry control point, some offices on the first floor, and a room used for in-processing in the back of the building by the airfield. On the second floor there was a walkway that over-looked the facility area where the general population guys were kept. There were interviewing rooms and some isolation cells on that floor, as well. In December 2002 CID was informed that two detainees had died in that facility. I do know the names and the numbers of the detainees that died. One was named Habibullah and his number was Bagram Temporary PUC 412. The second man went by Dilawar, and his number was Bagram Temporary PUC 421. Both of the detainees did not die at the same time. They died about a week apart. The first detainee to die was Habibullah, number 412. During the course of my investigation, I was able to determine when he came in the facility. The information indicates that he came in the Bagram facility on 30 November 2002. He did not leave the facility. He died on the night of the 3rd or 4<sup>th</sup> of December depending on which time you use, local or zulu. Mr. Habibullah was found in the isolation cells when he died. I do not know if it was the first or second floor. During the course of my investigation, I was able to determine when the second detainee died, Dilawar, came into the facility. The information indicates that he came into the BCP on 5 December 2002. He also did not leave the facility. He died on 10 December 2002. Mr. Dilawar was found in an isolation cell. He did not die in the same cell. I do not know if it was on the first or second floor. I do not recall. The unit that was charged with guarding the detainees at the BCP on December 2002 was the 377<sup>th</sup> MP Company, a reserve unit out of Cincinnati, Ohio. On any particular day at the BCP, the 377<sup>th</sup> did 12-hour shifts; one for the day, and one for the night and the remaining platoon had a deep duty out for force protection. The platoon that was on night shift on December 2002 during the early portions was first platoon but during the time frame when the two men died they were in the middle of doing RIP, so there were members of both third and first platoons circulating through different jobs. PFC Willie Brand was in first platoon. Both of the detainees died on the night shift. After the death of the second detainee Mr. Dilawar an autopsy was performed. I did read the autopsy report to

determine on how to focus my investigation. The autopsy of the second detainee who died, was performed by LTC Elizabeth Rouse. She determined the cause of death on Mr. Dilawar was blunt force trauma that was complicated cardiovascular disease. The blunt force injuries were primarily located on the lower legs and the thigh area of both men. Due to the cause of death reported by the autopsy reports, CID began to look at some statements taken from military police that indicated there were an degree of something called compliance blows or common peroneal strikes delivered to the detainees under varying circumstances. We began to look at those as possibly the sources to some of the blunt force trauma we observed. Based on the information we have collected through the course of this investigation a common peroneal strike is described as a pressure point technique that is applied by either the kneecap or the flat of the thigh and strikes the victim in the upper thigh region. It is designed to incapacitate the leg by striking a nerve in that area. CID did question PFC Brand on multiple occasions on whether he had delivered common peroneal strikes to Mr. Habibullah and Mr. Dilawar. On 24 January 2004, I did have an opportunity to question PFC Brand and interviewed him at the Embassy Suites Hotel in Cincinnati Ohio. The interview started at 1123 and ended approximately at 1730. The people present at the interview were myself, PFC Brand (who was then a Specialist) and Special Agent Carton. Mr. Carton informed PFC Brand of his constitutional and Article 31 rights before the statement was taken. I do have the documents I received in emails from you a few weeks ago.

The TC stated that he was showing what has been marked as Prosecution Exhibit 1A and 1B to the defense.

The documents that you sent to me are multiple pages I have a 3881 and a [REDACTED] if thirteen pages. When PFC Brand was read his rights by Mr. Carton, he used the form and he read verbatim from the portion on the back side of the form that talks about how to advise someone of their rights he advised him of his position, showed him his badge, explained the nature of the offenses, and then read through the form literally word by word. The DA Form 3881, that I am looking at, is dated 24 January 2004, the time in the block is 1123 and has our file number in both block four and the file number is also stamped above the top of the form in the margin of the paper. It is also signed by Mr. Carton, PFC Brand, and myself. This is a true and correct copy of the original DA Form 3881 that we all signed on that day. Special Agent Carton used the DA Form 3881 to read PFC Brand his rights. He also informed him on the nature of the charges of which he was suspected and was also told that he did not have to answer questions if he did not want to. After PFC Brand was read his rights and signed a rights waiver we asked him to go over what he could recall about the story, and we asked him specific question about the level of training and education he had, his experience on previous deployments, and his experience with the correction field. He talked about where he came from and what happened in the facility that he could recall. Embassy Suites operates rooms that are business suites. The front half of the room is a living area with a couch, an overstuffed chair, a refrigerator, a desk where I set my laptop up, there was a wet bar there so we could provide refreshments to the interviewees, a restroom located behind that, and behind the closed door is a bedroom area, which was never used during the interview. It was closed off during the time period of the interview. When the interview started we were sitting next to him. Mr. Carton was sitting next to him so they could go over the forms together and he could read alongside of him. I was either sitting on the couch next to him or on the overstuffed chair. The interview ended at 1735 when he finished his statements. The interview took about five hours. PFC Brand was aware that he was allowed to go to the latrine and get water. At the time he made the statement I found out that PFC Brand had

been on a couple of deployments. He had a good understanding of the English language and understood what was going on and the reason that we were there. He was fairly educated, could read and write, and could hold a good conversation with people and didn't seem to have any problems tracking with the subject matters. While PFC Brand was answering questions I went from talking with him to documenting the interview. So I moved from sitting on the couch to the desk area and then I was reducing the statements I was writing. The copy of the statement is a computer generated version of a 2823 Sworn Statement. This one is thirteen pages in length and the. The statement was made by then Specialist now PFC Brand. He generated all the answers. This is a true and correct copy of the statement that I typed out when he was answering questions on 24 January 2004.

The TC moved that Prosecution Exhibits 1A and 1B be entered into evidence as Prosecution Exhibits 1A and 1B.

There being no objections from the DC, the IO admitted Prosecution Exhibits 1A and 1B.

Witness read from prosecution exhibit 1A.

Within a month of returning from Kosovo PFC Brand was deployed to Afghanistan and he conducted pre-mobilization training at Fort Dix.

Witness read from prosecution exhibit 1A.

We discussed hip-pocket training PFC Brand had done at Fort Dix.

Witness read from prosecution exhibit 1A.

We then discussed the concept of a compliance blow.

Witness read from prosecution exhibit 1A.

PFC Brand then talked about the use of force training he received at Fort Dix.

Witness read from prosecution exhibit 1A.

I then asked him what his understanding of the detainee being "combative" was.

Witness read from prosecution exhibit 1A.

Yes, that was in response to one of my earlier answers about when a guard had taken a detainee and struck him in the knee for not standing up.

Witness read from prosecution exhibit 1A.

PFC Brand did describe contact with the detainee named Mr. Habibullah, BT 412.

Witness read from prosecution exhibit 1A.

PFC Brand told me he struck Mr. Habibullah while he was chained for the sole purpose of stopping him from resisting being rehooded. PFC Brand told me he knew the strikes were contrary to MP Doctrine.

Witness read from prosecution exhibit 1A.

PFC Brand told me that he had been trained differently and that this was wrong. I think PFC Brand did tell me what shift he was working when he came in contact with Mr. Habibullah.

Witness read from prosecution exhibit 1A.

The DC objected to having the witness simply read from the exhibit as improper particularly when its just having the witness to read isolated parts of the statement the purpose should be to question the witness about what other factors could be known by the witness not just simply read isolated portions.

The TC stated that Special Agent Birt had provided testimony about what she knows outside of what PFC Brand said, all she is doing is introducing testimony that PFC Brand made himself and its simply a matter of doing it, it made him arborous and counsel for the witness is certainly able to cross-examine her and ask her to read other portions of the statement but we are allowed if your honor would allow us to we would like her to read those.

The IO stated he would consider the whole statement. The IO stated that he had not ruled on the admissibility of it, but I am going to consider the entire statement and I will read it if government wants to proceed by reading portions they are allowed to if defense wants to read portions they are allowed to but I will consider the entire statement.

**Continuation of direct examination:**

PFC Brand did talk to me about striking Mr. Dilawar.

Witness read from prosecution exhibit 1A.

PFC Brand told me that the sole reason for him to hit or restrain Mr. Dilawar in both instances was for the sole purpose of getting him to put his hood back on. I did ask PFC Brand whether he thought striking or restraining a non-threatening PUC was wrong.

Witness read from prosecution exhibit 1A.

I did talk to PFC Brand about what he thought to be excessive or abusive force against detainees.

Witness read from prosecution exhibit 1A.

PFC Brand admitted on two occasions on this statement about when he struck Mr. Dilawar. On the 24 January 2004 statement PFC Brand did not admit that he had gone into Mr. Dilawar's cell on another occasion and delivered thirty common peroneal strikes to him at one time.

## CROSS-EXAMINATION

### Questions by the defense counsel:

I was the lead investigative agent in the case beginning in August 2003. In the beginning the folks in Afghanistan, Or. Flores, Mr. Potter, and Mr. Lighty, were the investigators. The deaths in this case occurred in December 2002 and all the autopsies were completed in December 2002 as well. The conclusions of the forensic specialists who did the autopsies indicated or suggested that both the deaths were homicides. I believe the defendant in this case made a statement in December 2002. I was not the CID agent who took that statement. I am aware he did in fact provide a statement in December 2002. I do not have the form in front of me but I do believe that when he was read his rights in December 2002, he was advised that he was only being suspected of having committed aggravated assault. The form did reflect that a rights warning was given on 21 December 2002, and Special Agent Flores indicated he was only suspected of a aggravated assault. So what I advised him on two years later was a lot different. On the 21<sup>st</sup> of December medical experts had already concluded that a homicide was the cause of death. I do not know why when he was first questioned nothing other than aggravated assault was indicated as the offense because I did not do that rights advisement

The TC objected on the grounds of relevance.

The IO overruled the objection.

I cannot explain to the Article 32 Investigating Officer why almost two years transpired before the defendant in this case was next questioned by CID. I can tell you how my involvement began in this case. In the lead answer to the statement I took on 24 January it starts out by saying I Willie Brand want to make the following statement. He did not voluntarily come to my office I contacted him first. He was on reserve duty at the time I contacted him. When I read him his rights there was a change for the first time in the offenses for which I notified him that he was a suspect under Article 31. When I read him his rights on the 21<sup>st</sup> of January I did not tell him he was suspected of manslaughter. I know now that he is charged with manslaughter after you just told me because it had not been discussed with me. Even as a CID agent and a one time lead investigator in this case I was not aware that two separate charge sheets had been preferred against the defendant.

The TC objected on the grounds of relevance.

The IO overruled the objection.

My involvement with the case ended in October of 2004 when I PCSed from headquarters I am not aware of what happened after that point and I have no knowledge of it. I have not seen the charge sheet. I have no reason to dispute the fact that it was not until 5 February 2005. That the defendant was ever charged with the manslaughter offense. When I advised him of his rights I only advised him that he was suspected of negligent homicide. I did explain to him what negligent homicide was. We described all the offenses here in the terms of this case and in the terms of anyone involved in conduct that is derelict or not in accordance with the rules that they are supposed to be behaving under. If someone dies, the consequence could be considered negligent homicide.



The IO stated that the question from the DC was not relevant.

Mr. Carton and I explained to the defendant what negligent homicide was.

The TC objected that there is no requirement in Article 31 that there actually be an explanation to the accused. He only has to be made aware of the charges.

The IO agrees with government and asks defense to clarify how it changes the veracity of the statement.

The DC replied that the understanding of the defendant is relevant to how he would answer some of these questions. The DC further replied that there might not be an requirement that an explanation be provided to a person being interviewed, but that if did provide anything, that is necessary information.

The IO stated that he would allow a few more questions along this line, but he believes that it is out of the scope and that it does not affect the veracity.

**Continuation of cross-examination:**

I explained negligent homicide to the defendant as any behavior that was outside the scope of legitimate police authority that might have resulted in the death of an inmate. We talked about the compliance rules and maltreatment and all of the things that are also listed here like assault, battery those types of things. I administered the rights reading at about 1123. That's the time he has fixed his initials. The reading actually starts a little before that and when we have finished the form that is usually when we obtain the signature the time and the date. That took about six hours it lasted till about 1735. I did not record the statement I was writing it down that's the only record of it I did not videotape it either. This is certainly not a verbatim statement. It is common practice as a CID agent for me to have conversations and discussions with the person being interviewed before taking the statement. I give a little bit of background as to why the person is there. I sometimes even elaborate on the nature of the offenses the person is suspected of and I did that in this case. None of this was recorded in the written statement the trial counsel asked me to authenticate but you have asked me about it in the person of the rights waiver. I did not start formally taking a statement from the defendant until the rights waiver was recorded. I really do not know for how long we just engaged in preliminary discussion after the rights warning and before I took a statement. I cannot type as fast as people talk so sometime during the process of interviewing an individual I began to write down what is going on and what has been covered in a narrative portion, the background questions like where someone attended school that's all the narrative portion that appears on page one on specific questions I try to get as much as close to what they said as possible with my limited typing skills and that is when I would go through the statement with the individual at the conclusion of the interview and have them read and make corrections so that they are very comfortable with and understand and adopt everything that has been written down. It is not the policy of CID to tape record statements from anyone other than children who are not able to read or appreciate the written language. I have never in my career had to record a case for any other circumstances. I believe verbatim statements are always better just not logistically possible in all cases. I interviewed a number of other people who were involved in this case at the same hotel. On one occasion I interviewed

Specialist Cammack there was so many of them there were like ninety something interviews and they were all recorded in my agent investigative reports that will tell you exactly who was interviewed by whom on what date, I do not have that document in front of me. The ninety people were interviewed by me and my team of six people in a time period of about three weeks. I did conduct an interview of the defendant's chain of command, as it existed on or about the time of these alleged acts. I personally spoke with Captain Beiring, Sergeant Plummer was interviewed as was Sergeant Handroff, I did not do all these interviews as I said there were six members of the team there plus myself there was a lot of interviewing going on like I said I would have to refer to my report to tell you exactly who interviewed whom at what time on which date. Captain Beiring did make a statement. As a part of my investigation, I was able to make a determination that a number of people other than the defendant administered compliance blows against either of the deceased. The number of people who administered the blows is going to be in my report, which is not in front of me right now. I know that Cammack administered blows against Mr. Dilawar because he admitted to it. I would have to look at his statement to know how many blows. I determined during this investigation that some of the blows might have been administered by soldiers other than PFC Brand.

This is a broad generalization, but most of the MP's that we talked to felt that the scope of their authority extended to controlling, feeding, housing, and moving the detainees, but MI asked for directed or asked for MP assistance in delivering sleep adjustment, which required them to keep the detainee awake for long periods of time, during which no MI personnel were present, and that was man-power intensive for the MP's. Sleep adjustment is the only thing I can recall. It remained unclear throughout the investigation whether these two men were chained as a course of sleep adjustment or behavioral modification by the MP's. It was probably a combination of both.

## RECROSS-EXAMINATION

### Questions by the DC:

Detainees were not examined on a daily basis. There was a doctor that came into the facility, and there was a medic that could see the detainees. They visited certain places on a daily basis, but they did not see all of the detainees everyday, only the ones with medical complaints. I'm not sure what their access was to the ISO cells, but they were in the general population area, but none of the medical folks that I talked to told me that they had observed detainees in the isolation cell. Interpreters were available in Bagram. I talked to either 4 or 6 interpreters. I don't remember the exact number, but we took statements from all of them. We traveled to Afghanistan to talk to one or two, one was in Germany, and one was in Oklahoma. I can't recall the exact number of interpreters that we spoke with. Whenever the interpreters were in the facility they escorted by the staff. In certain instances they were asked to interact with the detainees to translate language for them, or to translate what they were saying to the MP's.

I was not made aware of complaints by 412 concerning treatment by the defendant, but I was aware of complaints concerning treatment by other individuals. The interpreters were aware that the detainees were making complaints that the "MP's" had beaten them, but that was as far as it went. They didn't know which MP's. We weren't sure if their representation of MP's was accurate. They indicated that it had been brought to the attention of superior authority, but to

my knowledge nothing was done. This was a complaint expressed by all of the interpreters that I spoke with. During my interview with the defendant on the 24<sup>th</sup> of January, we discussed the number of blows he administered to 412 and 421. I was incredulous that he couldn't recall how many times he had hit someone that died. I asked him if he had hit anybody that might have died, and why didn't he remember. There was an exchange back and forth, concerning both detainees, because of a response contained in his statement.

The Witness read from Prosecution Exhibit 5.

The defendant was basically saying that this was common practice. On the 24<sup>th</sup>, he basically told me that his conduct toward these two detainees was no different than the conduct he applied to all the other detainees. There was confusion about PUC 412 and PUC 421 during my discussion with the defendant. He didn't know their names. He could only differentiate between the one who died first and the one who died second. He remembered the combination of numbers. I reviewed his statement given on 21 Dec 2002 before interviewing him in Jan 2004. We questioned whether he had been lying to us, or there was an error in the question and the way it was answered, and we wanted to explore that. That's why the false official statement rights advisal. I would not agree that I used 421 and 412 interchangeably. We discussed PUC's in general, but with regard to those two folks, that's one of the reasons why they are referred to by name in all of the statement we took, because typographically, it's very easy to screw that up. There were a couple of times where it's asked regard to the number, but we try to stick with the names. The defendant was confused regarding names. He did not know. He knew the guy who died first and the guy who died second. At the beginning we talked amongst him me, and Mr. Carton. 30-40 minutes into the discussion I began typing the statement, and at that point I began to pick up with actual questions asked and his response to the questions. He spent 20-30 minutes reviewing his statement, and made some pen and ink corrections on it; he corrected some wording and struck some language that he didn't agree with. I had not accurately represented what he said, so he took that out. I don't recall the defendant telling me that he thought there was a conflict between doctrine and practice. I would have to read the entire statement, and look at each question. He talked about an incident involving another individual from the unit that twisted handcuffs; that had been with him in Kosovo. A lot of MP's made reference to a logbook, but we never able to locate it, during the course of our investigation. Many of them told us that they did not log any of the blows that they gave. There was an exchange of information, between the various shifts; but not as much as you would like to have happen. It was not formalized, and not in writing, unless it was in the logbook, but we never found the logbook. I don't recall the defendant telling me where he first heard the term Common Peroneal Strike. If he did, it's in the statement. I don't know if the defendant was asked about Compliance Blows or Common Peroneal Strikes at that time. I don't have his Jan 2004 statement with me. I would not find it odd that Common Peroneal Strike was not mentioned in Dec 2002 statement, because early in the investigation, there was a lot of confusion about whether a Common Peroneal Strike was a compliance blow, or whether something else was a compliance blow. I read the case and it wasn't clear to me. I don't know if it was clear to the earlier investigators, because we didn't have much interaction.

The TC objected on the grounds that the witness was going into broad discussion and also objected to questions regarding chaining.

The IO overruled the objection.

I took several statements from Cammack. I would have to go back to my report and look at it, but I think the first statement I took from him was 23<sup>rd</sup> of January. I believe I interviewed him a total of 3 times, in 2004. He made statement in 02. There were conflicts in his statements. He lied about giving common peroneal blows to detainees. I believe he lied in earlier statements. I will be at current location where 1LT Trainor reached me until 0700, my time on the 24<sup>th</sup>, at which time, I have an airlift movement request to return to Baghdad.

There being no further questions from either side, the witness was excused.

Special Agent George Chigi III, Fort Hood, Texas, was called as a witness by the government, was sworn, and testified, in substance, as follows:

### DIRECT EXAMINATION

#### Questions by the TC:

My name is George Chigi III, I am a special agent assigned to the U.S. Army CID, 11<sup>th</sup> MP Bn, Ft Hood, TX. I was active duty from 1961 - 1991. I am a DOD Civilian. I'm a criminal investigator, special agent I'm a polygraph examiner. I've conducted 1,000's of interviews over the course of 28 years. I came in contact with Brand in 3 February 2004, to ascertain whether he had any further knowledge pertaining to the death of Dilawar, PUC 421 at Bagram Airfield in Afghanistan. Initially it was just he and I in the room. We were, later joined by SA Birt. The interviews were conducted in a hotel, in Cincinnati, Oh. I do not know the name of the hotel. Angela Birt took the statement. I advised him of his rights. I read him his rights from the DA 3881, Rights Warning Procedure Waiver Certificate. Prosecution Exhibit 3a is a copy of the Rights Warning Waiver Certificate, which I used to advise SPC Brand of his rights on 3 Feb. It is a true and correct copy of the original. I was present when Angela Birt took a statement from him. The room that we were in was a suite. We were in the living room portion of the suite. In the room was a couch, a large chair, a table, a television; there were windows, but the blinds were pulled. There was a bedroom with the door shut, and a bathroom adjacent to the bedroom. I was about 3 or 4 feet away from Brand, during questioning. SA Birt was initially in the other room, monitoring the interview with a baby monitor device, because when do a polygraph, only the person giving the polygraph examination and the interviewee would be in the room., but we want someone else to monitor the examination. All of our examinations are monitored. There was no need to conduct polygraph, because during the initial interview, SPC Brand informed me that he struck Mr. Dilawar a number of times, which is what the allegation was. That's when Agent Birt entered the room. Brand seemed to be very intelligent he understood everything I was saying, very cooperative; a very likeable young man. I was not wearing a weapon, and do I not know if SA Birt was wearing one. I was wearing a jacket, shirt, and tie when I took the statement from him. I do not remember what PFC Brand was wearing. SA Birt was in civilian clothes. The entire interview, between, myself and SA Birt, lasted a little over two hour, but I think that I only interviewed SPC Brand for about 45 minutes before he provided information pertaining to the injuries to Mr. Dilawar. That's when I got SA Birt. I informed PFC Brand that he was allowed to leave or take a break that he was allowed to leave at anytime. I read his rights from the form we talked about. He was not required to stay. I read his rights directly from the

form. I read the entire form to him. I informed him that he had a right to an attorney, he understood that, and waived that right. I informed him that he did not have to talk to me, he understood that, and spoke to me anyway. SA Birt took a written statement, derived from PFC Statements that day. She used a question and answer format, based on the information SPC Brand provided to me. I went over the information again with SA Birt, and then she put that into a statement form, asking Brand more questions as she went along. Primarily, she asked the questions. I don't think I asked very many questions once she came into the room. At the end of the interview PFC Brand was given an opportunity to read the statement. I saw him read the statement. I do not remember how long he looked at it, but he went over the entire statement. He appeared to be reading it, and he initialed in the appropriate places and signed. Prosecution Exhibit 3b is a statement that was rendered and prepared for Willie Brand on the 3<sup>rd</sup> of February, prepared by SA Birt. (Inaudible) It was witnessed by myself, and signed by SPC Brand and SA Birt. I know that it is PFC Brand's statement because I saw him sign it. That is a true and correct copy of the statement he made that day.

The witness read from Prosecution Exhibit 3b.

After PFC Brand described how Mr. Dilawar was chained up in the cell I did make a drawing of it. Prosecution Exhibit 3c is the drawing I made up to scale of PUC 421, Mr. Dilawar at the time he received fifteen to thirty peroneal strikes by SPC Brand. I got the information that allowed me to draw this figure from SPC Brand. This is a true and correct copy of the drawing I made that day. After I made the drawing I did give PFC Brand an opportunity to look at it. He agreed that it was in accordance to what he had testified to, and he initialed it at the bottom, the initials are right next to 0935 the time that I drew the sketch.

The witness read from Prosecution Exhibit 3b.

I am under the understanding that there were two detainees who died in Bagram Air Base in December 2002. On the occasion that I spoke with PFC Brand I was not inquiring about anyone other than Mr. Dilawar PUC 421. PFC Brand did seem to understand that I was talking about the second detainee who died. He seemed very clear on that.

## CROSS-EXAMINATION

### Questions by the DC:

I conducted a number of interviews in this case, including the interviews SPC Cammack and a few others that I do not recall right now. I talked to SPC Cammack prior to talking to SPC Brand. The interview that occurred on 30 February was initiated by us we contacted him and asked him to come to the hotel for the purpose of the interview. I do not know if he was ordered or directed to come to the interview I did not make any of these arrangements the arrangements were made by SA Birt. During the course of my investigation on this entire case I did conduct a polygraph with SPC Brian Cammack. I did tell him that the intent and purpose of him coming up there was to administer a polygraph, we talked about the polygraph. I told him as soon as he came to the interview that I was there to give him a polygraph exam pertaining to this incident and that I would be advising him of his rights and filling out certain forms and conducting a polygraph examination if necessary. I told him the purpose of the polygraph was to identify the

truth fullness of his statement in regards to how he said he initially only struck PUC 421 two times in other information he indicated he had struck him more than twice. He said he had struck him a couple of time two or three times but the statement by Cammack indicated he had struck him fifteen to thirty times. A polygraph in my opinion would have helped me determine how many times he knew he had struck him if it was more than a certain times. At the end of the interview it had been determined the amount of times the blows had been administered was between thirty and thirty-seven times which was all we needed. The sketch was drawn by me during a conversation with the defendant which indicated fifteen to thirty common peroneal strikes. I did not test for that that was the allegation, whether or not he had said he had struck him fifteen to thirty times which he said he did. He also said during the course of his statement that he was uncertain as to the specific number, he admitted he had exaggerated the number on one occasion, said he may have been confused about the dates and times on when they were administered. I did read him his rights, the offenses that PFC Brand was suspected of were negligent homicide, assault and false statement. I do not any particular reason why that differed from the rights that he was read several days earlier by SA Birt, I do not know what she advised him of his rights for. I do not recall at this time if I examined him before I read him his rights, I may have. I did not advise him that he was suspected of maltreatment of a subordinate. The statement was transcribed and taken by SA Birt, she was typing it, she would type and then they would take a break and she caught up to what he said and then she would ask him some questions and type some more. She did engage in clarification questions while she was taking the statement, I believe the clarification questions are in the statement as far as I know everything that she asked him is in that statement. SA Birt was originally in a separate room designed to only have audio. I cannot explain why no efforts were made to record audio or video of the statement that would have been best. I do not know of any reasons that prevented the interview from being taped. SA Birt pretty much asked all the questions especially when she came back in the room she just took over the interview. I do not recall asking any questions when she was in the room. In the introduction paragraph when it talks about questions I asked I believe SA Birt was referring to initial questions I asked him in the initial interview. I do not recall what the initial questions I asked were at this time. I do not believe there are any questions in that statement that I asked. I asked questions initially about whether or not he recalled the conversation about delivering fifteen to thirty common peroneal strikes and he said he did not remember it and when he did I went and got SA Birt and she came back in and took the statement so those were the questions that I asked. I might have asked other questions but I do not remember what they were. I cannot explain why they were not in writing. I talked to him for about half an hour before I called Agent Birt back in. None of the conversation that we had during this half hour was recorded. The sketch was done while SA Birt was in the other room. I believe the sketch was done at 0935 during the interview, the interview with the defendant ended at 1022. I cannot recall during what part of the statement I was drawing the sketch. I did the sketch at 0935. I do not recall clarifying the number fifteen that is on the bottom of the sketch. I believe I did conduct an interview with SPC Morden but I do not recall the specifics. SPC Cammack said he delivered common peroneal blows twice or two to three times. He did vary on his description or the events on the number of blows he exerted. He initially said he only hit PUC 421 a couple of times when he really did hit him more times than that. He admitted to hitting him four or five times I believe. Based on the people I interviewed and the statements I took I cannot tell you how many peroneal strikes were administered to PUC 412 or PUC 421. I cannot tell you how many people had administered blows to PUC 421 before the defendant. I think someone

may have administered blows to PUC 421 after the defendant did. I do not know who the last person to administer blows to PUC 421 was. The defendant was cooperative, he did come to take a polygraph, and I was the one who chose not to administer a polygraph on him he did not refuse to take one.

The TC objected on the grounds of speculation on whether PFC Brand was telling the truth or not.

The IO directed the defense to rephrase the question.

He answered all questions that I asked, and he indicated that there were some areas that he was uncertain about. Told me he might have misstated or exaggerated some answers. I did not show him specific pictures of PUC 412 or PUC 421, the pictures of those individuals were not available. I did not show the defendant the pictures because first of all I did not have them. The defendant did not appear to be confused when I referred to 412 or 421. I asked questions about distinguishing between 421 and 412, but they are not in the 4 page statement, nor do I recall how long I talked to him about that. Uncertainties and questions could have been resolved by videotaping. SA Birt asked about the force of the blows on a scale of 1 to 10, explaining 0 being the lowest, and 10 being the highest, but it is not in the statement. Brand said that he hit him on a scale of 3. The defendant never said that he intended to harm the PUC's, and my perception of his belief was that anything he did was required to perform his duties. I do not recall any follow-up questions as to who in a leadership position he was referring to. I believe there were questions asked about changes in procedure between the deaths of 412 and 421, but I do not recall. I believe there was a question about changes in procedure following the 2<sup>nd</sup> death. I recall testimony about trying to log certain procedures. I recall the defendant being asked if he believe that giving the common peroneal strikes was wrong. His response was, No, not wrong wrong. Necessary to get them to do what you wanted them I do not recall him distinguishing between something being morally wrong or legally wrong. I do not recall PFC Brand telling SA Birt that the peroneal strikes were excessive under the circumstances but it might be in the statement. He did state that he had been trained and taught how to administer the blows. I do not know if there were any questions on who specifically trained him, there was a question were you required to get permission to give a common peroneal strike the answer was no when I trained in the Bagram control point the shift that trained up taught us to use common peroneal knee strikes as a matter of common practice but there were no more specific questions on that matter. The only time there was any change was after the death of PUC 421. I do not believe I had follow up involvement in the investigation in this case after taking the statement.

### REDIRECT-EXAMINATION

#### Questions by the TC:

The witness read from Prosecution Exhibit 3b.

He did not record that thirty times, and he specifically remembered that he did not report that.

The witness read from Prosecution Exhibit 3b.

## RECROSS-EXAMINATION

### Questions by the DC:

I do not know if SA Birt ever followed up to the question by asking PFC Brand why not but apparently she did not. I do not recall it being asked. I believe I talked to PFC Brand for maybe a half an hour to forty-five minutes before Agent Birt started talking to him. Everything in the polygraph report is in the statement.

The TC offered Prosecution Exhibit A, Prosecution Exhibit B, and Prosecution Exhibit C into evidence.

The IO entered Prosecution Exhibit A, B, and C, into evidence.

Neither side having any further questions, the witness was excused.

Sergeant First Class Gerald Hawkins, was called as a witness for the Government, was sworn and testified in substance as follows:

## DIRECT EXAMINATION

### Questions by the TC:

My name is Sergeant First Class Gerald Hawkins, I am presently stationed at the third of the 338<sup>th</sup> TSB support unit. I have been in the army for approximately twenty-two years. I have been an MP for approximately ten years. For MP training I have been to the 95B course and I have also had the 95C course. The 95C is an EPWCI course. I am familiar with the 377<sup>th</sup> MP Company, I was a Staff Sergeant there, a Platoon Sergeant there and an acting First Sergeant there for about eight years. I am familiar with PFC Willie Brand who used to be a Specialist; he was in my platoon I used to be the first platoon, platoon sergeant. I was with the 377<sup>th</sup> in June 2002 when we mobilized and went to Fort Dix for two and a half months and then we went to Afghanistan, Bagram. The 377<sup>th</sup> arrived in Bagram in August of 2002. Our Company had various missions in Bagram we were the entry control point, we ran the Bagram correctional facility and we ran the control points for the base. Initially second and third platoons were in charge of guarding detainees they had it for the first two months we came into the country and we ran the entry control points and after the two and a half months first platoon went in and we ran it on third shift. We had six general population cells, one isolation cell section that was open when we got there then we opened a second section of isolation cells. The initial isolation cell was on the second floor and the second one was on the first floor. The isolation cells were initially used for the new in processing of prisoners that came in MI's would tell us which isolation cells to put them in or if there were PUC's in the general population doing interrogations they would tell us to move them into the isolation cells if they were getting information or not getting information. There was usually one guard posted in each isolation cell block to guard that block. The duties of that isolation guard while he was in there was to make rounds on each of the cells make sure all the PUC's were in their cell, and also to make sure as to when they were fed and that there were



two personnel going around taking the food whether it be himself or one of the other guards he would annotate the functions or what they did during the day in the daily journal.

The IO asked the TC if there was a need to read the witness his rights.

The TC stated that the government was not aware of any reason.

The IO stated that he noticed that the witness had signed a rights waiver at one time and just wanted to know from the government's viewpoint.

The TC stated that the witness is not titled in the CID investigation and the government does not believe there is any evidence to indicate that he committed any misconduct.

**Continuation of direct examination:**

I do remember that PFC Brand did act as an isolation guard, maybe up to four times. In December 2002 first platoon was assigned the night guard shift at the Bagram Collection Point, and PFC Brand was a member of that platoon. The rules for the amount of force used on detainees at the facility were to use the amount of force necessary. Those rules were no different from what I knew in my MP training. If a guard got in a situation with a detainee and he did not know what to do he was supposed to if initially there was hand to hand combat he could protect himself if there was something where he could have called the SOG or myself or the Lieutenant he should have done so. I did not authorize my soldiers to use common peroneal strikes on detainees who were chained up in isolation cells. I believe I told my soldiers not to use common peroneal strikes when we entered the facility because we went through two man escorts; there was no reason to use common peroneal strikes because there were two men controlling the PUC's. The only time I thought it was necessary was when the PUC's were walking around with a guard and it should have only been used for self defense. I told my soldiers not to use the common peroneal strike because it was a two-man escort and I did not think it would be necessary because you would have two people controlling the PUC's. If a detainee was in an isolation cell and he was chained to the ceiling my soldiers were not allowed to administer a strike in order for the detainee to put his hood on. My soldiers were not allowed to give a peroneal strike if a detainee was in an isolation cell chained to the wall and they refused to stop talking in order to make him comply. An MP is never allowed to strike at a detainee as a violation of breaking rules. There are no occasions that I can think of in my experience as a MP where it would be lawful or proper to strike a chained detainee in an isolation cell thirty times at one go.

The DC objected to the line of questioning stating that this goes to the heart of the reason as to why we had asked for numerous other individuals superior in rank and leadership position to this witness who we believe has specific knowledge of this type of activity and I think we know this so to bring in this E-7 and address this issue we think is highly improper.

The IO states that questioning is too limited not to the general atmosphere but talking specifically about this conduct.

It is correct that the detainees were required to follow certain rules. It is also correct that if a guard told a detainee to do something the detainee had to do it as long as it was lawful. There

were certain corrective measures that could be used if a detainee violated a rule. Striking them with common peroneal strikes was not one of the punishments. It is fair to say that the detainees in the facility were subject to the lawful orders of the guards.

### CROSS-EXAMINATION

#### Questions by the DC:

I did make several statements during the course of this investigation, some date as early back as December 2002. I believe the next statement I made was in February 2004 in Camp Atterbury, Indiana. I think the final one was made in June 2004. I think that in the first three statements when I was asked questions that I was not given a rights warning. I cannot be sure when I was given a rights warning I know that it was at my house and I do not remember the date that it was done on. I was probably platoon sergeant for about five to eight years I found PFC Brand to be a dutiful soldier, he was a person who performed his assigned military duty in accordance with law and regulation, and he had confidence in his MOS. The only thing I found questionable about PFC Brand was when he had a death in his family when we were in Afghanistan and for some reason he kept missing his flight back into the country. During the eight years or so that I was over PFC Brand I did find him to be a model soldier. There was training that was done at Fort Dix the commander said that we should learn how to do common peroneal strikes and it was taught at Fort Dix and so we did the training there and when we took over the facility on night shift I told my whole platoon that I did not want them to do common peroneal strikes because we had two soldiers escorting the PUC's. I cannot tell you the specific date when I told my platoon this but it was when we took over the facility on night shift. That was not reduced in writing or with each person assigned to me it was done through the platoon. So everyone in my platoon would have been aware of that. I cannot tell you whether or not there was a difference between my platoon and any other platoons on that issue because I do not know what the other platoons were putting out as information to their platoons we were the only ones doing two man escorts. The only time I discussed the issue of common peroneal strikes with anybody in superior rank or position to me was when the commander told us to take that training while we were in Fort Dix. I was trained in common peroneal strikes at Fort Dix. They showed us how to apply the strikes we did less lethal training where it was no weapons it was just hand to hand training. It was part of non-lethal force; non lethal force is authorized if you are trained by a certified instructor. The training we got at Fort Dix was done within the platoon by someone from third platoon I cannot tell you their names because I do not remember who it was exactly, I could not tell you if they were certified, I could not tell you if it was proper training. The training lasted approximately two weeks to a month not on common peroneal but on non-lethal training, there was about two days spent on common peroneal strikes. The training for the strikes was done by and instructor with an assisted instructor and they basically showed us how to do non-lethal maneuvers. I discussed the restrictions that I was placing on my platoon with Lt. Buelterman because we both sat down and came up with the decision that we would not use the common peroneal strikes. We had the meeting right prior to us going in the facility, the meeting was part of our guard mount that we had every day and prior to the platoon coming on myself and Lt. Buelterman would go up to the facility earlier about an hour earlier and find out what had been happening in the facility so both of us would sit down and talk about what measures to use and not use and what we needed to do prior to the platoon getting there and then we would do guard mount with the platoon to inform them as to what was going on in the facility and what

was our plan of action as far as what we would do in the facility. The counseling we had was not a formal counseling, when we informed the platoon that we did not want to do common peroneal strikes, Lt. Buelterman was there all the squad leaders were there. Anyone in a subordinate leadership position should have known this, as well people in senior leadership positions, Lt. Buelterman was my platoon leader. I do not know if he had any conversations with the commander about anything having to do with this topic. I cannot remember exactly when I told anyone in law enforcement that I had specifically prohibited the use of common peroneal strikes. I do not remember if it was mentioned in my statements that I made in December 2002. I do not remember while I was at Bagram hearing about any excessive force being used against detainees, I did not find out until I got back in the States that Willie Brand said he did the common peroneal strikes. There was never issue brought to my attention about excessive force. I left the country in I want to say March of the following year. The two deaths had already occurred when I departed the country. There were no issues raised about the treatment those two people has received at the hands of their guards. When we got in country the SOP used in country told us all prisoners would be hooded when they were being transported or if they were in the isolation cells with shackles on. I want to say that after the second PUC died we were told not to use the hoods we went to goggles. I do not believe there were any changes in the procedures or policies after the death of the first detainee. I am not aware of any requirement imposed by senior authority that strikes be recorded in a logbook at anytime or following the deaths of one of the detainees. There was a status board in the facility to see how long personnel might have been shackled in their isolation cells or standing in their isolation cells. The status board was supposed to have the time when we started and the SOG or myself or 1LT. Buelterman would check the board to make sure that their times matched in as far as if they put them up at a certain time that if they were compliant or whatever then we would take them down at that period of time. There was no friction between the initial MI commander and our commander when the second MI commander came in there seemed to be friction between them I could not tell you what it was. I believe the first detainee was chained up during our twelve hour shift because when meals were coming around he would still kick at the troops when they would take meals to him, I believe he was up for six to eight hours. The second one was up during the entire twelve hour shift of our shift. He was chained up in the position I described earlier. The first PUC that died was up for six to eight hours, the second one I believe was up for the entire twelve hours because he was still being combative the whole time. It is possible that they were chained in that position for a longer period of time by other personnel not on my particular shift, that would be recorded in the daily journals that was left there at the facility, the isolation guard would be in charge of the isolation room book and the floor supervisor would be in charge of the floor supervisor book. The journals had any movements of the PUC's, the behavior of the PUC's, any escorts to the latrine, or any escorts to the MI interrogation rooms. It would be a roadmap as to where any of the detainees were taken. There was a hospital approximately ten to fifteen minutes away as far as ambulance, the Bagram air base hospital fifteen minutes away by ambulance. There was not a doctor on site, the only time there was a physician on site was when we were doing in processing of new PUC's coming in through the facility. If the detainee was to have a medical problem or complaint during the day shift there was a combat medic who would check on them with an interpreter find out there problems and complaints and he would report them to a physician on base. If a person had a problem during the night shift the detainee could voice his problem to the day shift. During the night shift when we did not have interpreters we would use the PUC's to find out what was going on and what was wrong. There were PUC's there that spoke English better than what some

of our fellow MP's spoke Pashtun or Arabic. We relied on PUC's to be interpreters because we would give them basic movements and he would do so based on what he would tell them. That would be another individual to whom a problem or complaint could have been raised. There were numerous opportunities and avenues for a detainee to voice a complaint with respect to treatment. The Red Cross came into the facility also once a week, I do not believe that is in my statement because I do not believe I was asked that question. I do not remember being asked if the status boards were wiped clean before any international committees, visitors, or the Red Cross came through. I do not have a copy of my statements in front of me.

The DC reads from Prosecution Exhibit 11.

I am not sure if I remember being asked that question. Red Cross would only come during the day they never came during the nights. The purpose of the Red Cross visits was to check the status of the PUC's make sure there was no harassment or anything happening inside the facility. I could not tell you whether or not they came with their own interpreters or not I never saw the interpreters when they were there. It would be fair to say that was another opportunity for complaints to be voiced.

The TC objected on the grounds of speculation because what the witness has already said was he was not present when those events occurred he is speculating he knew that the organization came through but he never witnessed it or knew the circumstances.

The IO sustained the objection.

The First Sergeant and the Company Commander did walk through the isolation cells. I saw the First Sergeant there a few times but the Commander was there on a day to day basis. Captain Berry became our commander a month before we deployed we was with us for approximately eleven and a half months. I did from time to time accompany him on walks through the facility. He did not have an interpreter when he did the walk through with me because it was during the night. I saw the journals on a day to day basis I also walked through the facility all day long. The journals were green notebooks that said journal on the front military issue style they had the date on them the time you started your shift and when you were relieved on duty. What was maintained in the log book was you wanted any movements of the prisoners any removal of hoods any non compliance anything that they were doing when they were inside their cells whether it be on the main floor or in the isolation rooms. That would be a mechanism to determine specific complaints about non-compliance. The daily log said that PUC 412 not complaint he would constantly spit at the soldiers or try to kick at the soldiers, anytime if you went into his cell, to feed him, to see if he was going to be compliant. The daily log said the same thing about PUC 421. There was not a way for me to determine whether one of the two detainees was more combative than the other. The best evidence of that would probably be the log book. The log books were available to everyone up to the Unit Commander and that was the purpose of the guard mount we would go in and look at the journals and explain to the troops whether there were problems in the facility or if it was running smoothly. I was not aware of any changes by the Chain of Command with respect to annotations or contents of the journal. The journals were still being maintained when I departed in March 2003. I am aware of positive and negative counseling statements. I never used positive or negative counseling techniques address issues of compliance blow or disciplinary procedures with detainees. There was one incident

where Corey Jones pulled on a PUC's hood, because one of the floor NCO's told Jones that he was going the wrong way. I saw it and so did the floor NCO. We actually did counseling on him. I did not know SSG Loring. When being removed from cell or ISO unit to be interrogated, they traveled about 50 - 75 feet, maybe 100 depending on which cell they were in. PUC's sometime they came from ISO cell upstairs or from the floor downstairs. ISO cell 2 was on the same floor as the interrogation room. ISO 1 was downstairs, on the main floor with general pop. If they had to be moved upstairs it would be via stairs. Transporting procedures required the PUC's to be walked. There were 2 escorts at all times, so if there was a problem you would have two people to verify if there was a problem or if something was being done by another guard. I was not aware of any reports that detainees would return from interrogations with MI, with obvious signs of physical injury. That would be an allegation that I never heard of or witnessed. Guards would wait outside the interrogation room, while detainees were being interrogated. There were no limitations on the time frame that an interrogation would last. That was directed by the MI community. We were hooding detainees when we initially got to the facility, but after second PUC died they from removing the hood to putting making us put goggles on. That came from my Commander. I don't know how high it went, but he told our company that was what we had to do.

There being no further questions from either side, the witness was excused.

The IO stated he would like to consider two statements by Cammack and two statements by Curtis.

There were no objections by either counsel.

**The Article 32(b) Investigation recessed at 1345 hours, 22 March 2005.**

**The Article 32(b) Investigation reconvened at 1430 hours, 22 March 2005.**

The IO stated that all persons present when the investigation recessed were once again present.

**Special Agent Daniel Flores, was called as a witness for the Government, was sworn and testified in substance as follows:**

### **DIRECT EXAMINATION**

#### **Questions by the TC:**

My name is CW2 Daniel Flores III, and I'm the special agent in charge of the Resident Agency CID. I've been the Army 17 years, and CID 10 years. I received the basic training at the Advanced Special Agents Course at Ft McClellan, Al, several other courses dealing with interviews and investigation, such as Child Abuse Prevention and Intervention Training, and my experience. I've conducted hundreds of interviews during my 10 years as a CID agent. On 21 Dec 02, I met with PFC Brand, because we were investigating the death of a detainee, at the Bagram Collection, Point, in Bagram, Afghanistan. When I first met with PFC Brand I did read him his rights, I got a DD Form 3881 which is the rights advisal form and I put his information in there as well as mine and then the charge that we were investigating and we both signed it. I

do have the documents that you faxed me a couple months ago, the DD Form 3881 the rights advisal pertaining to Willie Brand. I know it is his because it has his name and his information on the top of the form and his signature on the bottom of the form. This is a true and correct copy of the original that I made. After I read him his rights I proceeded to take a statement from him. The room that I was in while I took the statement was a large room probably about twenty feet by twenty feet, an open type area we had a desk that we built along one side of the wall in the part of a corner just underneath a window our computers and stuff lay on top of the desk that we built and we had folding chairs at the desk. I was roughly a fourth foot and a half away from PFC Brand when I questioned him. I was not armed. If he needed to go to the latrine or get a drink of water he was able to do that, he was made aware of that. I did have an opportunity to observe his size, height and weight at the time of the interview I filled out the CID form 44, which has all the pertinent information on it. He was 71 inches tall and weighed 194 I know that because that was the information he provided me or I took off his military identification card. I began to question him and we wrote the statement out. What I do first is I interview the person I talk to them see what they have to say get a feel as to what they know pertaining to the investigation then I will go ahead and type out that information that they gave me then we will do a questions and answer session after the narrative portion once that is complete I will print it out and let the person review it from top to bottom they can make any changes any additions anything they want to do then I go ahead and have them initial it in certain places then they swear to it and sign it. The other part of the document that you have faxed to me is the DA Form 2883 the sworn statement it is Willie Brands sworn statement I know it is his because it has his information on the top and his signature at the end. This is a true and correct copy of the statement that I took from PFC Willie Brand on 21 December 2002, it consists of four pages. After I got through writing out the statement I gave PFC Brand a opportunity to read through it, he did read through it. From my recollection he took the time to read through it and he understood it. Also at the end of it I ask them if they agree with the statement if they do there is an affidavit at the end of the statement that I have them read out loud and if they agree with it I have them initial at the end of the affidavit. The four page statement that we are talking about here is a sworn statement.

The TC offered PE 2a and PE 2b into evidence as PE 2a and 2b.

The IO admitted PE 2a and PE 2b into evidence as PE 2a and PE 2b.

The witness read from Prosecution Exhibit 2a.

I asked him if anyone had gotten abusive with the detainees because the thing with this investigation is that we believe that the detainees had been struck and we wanted to make sure that they were not being struck in a abusive manner. PFC Brand told me that he had not been abusive to any detainees. During that statement PFC Brand never told me that he had struck Mr. Dilawar fifteen times in each leg in the same instance. I do have the two sets of photographs that you emailed to me a couple of weeks ago the pictures are marked as prosecution exhibit 9a through 9j.

The TC stated that they have shown what has been marked as PE 9a through 9j to the counsel for the accused.

There was no objection from the defense for PE 9a through 9j.

The picture marked as 9a states on it BT-421 and underneath that 10 Dec 02 and Bagram, Afghanistan and I did that just to give myself a marker of what I was going to be picking photographs of. This is a photograph of something that I had written out myself, the photograph was taken on 10 December 2002. Prosecution 9b is the number one above the isolation cell number one in the Bagram collection point, that photograph was taken on the same day 10 December 2002. This photograph does truly and accurately depict the way that portion of the cell looked on 10 December 2002. Prosecution exhibit 9c is the door the entrance to that isolation cell I know that because it has the same number one above the door as the previous photo, this was also taken on 10 December 2002 and it does fairly and accurately depict how that cell door looked on that day. Prosecution exhibit 9d is the isolation cell itself as seen from the open door that was taken on 10 December 2002, and it is a fair and accurate depiction of the inside of that cell on that day. The two things hanging from the ceiling are handcuffs one on each side you have the long set of handcuffs with the long chain on between them and attached to those are the short handcuffs. When I took those photos it was roughly in the afternoon. Prosecution exhibit 9e is the left side or if you are looking at it from the open doorway the left side of the isolation cell, that was taken on 10 December 2002 and it accurately reflects the condition of the cell on 10 December. Prosecution exhibit 9f is the right side of that isolation cell that was also taken on 10 December, and it accurately reflects how the cell looked on that day. Prosecution exhibit 9g is inside the isolation cell looking out to the entrance to the isolation cell, that was also taken on 10 December 2002 and it is a fair and accurate reflection of how the cell looked on that day. Prosecution exhibit 9h is the front left corner if you are looking into the cell and I also depicted the Koran that was wrapped into the prayer rug on the corner of that cell, I was told that was BT 421's Koran by the MP who was on shift duty at the time I took the photograph. Prosecution exhibit 9i is the right front corner of the cell looking in to the cell from the open door, the things in the corner are water bottles and a surgical mask, this was also taken on 10 December and it does accurately reflect the cell. Prosecution exhibit 9j is the top of the isolation cell showing the fencing actually it was not really fencing it is the barriers that are used they are set up in a square or rectangle shape and a bag goes inside of them and they are filled with sand or anything else to form a barrier in this case they were used as a ceiling to the isolation cell, this does fairly and accurately depict how the ceiling looked on 10 December 2002.

The TC stated that those pictures were show to the counsel of the accused

I do have the photographs that you sent me that have been marked as 10a and 10b. Prosecution exhibit 10a is the entrance door to the isolation cell of BT 412, that is the cell we were told that he was held in and the cell that he died in. That picture does correctly and accurately depict how the cell looked in 10 December 2002. Prosecution exhibit 10b is also a picture of the door to the isolation cell and it does accurately reflect how it looked on 10 December. The cell that is shown is 9a through 9j depict the cell that Mr. Dilawar was found in on the day of his death.

## CROSS-EXAMINATION

### Questions by the DC:

The Prosecution did email other photos to me those were also pictures that I had taken on the 10<sup>th</sup> of December. Some of the photos that I took had people with chains on basically



modeling or standing in different positions those were photos of the isolation cell that BT 412 had been found non responsive. They had someone stand in the photos with chains on to depict how the detainees were shackled in the cells. I did not take those photos myself but I was there when they took those photos the reason for that was Doctor Ingwersen the forensic pathologist wanted to get a good idea of how these detainees were being held for when she conducted her forensic examination. If I remember correctly she did want to see what it looked like before she did her autopsy. She wanted to see how they were chained or how their arms were extended because she wanted to see if it played any part in his death. From what I understood she was concerned it had played a role in the death.

The TC objected to the whole series of pictures that are being referred to and the questions from Doctor Ingwersen refers to the death of Mr. Habibullah not Mr. Dilawar and I believe the pictures were taken before Mr. Dilawars death and it is the governments position that what is a factor in Mr. Habibullah death is not relevant to Mr. Dilawar's death.

The IO stated he is going to allow the question to be asked but not questions about general conditions in the prison.

I did not take those other photos they were taken by either by Mr. Lighty or a Staff Sergeant Richard Potter who took those.

\*TC asks that the photos in Exhibit 10 be admitted.

I had quite a few conversations with Colonel Ingwersen, the forensic pathologist, while she was there. She actually made an appearance in Afghanistan her and her team flew into Afghanistan. The purpose of her visit was to do the forensic examinations of the detainees, both of them. Some of the directives that she gave to me in regards to photographs were not applied in the death of both detainees because the second one BT 421 which was Mr. Dilawar I was there on my one she was not in Afghanistan when he died and I went and conducted the examination by myself. It is standard procedure when an incident occurs we go to the crime scene and we take photographs. Doctor Ingwersen was in Afghanistan the first time I believe two or three days and then when she came back she was there for about another three days as well. She came back after the second death the death of PUC 421, she came back to conduct the autopsy on his remains. At that point she did not make any visits to the facility, based on photographs or anything else she did not give me any directives or have any meetings with her in anticipation to the autopsy she conducted, just setting up the area for her to be able to conduct the examination. The corpse was kept for a day or two before she conducted the autopsy they were kept at the mortuary affairs on Bagram Airfield. The mortuary affairs people were responsible for maintaining the corpses. A second forensic pathologist did not accompany Doctor Ingwersen but there was another forensic pathologist who came in I believe it was from the States, I believe her last name was Rouse. They were not both present during both autopsies just the second one. The first autopsy was Doctor Ingwersen with her assistant and a Colonel Duke who I believe he was a forensic deontologist I believe they are called. During the autopsy of 421 they were both present at all times. Colonel Rouse did not at any time give me instructions or directives to



provide her with information just basically what we had learned through our investigation to help them when they did their autopsy. I let Doctor Rouse know how the detainee was discovered unresponsive, what measures were taken, and whether or not they were shackled when they were in their isolation cell. The specific information that I provided Doctor Rouse about 421 being shackled was the he had also been shackled standing up to the ceiling of the isolation cell. I did not furnish her with any other information as to how long he had been shackled. She did not ask for that type of information. I did not furnish any other information to the doctors in advance to the autopsy. When the first PUC 412 died CID was notified by other agents who were not members of CID they were part of the Criminal Task Force we were notified by them because we were living in the same building that the detainee had been transported to the mash there because he was unresponsive and that is when the criminal investigation was opened, at that time it related to only PUC 412 he had been the only one who died. An expansion of the investigation was rendered after the death of PUC 421 the second death was basically the same thing so we just included both together. I was the lead agent throughout the entire investigation. I do not recall the exact date when I was furnished with the copies of the autopsies but it would be in the case file when Doctor Ingwersen mailed those to us, I did receive oral notifications from the Doctors as to the findings. They also gave me the preliminary autopsy results before they flew out of Afghanistan, it was given to me shortly after they completed the autopsy I cannot remember the exact date probably about the 13<sup>th</sup> or 14<sup>th</sup> of December and if I remember correctly Doctor Rouse put on there I believe she put negligent homicide as a manner of death and the cause of death I cannot remember the exact terminology for it. I recall her using that term negligent homicide. She did elaborate to me in her preliminary finds as to why she said negligent homicide due to the strikes that the PUC's were receiving and the condition of his legs where he was receiving those strikes. I interviewed the defendant a week later maybe even more than week later on the 21<sup>st</sup> of December, I advised him of his rights when I interviewed him. I advised him he was suspected on the offense of aggravated assault. I had earlier been advised though that the expert considered this a possible case of negligent homicide, and she had expressed concern about blows being administered. I do not believe in her preliminary report that she gave any indication that she was concerned about how the general conditions or the chaining might have played a role in the death of PUC 421 and without having the preliminary autopsy report in front of me I don't believe she mentioned that in there or to me. I would have to see the case file to see how many people we interviewed but I know we interviewed three different shifts of MP personnel and two or three different shifts of MI personnel assigned to the detention facility. As an investigator I was interviewing MI personnel because they were involved in the interviews that were taken place in the facility and they might have been aware of what was going on there. That was not something either Colonel Rouse or Doctor Ingwersen expressed concern about. I as the lead agent and the special agent in charge that was part of my responsibility. There was not anybody that I interviewed that I told them they were suspected of negligent homicide, negligent homicide is the manner of death they put on there we were just concerned about the aggravated assault, even though the autopsy had been completed and the preliminary findings were negligent homicide. I discussed with Major Vavarnick what offense should be included on the 3881 he was my trial counsel there in Bagram and I also discussed it with CW3 Randy Lighty who was my operations officer based out of Uzbekistan, he was the same person who I said may have taken those photographs. He came down there to oversee what we were doing and to give us guidance but I was still the agent in charge and the lead agent. To the best of my knowledge I was specifically instructed by Major Jeff Vavarnick to advise aggravated assault and nothing more

serious. In conducting that discussion with Major Vavarnick I considered the fact that the blows the PUC's were receiving might have been detrimental to them and anything else that might have been happening to them as well. I was one of the first investigators on the scene. I did not secure or obtain any evidence that would reflect the treatment that the two detainees had received during the time that they were at Bagram not from the facility itself we just exposed the photographs. I did get to look at a log book which showed me where the PUC's were kept when they were moved into the isolation cells, I am not sure if I made that a part of my CID file and without the case file in front of me I am not sure if I included that or not. That was a document that reported movement, I did not take photographs of the areas where the detainees were interrogated the facility at the time was classified and we were only allowed to take pictures of certain areas we were not allowed to take pictures in other areas because the facility was classified. I did not ask to try to get into those areas I only asked to get into the areas pertinent to my investigation and at that point it was the isolation cells in which the detainees had died. I was told I could not take pictures of certain areas. When I conducted my interview with PFC Brand I did not show him pictures of PUC 412 or 421. I do not believe there was any confusion as to who was PUC 412 or PUC 421. We had photographs but I do not recall showing them to PFC Brand. The statement it self on 21 December 2002 was taken in my office at Bagram Air Field, on my CID Form 44 the interview was started on 0300 Zulu and the time he signed his sworn statement was 0930 Zulu so roughly six hours. During that time I basically secured two and a half pages of typed sworn testimony. I did not record the interview or video tape it, I had those mechanisms available to me if I chose to use it I did have a video camera it is not my policy to video tape a interview, there is no requirement for it. This was a serious case but any death investigation is a serious case. I already knew I was looking at a situation where there had been two deaths, the only interviews I have ever taped are child interviews and that is because we cannot record them in their handwriting and signatures and I have never recorded any other interview in an investigation. PFC Brand was cooperative, he did not appear to be hiding anything from me he answered every question I asked of him. I am looking at the questions right now I never asked him at any time how many times he had struck PUC 421 because he states in his narrative he kneed him about three times in a row and he also states I also had to strike him one other time but I do not remember when, I struck him in the thigh those were the only times I ever struck him. I did not feel the need to follow up with any other questions as to how many times he struck him since he said three times and one more time. At the time I was asking him about this I told him he was being investigated for aggravated homicide. I can't tell you an exact number without the case file, but we did a quite a few interviews before and after. We spoke to the entire Chain of Command and the people in charge of the facility. In speaking to them, I concluded that they were aware of the chaining, and that some of the detainees had been the subject of compliance blows, as far as what they called Peroneal Strikes. I heard about these blows from several others who were senior to Defendant, before I interviewed to him on the 21 December. They also indicated that they knew the blows had been applied, and to my recollection they called them compliance blows. It was explained that they put did put hoods on the detainees. After the death of PUC 412, I believe I was told that they were going to look at the policy again and see what needed to do to change it, or alter the way they did it, but I never heard anything specific. Because it was so soon after the death, the people in charge of the facility, MAJ Bovarnick, and the SJA people, were still looking at the SOP deciding. I can't remember the date, but my first interview with SFC Hawkins was shortly after the first death, since he was one of the NCOIC's of the facility. He indicated that he was aware of the blows being used, but

I don't whether or not he told anybody not to use that unique. That's something that if told, I would remember, and it would be in his sworn statement taken in December 02. I don't recall that he was aware of any complaints by detainees. To my recollection, we interviewed 5 or 6 interpreters. Without the case file; to know the dates, I couldn't tell you if I interviewed any interpreters, prior to the defendant. To my recollection a couple of the interpreters stated that the detainees told them that they didn't like the way they were being treated. The complaints were presented during interviews with MI personnel. During the interviews, I sensed that there was friction between the MI's community and the MP community, but I didn't address it, because there wasn't anything for me to go in and ask if they had any issues with each other. I asked the defendant if he had been or had seen anyone get abusive with detainees, and I defined abusive as being mean, hitting with force, or causing to bleed; non-proportional response. I don't believe that definition is in the statement, but I did ask him, when he struck 412, how hard did he strike him. His response was, I wouldn't say extremely hard, just hard enough to get him to cooperate. Then I asked how hard he would say on a scale of 1-10, 10 being the hardest. His reply was, maybe a seven. He also said that 412 and 421 were the most uncooperative. They were difficult; not doing what they were told, such as keeping their hoods on while being moved, when they would try to get them to eat or drink. I don't remember specifics. I did ask him if BT 412 ever complained about any pain, and he said, "I don't speak the language, so I don't know. The doctor made a few rounds during the night shift, but I don't know if he saw him." To the best of my knowledge there was always an interpreter and a medic available. Without seeing the case, and the statement I took, I couldn't tell you the last person was that struck 412 or 421.

### EXAMINATION BY THE IO:

#### Questions by the IO:

The second question references have you ever been abusive with any detainee. I would have clarified the question. I'm not sure why I didn't spell it out, but I would've made that clear to him. As far I know, the defendant understood the question that way.

### RECROSS-EXAMINATION

#### Questions by the DC:

I probably gave the defendant my definition of abusive during the oral part of the investigation while I was explaining why he was there, what my purpose was; before I started typing the formal statement. To the best of my recollection, I mentioned that abusive meant being outwardly mean, hitting for no reason, and causing to bleed. I can't tell you an exact number without the case file, but we did a quite a few interviews before and after. We spoke to the entire Chain of Command and the people in charge of the facility. In speaking to them, I concluded that they were aware of the chaining, and that some of the detainees had been the subject of compliance blows, as far as what they called Peroneal Strikes. I heard about these blows from several others who were senior to Defendant, before I interviewed to him on the 21 December. They also indicated that they knew the blows had been applied, and to my recollection they called them compliance blows. It was explained that they put did put hoods on the detainees. After the death of PUC 412, I believe I was told that they were going to look at the policy again and see what needed to do to change it, or alter the way they did it, but I never heard

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The IO reads from PE 7

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There being no further questions by either side, the witness was excused.

PE 8 (9a - 9j), 10a - 10 b), and 11 offered into evidence

IO ruled logbooks containing movement of PUC's irrelevant. If there is a log on Common Peroneal Strikes IO wants the log turned over.

**The Article 32(b) Investigation recessed at 1542 hours, 22 March 2005.**

**The Article 32(b) Investigation reconvened at 1552 hours, 22 March 2005.**

The IO stated that all parties present when the investigation recessed were once again present.

The DC requested that their medical expert, Dr. Carter, be allowed to ask LTC Rouse questions.

The TC objected.

The IO stated that the DC could consult with Dr. Carter, but only counsel could ask questions of witnesses.

**Lieutenant Colonel Elizabeth Rouse, Rockville, Maryland, was called as a witness for the Government, was sworn and testified in substance as follows:**

#### **DIRECT EXAMINATION**

##### **Questions by the trial counsel:**

My name is Elizabeth Rouse. I am a Lieutenant Colonel in the United States Air Force and I am the First Chief Deputy of the Armed Forces Medical Examiner. I am stationed at the AFIP annex in Rockville, Maryland. I am the First Chief Deputy Medical Examiner which means I am beneath the Chief Medical Examiner. As the armed forces medical examiners we handle death investigations including autopsies of cases of federal jurisdiction. We also have the DNA identification lab and the toxicology lab as part of our armed forces medical examiner system. Right now I am in Cayucus, California I am on leave. My husband is currently deployed in Iraq. I have two children I am the sole caregiver at this time and this week they are out of school for spring break. I attended undergraduate school at Virginia Polytechnic School, also known as Virginia Tech in Blacksburg, Virginia. I got a Bachelors of Science degree in Biology. I graduated summa cum laude. I then attended the Virginia, Maryland Regional College of Veterinary Medicine and received a doctorate in veterinary medicine. Then I attended the Uniformed Services University of Health Sciences in Maryland where I received a medical degree, I graduated in the top third of the class. I then PCS'd to San Antonio where I completed a residency in anatomic and clinical pathology at the combined residency with Wilford Hall Medical Center at Lackland Air Force Base and Brook Army Medical Center at Fort Sam Houston. That residency is a five-year program. The residency was for anatomic pathology and clinical pathology. Anatomic pathology is the branch of pathology that deals with the diagnosis of disease and disease processes typically from tissue samples, any surgical biopsies, shaves, needle biopsies, tissue or blood samples that are taken are looked at grossly and microscopically as well as variety of other immunistic chemicals stains and whatnot to diagnose disease from living patients typically. Anatomic pathology is a sub-specialty, which is a looking cell for the diagnosis of disease, hematology, which is blood born disorders and whatnot. The field of clinical pathology is the field of pathology dealing with the laboratory and the laboratory methods of diagnosis of disease. We handle the blood bank in the hospital, the microbiology lab