

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

all the microbiologic testing cultures as well as the chemistry and immunoistic laboratories dealing with the chemical. It is a different laboratory now usually it would be ordered in the hospital diagnosing disease. After my residency I went to the Bear County Medical Examiner's Office and I completed a military sponsored fellowship in forensic pathology. Since my fellowship I have spent one year at Lackland Air Force Base where I was a staff pathologist in both clinical and anatomic pathology as well as I served as a Regional Medical Examiner for the Armed Forces Medical Examiner and after one year I PCS'd to the Washington D.C. area where I have been the First Chief Deputy for the last two and a half years. I have a medical license in the state of Virginia and I am board certified by the American Board of Pathology and the seal for the anatomic pathology, clinical pathology and forensic pathology. The American Board of pathology is the certifying agency and they require for anatomic and clinical pathology you have to successfully complete a residency with a certain required number of months in the different areas of study and that has to be signed by the program director that you have completed that residency and then you are deemed eligible to sit the boards at which time you can take a board examination. At the time I took it, it was a three-day examination and upon successful completion of the residency and the examination you are awarded board certification. For forensic pathology they require successful completion of a one-year fellowship in the field of forensic pathology in an accredited program and a successful completion of a one-day examination. I have an article I have published in the Archives of Pathology on the role of clostridium septicum and parania plastic syndromes. I have also contributed to a DOD breast pathology CD-rom. I have also had some photographs published in Doctor DeMaio's test of forensic pathology. I have taught in this field, we teach when I was at Lackland Air Force Base I taught to the residence in the field of forensic pathology, since I have been at the Armed Forces Medical Examiners Office we do quite a bit of teaching, each year we put on a course director in the basic forensic pathology course we also lecture in the forensic anthropology courses, the forensic ~~anthropology~~ course. We also did lectures at different military flight surgeon's courses, aircraft mishap courses. I lectured to the national transportation and safety board, FBI and then we also every semester have a course through George Washington University a graduate level course on forensic pathology that we are instructors for. I have testified in court approximately twenty to thirty times, approximately half of that has been military versus civilian. On those occasions that I testified the subject I was testifying on was the field of forensic pathology. I was qualified as an expert. In my career at this point I have performed approximately 1000-1500 autopsies. We observe blunt force injuries quite frequently I would estimate probably two thirds to three quarters of the cases some type of blunt force injuries are observed, up front these are forensic cases where we will be performing an autopsy.

The TC offered LTC Rouse as an expert in the field of pathology. She is so declared an expert in the field of forensic pathology.

The DC had no objection.

The IO declared LTC Rouse an expert in the field of pathology.

I am familiar with an individual named Mr. Dilawar also known as Bagram detainee 421. I performed an autopsy on that individual in December of 2002. Our office was notified of his death on approximately the 10th of December in the year 2002. In response to that notification we began preparations followed by subsequent travel to Afghanistan, which took approximately two

days and arrived in Afghanistan and the following morning we performed an autopsy examination on that individual. Local day was 13th of December. I was able to determine the cause of death. It was blunt force injuries to the lower extremities complicating coronary artery disease. When we begin an autopsy examination we observe the body as it is received typically in a body bag then we layer by layer expose the body, take it out of the body bag, it is observed and documented at every step, any clothing is examined on the body all sides of the body are examined, clothing is removed if it is on the body other personal effects if applicable are removed from the body and then the body is examined from head to toe, entire skin surface is examined for any evidence of injury or disease any abnormal findings or variations findings on that body that's the external examination of the body. During that procedure the body is turned to all surfaces to be examined. That is followed by the internal examination of the body. We open up the head, chest, and abdomen. The organs of those cavities are examined as they sit inside of the body and then the organs are removed and typically weighed. We examined any abnormal fluids. These are documented. The organs are sectioned, looked at what we called "grossly," looking at the organs. Small pieces might be save for microscopic examination. We also take fluid samples and sometimes tissue for toxicology samples. Typically that is vitreous fluid, blood, urine, bile, blood samples or muscle may be taken for DNA. That is the basic autopsy. Depending on the findings, additional studies or areas of examination might be undertaken and that was the case on Mr. Dilawar.

When I did the external examination I discovered that Mr. Dilawar had bruising, what we call "contusions," which are discoloration of the skin a bruise where the blood has leaked out of the blood vessel into the tissue. He had bruising on both legs from the upper thighs to his upper calves. It was nearly circumferential all the way around his legs. There were some areas of sparing. In the initial examination, we noticed some areas were clearly bruised or contused on the back of the knees for example. Other areas, he had just a reddish discoloration. There is some normal skin pigmentation which he had and some redness could be seen through those. There are several processes that can cause a red coloration to the skin and those would be leividity, which is a pulling, or settling of the blood from gravity still in the blood vessels. It is not leaking out like a bruise where the tissue is damaged but just from the force of gravity the blood settles and gives a red discoloration. Just refrigeration can also cause there to be a red change. Then there are others like carbon monoxide, or burns that can be red and so for that reason we made incisions in the skin to actually look at the tissue beneath the skin to see it that was just leividity or they were indeed bruises. I did document the external examination and the bruising I am referring to on the legs. We take photographs as part of our autopsy externally and internally. We photograph any normal as well as abnormal findings. Prosecution Exhibit 5a is a picture showing the back of Mr. Dilawar's right leg, looking at the photo going from right to left, to lower part of the buttocks, a small amount of the fingers on his right hand, the back and outer side of his right thigh, ending just above the knee, and a small portion of the back and inner part of his inner thigh. I recognize the photo by the case number documented, the changes inaudible. The photo is an accurate representation of what Mr. Dilawar's legs looked like at the time of the autopsy.

TC refers to PE 5a.

Starting at the right of the photo, on his buttock and fingers, you see the normal tan skin color. The area beneath the ruler looks redder, like a sun burn, just below the buttocks, down the right thigh, then the back of the left thigh. As you approach the knee on the left side, it gets tanner and

the redness sort of fades. On the right leg as you move down, it gets very red. When you move to the knee, it gets purple, which is clearly a bruise or contusion. The red area from the image could represent trauma, a form of contusion, bruising or other possibilities. I made incisions down the back of his legs, through the skin as we could see there were hemorrhages or bleeding into the tissue. This was abnormal and then because of this, I peeled back, dissecting beneath the skin, laying the skin back to see the underlying tissue. Overall, we examined nearly the entire circumference of Mr. Dilawar's upper and lower portions of his legs. Also looked beneath the skin, which is the subcutaneous tissue. That is the muscle all the way under the bone.

TC refers to PE 6c.

This is an image of Mr. Dilawar. He is lying on his stomach. From the top of the picture, you see the lower part of his buttocks with two small incisions. The back of both legs, thighs, knees, and mid-calf. The skin has been incised and rolled back. You can see the inner aspect of the skin, as well as the top of the muscles of the thighs and calves. I recognize the picture because I see the changes and findings Mr. Dilawar had at the time of his autopsy. It is a fair and accurate representation as to what Mr. Dilawar's legs looked like at the time of the autopsy.

The TC offered PE 6 c into evidence as PE 6 c.

[Neither the DC nor the IO made comment.]

Continuation of direct examination:

This picture shows where the skin, like I said we are looking at the tissue beneath the skin, probably the easiest way to start at the lower leg and you see the hair bearing skin that has been incised or cut open and peeled back starting at the lower part of his legs. You see a white glistening tissue which is a tendon muscle. As we come up into the calves you see the beefy red skeletal muscle. It looks like a steak tissue that is normal skeletal muscle. As you continue on you can see coming on the outer part of the skin lateral to the knees first and covering the entire back of the thigh the dark red is hemorrhage or blood that is in the tissue. If you look on the blanket below that is still blood from the autopsy. The blood in the tissue is blood that leaked out during his life. That blood does not wipe off it is actually leaked out and it is on that tissue it is what we call a contusion, It is hemorrhagic or bloody and damaged and that continues on the outer part of both knees and the back of the knees and the back of the muscles of the thighs all the way up to the buttocks. If you look closely you see on the outer edges of the thighs and areas in addition to just hemorrhage or bleeding into the tissue bruising of that tissue. The tissue was actually losing its integrity as it had been so extensively damaged it was essentially crumbling and falling apart. We looked at tissue microscopically in different areas and that tissue was what we call necrotic or dead. That tissue while Mr. Dilawar was alive was damaged to the extent that it was irreversibly damaged it was falling apart had basically been pulpified. It was crumbling and necrotic.

The TC referred to Prosecution Exhibit 6b.

Prosecution Exhibit 6b is a picture of Mr. Dilawar laying on his back, his abdomen is up. This is showing the outer edge of his left leg. The skin is incised along the back and is peeled all the way back around so we are seeing the side of the left leg and the top of the left leg as well as

the underside of the skin which is being held by the two hands. We are seeing this from just below the hip down to about his mid calf. The top of the picture you see the top in the inner aspect of his right leg and his right knee. I recognize this picture because these are the incisions I made and show the changes that I observed at the time of the autopsy.

The TC offered PE 6b into evidence.

[Neither the DC nor the IO made comment.]

The significance of this photograph is if you start at the far left you can see there are fairly normal subcutaneous tissue, fascia which is the fibrous tissue over the muscle. As we come over to the mid calf it starts getting that dark red and again that hemorrhage or that bleeding into the tissue into the muscle and tendons of his leg basically extends. The entire left knee is almost obscured by the blood. It's continuous bleeding in the tissue from mid calf all the way up. It is visible on the entire leg. It's darkest around the knee and as we come up around the thigh we see little bit more of the muscle. Some of the white fascia has been cut and you can see the deeper bleeding down in the muscle. You are also in the underside of the skin. Again you can see hemorrhage or bleeding into the tissue. Again this is blood that wipes away. It is not just blood that has leaked out while performing the autopsy it is actually within that tissue. The tissue damage on both legs as we dissected down the muscles of the thighs particularly on both sides on the outer aspect were damaged down to the level of the femur which is the large bone that runs on the upper leg. It was damaged down to the bone and the knees and it had hemorrhage in the knee joints and in the calves down through the muscle, the outer part of the upper calves.

The TC referred to PE 6a.

I recognize Prosecution Exhibit 6a. It is a photograph of Mr. Dilawar. He is laying on his stomach. You can see starting from the right of the image the back of both buttocks. There are two smaller incisions on the buttocks showing the normal color when you make an incision in a normal deceased individual's skin you would see white skin and yellow fat subcutaneous tissue with no blood. Then you see the back of both legs as well as the outer aspect of the right leg. The skin has been cut or incised down the back and dissected or what we call reflected back so we see the musculature of the back of both thighs down to below both knees as well as the outer aspect of the right leg. Starting from the skin and the subcutaneous tissue and the buttocks you see the yellow. That is what normal fat looks like. It is not damaged and you see some yellow in the thighs which is fatty tissue for muscle tissue. If you start on the left of the image and particularly on the lower leg you see the calf muscles its kind of a pink red glistening tissue coming up towards the back of the knee there is some white that is visible and that is the outer fascia, condensed fibrous tissue outside that muscle approaching from tendons but that red muscle is normal. It looks like any other skeletal muscle of any other animal such as a red beefy tissue in that skeletal muscle as you come up though beyond that upper calf you see the dark red, the hemorrhage in that blood and damaged tissue taking us all the way up to the top of the incisions. In this image you can see if when you are on the thigh going from the inner aspect to the outer aspect involving the entire exposed underlying tissue in this image on the back of the thigh. The tissue that appeared to be losing integrity of crumbling can be seen in this picture if you look about slightly to the left of the midline on this image and down to where the skin is kind of peeled back from the muscle tissue. You can see some that's sort of stringy and crumbly.

It does not look like the intact solid muscle of the calves. Prior to even cutting through it did not have a normal structure. It had been damaged to the point to where the actual cells had been broken and ruptured and all the normal structure and integrity that muscle was damaged, that would be the outer aspect of the right thigh toward the knee you can see that in this image. Necrotic means dead. That means that the tissue actually began the process of dying. It's irreversibly damaged when that person was still alive, the tissue had died. I was able to determine that by looking at the tissue. We see that it is severely damaged. All the muscle with the exception of the calves—essentially all the muscle that is visible—is damaged and hemorrhagic. Like I said while I was doing the autopsy I could see that it was crumbling and falling apart which is not normal for muscle. I sampled a variety of different areas to look at microscopically and we could tell microscopically that the cells had lost all their integrity and structure. They had lost the nuclei meaning that they were dead when Mr. Dilawar was alive. That tissue was dying. We sampled a variety of the area and quite a bit of the tissue was actually necrotic. I would estimate probably a quarter of the tissue appeared necrotic. Essentially all of the muscle of his thighs was damaged. There were some small areas that were relatively spared. There was very little of his thighs above the knees or buttocks that was completely normal. There was some degree of damage in essentially all of it the area with the most severe damage on the outer aspects of the thigh and back of the thighs and the inguinal region which is the upper inner aspect of the thighs or the front. All of the injuries we are describing on the legs of Mr. Dilawar all appear to be essentially of the same age, meaning I do not see any changes indicating any injury as older, meaning it is going through normal processing in a person's life. They all appear recent, the bright red, dark red blood is a recent bruise or injury. As a bruise ages it breaks down and it begins to change colors. Most people have had bruises. They see it they turn yellow, green colors. He has no bruises on his leg that appear to have undergone any healing or resolution processes. These all appear recent and approximately the same age—all the bruising and hemorrhaging on his legs. Having examined the injuries in this case, the blunt force trauma in Mr. Dilawar's leg is consistent with the repeated application of knee strikes to his thigh.

CROSS-EXAMINATION

Questions by the defense counsel:

I received a notification shortly after the death. I believe our investigators received the initial notification. It was relayed to me as soon as I was in the office that there had been a death we would be performing an autopsy on. I do not know how long at the time I received my notification the victim had already been deceased. I do not know an exact time with the differences in time with the time zone differences. I cannot tell you exactly how long he had been dead. My understanding is less than 24 hours since his death that we were notified. I then went and conducted the autopsy in Afghanistan. There was some consideration given to having the body brought to me instead of me going to the body but in these types of cases of individuals are deemed to be in our jurisdiction that we will be performing autopsies on that are not U.S. citizens. There are always concerns both about the family and cultural issues whether we can move the body and in many cases it is deemed that it is most expeditious for us to go to the body to cause the least disruption to the families so we have traveled to perform these autopsies in country. The decision to me going in country to do the autopsy was made by Dr. Craig Mallack the Chief Medical Examiner and he knew that the detainee was from Afghanistan. There was a question to whether we could even legally transport him to the U.S. He was not a citizen of the

United States so transportation, airlifts, culturally whether that would cause more animosity or whatnot, it was determined that we would travel to perform the autopsy there. At the time that I received this notification I had already been notified of a death at the same facility of Mr. Habibullah, PUC 412, several days earlier. I am not as aware of as to whether or not there had been a discussion of whether or not I should fly out for the autopsy or whether the body should be flown to me. On that case a pathologist from Germany had gone to Afghanistan to perform that autopsy. I was joined in the autopsy by another forensic pathologist. Doctor Kathleen Ingwersen is a Regional Medical Examiner in Germany. She performed the first autopsy and was en route home. They were way laid over in Turkey and to my understanding came back to Afghanistan arriving shortly after I did. She observed the autopsy of 421. We were discussing the findings as we were performing the autopsy. We do not make any voice recordings while we perform the autopsy. I have never done that nor have any of the offices that I have worked in. We met briefly with the CID agents. I believe their names were Mr. Flores and Mr. Lightly. We discussed primarily the night before performing the autopsy and that morning, most of our conversations were in the CID housing office area. At that point the information was that the individuals were in custody. They had some statements from some of the individuals and no obvious explanation for his death was revealed in those statements. We are very dependent on their investigative information so we requested that they keep us abreast of investigative information. As we had the autopsy findings we briefed them of the findings and we discussed at that time we did not have a explanation for the injuries that led to his death. I believe at they had secured the areas that he was detained in but you would have to refer to their investigative information as far as their actual process what they were securing. I do not recall seeing images of where PUC 421 was. There were photographs taken where the previous detainee had been restrained when his death occurred. It was my understanding that PUC 421 had also been restrained. We look on the autopsy and document and changes or injuries to his body from restraint and we are trying to piece together basically a timeline where he was in the days and weeks prior to his death trying to fill in exactly what had happened to him up until his death. I was aware that he had been subjected to chaining which required his hands to be above his head for extended periods of time. That was certainly a factor I considered important in making my determination on the examination report we documented bruising or contusions around the wrist which would be consistent with the securing of the hands. That does not tell us whether they are overhead or not but would certainly be consistent with the hand being over the head, however that restraint would not explain the injuries to his legs being restrained in that position would not cause the tissue damage—the bruising and injury to the muscles of his legs. Performing the autopsy, the injuries around his wrist for example are evidence of restraint. They are not significant injuries that caused the death. [The injuries to his legs are severe and did cause his death. The chaining of his hands overhead could have been a contributing factor in his death. After a person receives an injury at what point they actually die, other factors contribute. If the person is dehydrated, if they are for example restrained upward, that may lower their blood pressure. That might cause him to die sooner in the process, not survive as long with those injuries. His underlying disease processes that all may determine at what point after the injuries that person may die I did not feel it was a cause of his death. The severe muscle damage to his legs explains his death I saw no injuries significant other than bruising around the wrist no significant injuries from being held upright that would contribute to his death. Like I said if that in combination with natural disease, dehydration other factors may have caused him to die earlier but it did not cause him to die. I think it made him die sooner from the injury rather than being

able to survive for a slightly longer period of time. We try to obtain as much information as we can to everything that has happened to the individual prior to their death to consider all factors. I believe he had an entrance physical or examination documentation of an examination on receipt of the facility I did not know of other medical records we certainly try to obtain any medical records that are available on all deceased individuals that we do an autopsy on. I did not speak with any medical individual at the prison facility on the condition of the detainee. I have conducted over a thousand autopsies, we strive to perform an autopsy as soon as possible we certainly perform autopsies as far out as years after an individual's death. In this case it was three days after the death to the individual. I believe the body was secured at the Mortuary Facilities in refrigeration. The facility did not any way interfere in any way with my ability to render, all the American soldiers that die in Iraq takes typically two to three days before they arrive in country I am sure the time frame is essentially what we are dealing with as long as the body is cooled that stops or slows down any changes after that and his body appeared to have been cooled appropriately and the facility was adequate. The process of necrosis and deterioration of tissue does not immediately stop after the person dies if it is refrigerated it does we also look for the bodies response and if it has been going on long enough and the body has had time to respond to it the changes the crumbling of his tissue that is not a post mortem change we see many many changes of decomposition and are very familiar with those and he had no changes of decompositions any changes were just from being dead the body is decaying that was a very different process from what was observed in his legs. I am not aware of there being any test or any procedures that I was not able to perform during the autopsy because I was conducting it in Afghanistan. There was some follow up testing in this case we brought samples back, toxicology samples as well as tissue samples we put the tissue in formalin so it sticks and preserves we brought this back to the states. Those are preserved for potential use in judicial proceeding and some tissue is used for maybe toxicology in processing but then its secured and maintained according to standard. In this case if another physician wanted to examine some of that tissue it would be available to them it has been maintained, the majority of it would be located in Rockville, Maryland and if it is not there it may be secured at the main AFIP. Potassium after death changes rapidly post mortem blood potassium is of no value we look at because immediately after death that changes we look at vitreous electrolytes at some point but that also changes after death. There is no test done for potassium levels I do not feel that would contribute. When I examined Mr. Dilawar there was no evidence of a pattern on his skin of a particular instrument that may have been applied I saw no pattern injuries on his body. I would describe all of his injuries referring to his legs because he did have some minor scabs and crusts that may be older, but the injuries to his legs the bruising all appeared what I would consider to be recent and it all appeared to be in a consistent similar time and what I would categorize as recent. My testimony on direct was same age and recent. When I say same age I would be fairly conservative there was no evidence of healing which to be seen grossly or microscopically I saw nothing that appeared greater than two or three day earlier. All the injuries on his leg that I observed appeared to be recent within 24 to 48 hours prior to his death. I did not see any older injuries for example if there was a bruise that had started to turn yellow or green I did not see a color change of an older injury I cannot differentiate between hours but I can say that it was recent. Prior to the autopsy I was not briefed as far as the types of blows that would have been applied after reading some of the statements a description of the peroneal blows were described having been given. It may have been discussed shortly before but it was not extensively briefed my recollection is it was discussed after the autopsy. I cannot tell you how many blows were

can't say how much that would've stressed his heart. Looking at his heart he didn't have a clot, which is what we call a heart attack. Typically a thrombus blocks the vessel. He did not have that. There were no microscopic changes indicating a heart attack. We incised down in the leg; the vessels are in the tissue in the leg, but that procedure is not in the report. Not all normal findings are always included in the report. I did not see any clots in the large vessels or deep veins of the leg, and even if he had clots, they would only cause problems if they were broken. I do not see physical findings that standing would cause his death. Standing would not have caused the injuries to his legs, which caused his death. Sleep deprivation would not have caused the injuries to his leg. I'm not aware of sleep deprivation being a contributing factor to his death, but I'm not an expert in sleep deprivation. I'm not aware of any physical findings of sleep deprivation. I submitted a urine sample to the National Naval Medical Center assessment of serum and myoglobin, because the urine was brown, which could be caused by myoglobin. The level of myoglobin is significant to my conclusion of the death is significant, because the injury to the leg is the cause of death, and as muscle tissue is damaged, myoglobin leaks out, and circulates in the blood, but is not a normal component of the blood. It's filtered by the kidney and ends in the urine. Myoglobin was present in the urine, which goes along with the injury in his leg, indicating that he was going into a state called rhabdomyolysis. This condition occurs when the muscle tissue is damaged, which there are a wide range of causes. Myoglobin, which is part of the muscle cell, is released, as well as other components of the cell, and it is not normal. Myoglobin is looked at; it's specific to the heart, skeletal muscle, smooth muscle structures, and other sources. When it leaks out, it is very toxic to kidney, and the patients can go into kidney failure. The myoglobin is a marker for the damage to the tissue. It gets into the circulation, and that can explain the mechanism for death caused by blunt force injury. I know that the Base Commander and the International Red Cross were briefed, but I'm not sure about JAG. I indicated to CID that I believed that there was foul play or criminal activity involved. I determined the manner of death as homicide; meaning that the death was caused by other people. Criminality of death is a legal determination. My determination was passed on to SA Flores. Dehydration doesn't explain the injuries, but may cause a person to die sooner from those injuries. Based on my review, areas of tissue were damaged to the point that they were dying. The mechanism that causes death is the factor that sets in motion a chain of physiological events leading to death. With muscle injury, when the muscle is damaged, in addition to myoglobin, potassium leaks out and rises in the blood. He has a heart lesion, a stenosis of the coronary artery, and ultimately the heart stops beating. Most likely, as the potassium is rising from his leg injury, he would go into a fatal arrhythmia sooner, because of his heart lesion. Initial statements indicated that various individuals applied what was described as the Common Peroneal Strike, which I had not heard of prior to this case. We can certainly describe that injury. A number of things can cause that injury, but in forensic pathology we are better able to identify inconsistencies, which this did not cause, rather than what caused it specifically. If there was evidence of multiple people applying blows to this area of the decedent's body, I could not determine which of the individuals played a greater role. The extent and location of his injuries were beyond what a single blow would cause. If multiple people admitted that blows were delivered, it would difficult for me to distinguish any varying degree of culpability or responsibility for the injuries that I observed, but I can describe the depth and nature of injuries. Without the furnished statement, indicating the number of blows or the force of the blows, I could not tell you the number or what type, but the ultimate injury indicates physical evidence of significant force. We examined his wrists, and there were circumferential bruises, but there were

no other areas of redness that would've warranted incising the arms. Based on the external examination, he had red discoloration just beneath his buttocks to the mid calf, purple behind the knees, and the red blends into the purple. I can't speculate on what part of the body people saw when he was alive, but of course, clothing could conceal things. I would opine that he had difficulty ambulating, and I doubt that he would've been capable of running. Shuffling and keeping the body upright requires less motor skills. It's impossible to determine what he was capable of doing, but I would opine that he would've been impaired. I know that detainees were hooded, but I don't know the specific time frame that he was hooded without referring to statements. The impact that hooding would have on someone with an underlying coronary artery problem would depend on the type of hooding. There was no physical finding of problems with hooding; no evidence of being tied around the neck. I don't know about the ability of air to move through the hood. We described to CID the injuries, explaining that something impacted his body, predominately the legs. Common Peroneal Strikes were referred in statements or about the time of the autopsy, but I don't know which statements those were. I would have to defer to CID statements.

REDIRECT EXAMINATION

Questions by the trial counsel:

The principle concern for a person with coronary artery disease is that they can have a heart attack or irregular beat; basically the heart can be deprived of oxygen. Mr. Dilawar's heart had not been deprived of oxygen. The autopsy report is dated 23 Feb 03, 8 pages in length, with my signature, and the signature of Kathleen Ingwersen. We did not determine Mr. Dilawar's weight. We stated that the body appeared to be consistent with the weight reported in his physical, which was 122 pounds, and his height was measured at 69 inches.

TC refers to PE 12 and 13

EXAMINATION BY THE IO

Questions by the IO:

I would characterize the injuries as recent, meaning within days. A pattern of blows can be counted, but I cannot count Mr. Dilawar's, because his were confluent. I cannot count discreet impact sights. Going from the front, to the side, and to the back of his thighs, one or two blows could not cause damage to that much area. If someone is shoveling and has a heart attack, there would be no hemorrhaging in the muscles, or the injury Mr. Dilawar had. Physical exertion would not cause hemorrhaging or bleeding into the muscles. There would be no injury to the muscle. The person would look normal. The heart would have plaque, and usually an acute clot, or an area that is deprived of oxygen. It takes a while to see that change, so the only finding may be an occlusion. Depending on how long the person lives after the heart attack, you can see what part of the heart was deprived of oxygen. Kicking a door would not cause the injury to his leg. The nature and severity of the injury to his leg is to the extent that would cause death. He had a stenosis of his heart, and I saw no evidence of any recent or old heart attacks. Commonly, if someone has heart disease there will be evidence of heart attacks that they were not aware of,

but there will be microscopic evidence of old scarring or fibrosis of the heart, but there were no changes in his heart. Not infrequently, people will have 70-80 percent blockages, most likely never diagnosed, sometimes in young people, but more common the older we get. If someone has a gunshot wound, that is the cause of death, the heart disease is only a finding, not the cause of death.

RECROSS-EXAMINATION

Questions by the DC:

Light taps on the leg would not cause deep injury all the way deep down to the bone, but that depends on your definition of light blows. He has injuries from the skin, all the way to the bone, and in the joints. I've seen similar injuries in an individual run over by a bus. To inflict that type of injury would require moderate to severe blows. It would require a magnitude of force to cause hemorrhage this deep in the leg.

I did not see evidence of compartmental syndrome, which will often follow later, after an injury. That's where the muscle is confined within the fascia, it's injured, physiological changes occur, and swelling begins. He did not have extensive swelling of the muscle fascia. Compartmental syndrome is more of a clinical term, rather than an autopsy finding. In my opinion, whether or not someone with Mr. Dilawar would have been able to kick in a door would depend on the stage. Close to or prior to his death, I would opine that he would not be capable of much skilled motor activities. The time frame that I'm referring to when I say close, depends on how soon the death occurred from the injuries. If the injuries occurred within hours of his death, soon after the injuries were inflicted, I would not expect him to have been able to do much, but I can only pinpoint that time frame in broad categories.

REDIRECT EXAMINATION

Questions by the TC:

Approximately 30 blows delivered with adequate force could explain the extent of damage to Mr. Dilawar's legs.

EXAMINATION BY THE IO:

Questions by the IO:

I was not present for the autopsy of PUC 412, Mr. Habibullah. I reviewed the autopsy findings and looked at the microscopic slides of Autopsy Report A0293. He had abrasions and bruising on the arms, patterned, restraint type of abrasions on the wrist, elongated contusions on his thighs, similar to Mr. Dillawar's, a bruise or contusion on the knee, and deep contusions on the calf. His were more in the calf. The meaty tissue on the back of the leg, behind the knee were not as involved. He also had a pattern type of abrasion on the back of his left calf.

The Article 32(b) Investigation recessed at 1730 hours, 22 March 2005.

The Article 32(b) Investigation reconvened at 1754 hours, 22 March 2005.

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

Mr. Thomas Curtis was called as a witness for the Government, was sworn and testified in substance as follows:

DIRECT EXAMINATION

Questions by the IO:

I recall making a statement to CID 4 Feb 04, in Cincinnati, Oh while I was a member of the U.S. Army Reserves. I was assigned to the 377th MP Co as an E-5, military police officer. I recall being questioned about PUC 421, detainee who died.

Brand and Morden went into the isolation cell to either see if he needed to go to the bathroom, or they may have been bringing him back from the bathroom. He was chained up, and I'm not sure why, but Morden was kneeling him in his thighs. I don't remember what SPC Brand was doing. Morden exited the cell, and I imagine SPC Brand came out after him. I don't remember ever seeing Brand strike PUC 421 or any other detainee.

IO referred to PE 14

Questions by the TC:

I've given a few statements, and there are some things I remember and some things I've forgotten. If I said in my previous statement that I saw SPC Brand, SGT Humphrey, and SPC Morden give Common Peroneal Strikes, that's correct. It would be more accurate to say that I can't remember seeing Willie Brand deliver blows. My memory would've been better closer to the time that I was in Afghanistan. Morden delivered approximately 4 to 8 blows and Brand was in the cell with him, but I can't remember if Brand was assisting. When the blows were delivered Mr. Dilawar was not doing anything threatening to SPC Morden. I felt sorry for him because they were delivering these blows for no reason. I gave a sworn statement on 22 Dec 02 in Bagram. I recall being asked if any of the guards had struck the PUC's, they were SPC Brand SPC Morden, and SGT Humphrey who gave common peroneal strikes. That's what I said on my statement, but I don't recall SPC Brand or SGT Humphrey doing it right now, but what I said in my statement is more accurate than my memory.

PE 13 admitted into evidence.

CROSS-EXAMINATION

Questions by the DC:

I was read my rights by CID before I furnished any statement. I gave my statement to a CID agent but don't recall his name. I recall him reading my rights. I don't remember being told

that I was suspected of aggravated assault. No one ever mentioned homicide or anything like that when I was read my rights. I was talking to the CID agent for at least an hour and a half. I think he recorded everything I said in my statement. As I spoke he typed if it's not then it's pretty close. He pretty much typed everything I said. I was told I was there based on what I saw. I can't remember him ever mentioning the word homicide. He could have, but I don't remember. I don't recall saying that the guards never struck the PUC unnecessarily on 22 Dec 02, but if it's in my statement then I said it. I said in my statement that I saw SPC Brand and SGT Humphrey give common perennial strikes, but I can't recall right now when or how many strikes SGT Humphrey gave. My statement does say that I saw the named individuals do it. It was my understanding that this was common practice that was used, but I only observed during the situation of PUC 421. I was the senior person, the NCO, I did not tell them to stop or report it to anyone. Based on my training I wouldn't call them unauthorized unless you receive too many of them. If I saw those and a guard did not do them unnecessarily I would not complain about that. We would put a hood on them if they were spitting or moving them around the facility. We would take them no more than 50 feet to be interviewed by MI personnel. We did have a doctor to examine PUCs on a daily basis. They would not always be accompanied by interpreters unless they needed to talk to them about something. I was not always present when they were examining PUCs, and I don't remember ever seeing them examine PUC 421. It is fair to say that they did do examination. One of the local nationals, who worked with us, was used as the interrupter to receive concerns and complaints to us. They did not have access to the PUCs unless we went and got them. I did not have batons available to use. I don't recall ever being asked if my unit had batons, but if my statement says we had them then I would defer to that. But I don't remember now. No one ever approached me prior to 22 Dec 02 to give any statement. After the death of PUC 412 I don't remember any changes. I also don't remember any after the death of PUC 421. I never gave another statement after talking with CID on 22 Dec 02 until Jan 04. When I gave that statement in Cincinnati at the Embassy Suites it lasted probably 4 to 5 hours Saturday and another 4 hours that Wednesday. I made two appearances with CID in Cincinnati in early 04. I was first interviewed by them in 31 Jan 04 and then again on 04 Feb 04, by the same agent. There was a written statement that I gave on 31 Jan 04 and I also gave a statement on 04 Feb 04. So I gave two statements and I was read my rights both times. I don't recall ever being told that I was suspected of neglect homicide, cruelty and maltreatment or false official statement, but if that's what they are saying okay, but I don't remember right now. I don't recall the name of the agent who interviewed me but I know it was a male and female. They were both asking me questions. I talked they transcribed, so I didn't actually write anything down. But I did see them transcribing what I said. I reviewed it, signed it, and was sworn to it. And I did the same thing on 04 Feb 04. The first interview was long and we did not cover everything they wanted to cover so I had to come back. The first day took 4 hours. I was not concerned that I was a suspect of negligent homicide. If the second report says it reflects everything that was talked about on 31 Jan 04 and 4 Feb 04, it doesn't jog my memory that I was shown it. Earlier I thought I said that I wasn't really shown it, but if it's in writing and I signed off on it then I was. I just can't remember right now if I was. My civilian job right now is a parole officer and prior to that I worked in various detention facilities. I worked directly with prisoners one on one for about seven years. I worked at the local juvenile detention facility here at Hamilton County before I went to Afghanistan. I was sensitive with issues of using excess force because they were juveniles. I do recall, in my statement 04 Feb 04, making a reference towards log books. I recall log books being used in the facility they were used for keeping a

diary of the daily events as they related to the detainees. I was given instructions to write down their movements, eating habits/patterns, any special incidents. I wouldn't keep complaints because you couldn't understand them although that could fall under special incidents. I was told to write down in the log book bathroom breaks, when they eat, when they saw medical, when they were interviewed, what MI directed about the detainees' treatment, put if he is standing up or sleep dep. That is the type of things that were included in the log books. The log book looks like a short about a 4 by 6 book about a 100 pages and each page was lined. I opened it up and wrote in it. There was one in each ISO cell and one on the main floor. There were several of these. They were used the same way you would use a CQ log. There was a status board in the facility and it was used for keeping track of the major things to be made aware of dealing with the prisoners. Such as how many there are any problems we might have had with any of them, discipline you are giving some of them, talking, or how many times they were talking to each other. I don't remember being asked if strikes given to the detainees were to be written in the log book. I think that would fall under special incidents, if you had to strike one that meant something was going on, a serious situation was going on. If you had to strike one and you were going to put that in the log book that means something real bad was going that everybody knew of you wouldn't just strike one then write that in the log book. There may be someone that has done that I just don't know of anyone that has done that. With respect to CID statements or indications whether or not the detainees PUC 412 or PUC 421 were combative I have heard that they were, however, I have not seen anything written down. When I talk about them being combative I mean resisting, trying to do the opposite or contrary to what we wanted them to do, not following our directives. I am aware of MI officials directing sleep deprivation. It was a frequent occurrence and usually they will not sleep the first 24 hours they got there. If they did not comply with the order to undergo sleep deprivation training and forced standing would be a must. I was aware of that occurring on detainees and that was a generally accepted practice in the facility from what I could see. The commanders were aware of this because it was directed by MI. On my statement on page 3 of 10 I stated this is one of the things that would definitely be documented on a status board or dry erase board. It would also be documented in the log book as well. I left Afghanistan in mid March around March 18th or 19th. I am not sure of the exact date. Status boards and log books were still being used in March 2003 to my knowledge however, we had changed units. In relation to the isolation cells the status boards were right as you step in the door, they were right on the first wall that you saw as you enter. I know a SFC Davis and I recall telling CID that he would take the log books and compile them on the computer. I recall in my statement saying that his job was administrative recording who came in and who left, who went to GTMO and he kept everything he did very secret and protected it very closely. I recall saying in response to the question, "Were compliance blows recorded in the log book?" I stated I doubt it and I never remember reading it in the book. I know the blows happened and I don't remember reading it. The procedures were for SFC Davis to get the log book to do his compilation at the end of each daily shift. There were no instructions other than what you have already mentioned like the major things to record in them. I want to say that PUC 421 had difficulty walking but I cannot clearly remember. I cannot remember PUC 412 having difficulty walking. When I saw that I cannot remember making a complaint. I don't recall and I don't remember right now saying in February 2004 that I observed PUC 412 acting in a manner indicating that possibly he had been hurt. I remember hearing about an incident, but I was not there, where either PUC 412 or PUC 421 kicked a guard in the groin. None of the interpreters came to me with complaints about the manner in which the

detainees had been treated. We use basic words like "tashnob", meaning bathroom, and be quiet to communicate with the detainees other than that we will get an interpreter. I do remember saying that water was required anytime they wave an empty bottle at me. There were no serious communication problems, because we can generally go get an interpreter. I said in my February that I recall Morden striking Dilawar pretty hard in his knee with his knee pretty hard in both legs. I think I observed that hitting of 5 or 6 times. I do not recall what day that happened, however, it was the same day that Dilawar died and it is addressed on page 7. It was hours before, in relation to the actual death happening. I can describe Morden physically as a guy that is 5 foot 9 inches, white male about 240 pounds short hair. I do not recall right now telling a CID agent in my February 2004 statement about peroneal strikes specifically, everyone knew what had happened from the Sergeant of the Guard to the Platoon Sergeant and Platoon Leaders. However, if I wrote it in my sworn statement then I said it I just cannot remember right now. I also said that after the second death I could not stand detainees up or strike or hit them. It is a given that you aren't supposed to hit them but it is also a given that it happened. The entire time that I was at the facility I was never told or given a directive that common peroneal strikes were never to be used. I do remember that perennial strikes were a common occurrence not that I saw it, but I am just assuming that it went on. The situations that I did see, I am not confident that senior officials knew about it. The log books were still there when I left in March of 03.

REDIRECT EXAMINATION

Questions by the TC:

I stated in my 4 December 2002 statement that I thought the reason that Morden and Brand were in the room delivering blows to Dilawar was for a little revenge thing to the detainees who had been hard to handle like to soften them up. So the blows that were delivered on that occasion by SPC Morden with PFC Brand being present it wasn't because the detainee was failing to comply with some sort of direction. There was no physical threat to any of the guards or any other detainees in the isolation cell. When I talk about detainees it was the young guys and it was not a unit thing, it was just the guys that were immature. The blows that Morden was delivering before PUC 421's death, they were not necessary blows. I had worked with juveniles and detention facilities and have been with the military police. The standard for handling prisoners is minimum force necessary. There is no way that I think it would be appropriate to deliver common perennial strikes to any of the people that I work with in my civilian capacities under similar circumstances. The strikes were also not logged in the log book. I also had questioned if these were common occurrences, but what I saw was limited and all I can remember right now is the Morden event and I believe I was telling the truth when I said Brand and SGT Humphrey had also delivered common peroneal strikes. I also did not report this up the chain, and I also don't know if anyone in the chain of command knew about it. I never delivered any common peroneal strikes.

IO reads from PE 14.

RECROSS-EXAMINATION

Questions by the DC:

The items I told CID in Feb 04 include matters that I never furnished to CID in Dec 02.

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

The IO stated that he would not be calling 1SG Betty Jones nor consider her statement.

The DC stated, to ensure the record is clear, that he asked that a copy of 1 Feb 04 statement be pinned to the record. The testimony addresses the issue about command knowledge and we would argue command authorization for common peroneal strikes and other compliance rules.

The TC stated that it was the government's position, from statements and interviews from the 1SG, that she stated she had very little interaction inside the Bagram Collection Point and was unaware of any testimony that she had knowledge of any authorization about common peroneal strikes.

The DC objected, arguing the TC was testifying.

The TC stated he was offering the information because the record was being made about a witness as a response as to why the government thought she is not relevant.

The IO stated that he made his ruling before the government counsel said anything and made it based on the 1SG's statement. He did not think it would be appropriate.

The Article 32(b) Investigation recessed at 1848 hours, 22 March 2005.

The Article 32(b) Investigation reconvened at 1849 hours, 22 March 2005.

The IO stated that the investigation would adjourn until 0800 hours, tomorrow morning and will address the logbook issue.

The Article 32(b) Investigation recessed at 1851 hours, 22 March 2005.

The Article 32(b) Investigation reconvened at 0807 hours, 23 March 2005.

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

SPC Brian Cammack, was called as a witness by the government, was sworn, and testified, in substance, as follows:

DIRECT EXAMINATION

Questions by the TC:

I am not currently represented by counsel. I understand my rights and I am willing to speak and do not want a lawyer. I recall giving a written sworn statement on 29 Jan 04.

The IO reads a question from SPC Cammack's statement.

The DC objected.

The IO stated that the DC's objection was noted.

I recall giving that answer to SA Angela Birt. That is a true answer. The part with SPC Leo, I was told that he was there but I don't remember how it was worded. SPC Brand told me this story. I don't recall exactly what he said the detainee did but he got in his face and said, "That does it," and gave 15 Common Peroneal Strikes to each leg. His knee had gotten sore and he switched legs. I did not witness any of these blows. He told me because they were asking me my involvement with PUC 412 and I prompted him to saying something about it. He was speaking about Dilawar. I did not observe Brand strike anyone. That was the first time I had heard about the Common Peroneal blows and he did not speak to me about them any other time. That was when I was in Qatar. I remember giving another statement on 18 Jun 04 to SA Brandon Owens. I was at the unit when I gave that statement in Cincinnati. I remember saying that this is the same information I gave in my first statement about Brand giving 15 Common Peroneal Strikes. It was the same detainee Dilawar, and that SPC Wathen had given him a good shot. Wathen was somebody from 3d PLT from our unit. We never worked with him, because he was on another shift. I did not see Brand or Wathen deliver a blow. This is just what they told me at a later date.

CROSS-EXAMINATION

Questions by the DC:

My current rank is SPC. I don't know how many statements I have made in this case. I don't remember how many times I talked to CID while in Afghanistan. I think it might be three but I'm not sure. I remember speaking to them on 10 Dec 02, 16 Dec 02, and Jan 04 in Cincinnati. I spoke to them on 29 Jan 04 and was read my rights but didn't give a statement until 30 Jan 04. I gave my statement the next day because I work nights and don't go to bed until 7:00 A.M. I do know what went in the log book. I put in the log book about trying to feed him, him spitting on me, and that we restrained him. I read the log book every time I took over a shift but I don't think it was a requirement just something I did. I don't remember the date I left Afghanistan, but it was several months after I had talked to CID. I did not continue to work as a guard for about two weeks during the investigation, and I joined a different unit doing Military Police work on the base. When I was cleared, I was allowed to return as a guard until I left Afghanistan. I don't remember who told me that everything was okay and that I was allowed to return to the facility. The log books were still there when I returned up to the last day I was there. They were still being used after the death of PUC 421. They would provide information as to what type of problems the guards might have with them, if the prisoners were being combative, and how they were restrained. They would also show if an individual was moved around the facility and if they were taken for interviews. I don't remember the date I spoke with the defendant. I never mentioned it until two years later. I was told by CID that I was suspected of aggravated assault when I was next interviewed by CID on 16 December I was told again I was suspected of aggravated assault. Later that month, while still in Afghanistan, I was read my rights on 22 December and advised that I was only suspected of aggravated assault. In Jan 04 I was told I was a suspect of cruelty, maltreatment, and negligent homicide. I was very surprised by it, because they told me I was clear. I last spoke to CID in June of last year. I have spoken to the prosecutor of this case. I have had one discussion about this but I have had several phone calls asking me if I would do it, or that times and dates have been changed. I spoke with the

prosecutors about the events that had happened. I spoke with 1LT Trainor and LTC MacDonnell. I spoke with LTC MacDonnell on Sunday. We discussed everything that I had given and they read me my rights. They did not tell me anything that might happen to me in my case. I provided a statement in December 2002, in Afghanistan, in which I recanted what I remembered happening to PUC 421. I have only been talking about PUC 412 and I admit that not everything in my first statement is correct. I also gave Common Peroneal Strikes. The standing up rule was a discipline for breaking one of the rules. We would have someone stand up for 30 minutes and then sit them back down. On 4 December 2002, in my statement, I might have said that a detainee was to stand for four hours then rest for 20 minutes. I never received any instructions from MI in reference to PUC 412. If I remember correctly I was only around him a few hours and I never received instruction about PUC 421. I made a statement on 10 Dec 02, saying that several guards were trying to subdue PUC 421 because he was combative and uncooperative. I recall that PUC 421 was in an air lock and two guards were trying to subdue him. The guards were SSG Berkley and I think the other one was SPC Morden. There were also five other guards that were helping him subdue him they were SGT Humphrey, and I don't remember the rest and there was an NCO present. SGT Humphrey never said anything about stopping what we were doing and he was helping to subdue him. I don't remember if he was hooded, but he did have leg shackles on his hands. I don't remember anything else. I saw everything from the overwatch, which sits high and away from the airlock. I don't remember what happened. I don't remember saying that he refused to cooperate and stood over the toilet for 10 minutes. On 10 December 02, I do recall him being taken to the bathroom but it was a different day and time. On 9 December I saw the guards trying to subdue him but I don't remember how long after that the bathroom incident took place. After the five guards got involved detainee 421 was subdued and was chained with hand cuffs and they put leg shackles on him. His hands were not above his head and he was hooded to be taken to the isolation cells. The hoods that were used were just a cotton black bag. I don't remember what time of day it was when 421 was being taken to the bathroom, but I did see him walking. I saw him turn to the cell before he became combative again. I had my head turned and heard a commotion and looked over and saw some people wrestle with him and lay on the ground. He refused to get up and refused to walk so SGT Boland, SPC Torres, myself and I don't remember who the other person was. We each grabbed a leg or arm and packed him back up to his cell. I mean that we lifted him off the ground and took him up the stairs. We ran into one of the interpreters. He asked who it was and we told him and he said he needed to speak to him. He spoke to him in his language so I don't know what was said. He stood up on his own and spoke with the interpreter, he was not combative. The interpreter said everything was going to be all right and they were going to speak to him later. He walked back to his cell with two of us behind him and one person on each side to ensure he did not become combative again. They opened up the door and saw him going into his cell turned around and went back to post ops. That's the last I saw him until they called for me when he collapsed, and I ran to his cell. SPC Brand was not present during this time. I don't remember the interpreter's name. I don't remember how long it was but it was snowing and had to leave early to back to work without sleep then went back to visit with CID. Then I gave another statement on the 30th and another one in June. I have not spoken with CID after that last statement. The statements are all different that I gave to CID. The reason is because I was scared about my involvement with PUC 412 and did not admit it at first. They kept coming back and I knew that it was not going to go away until I admitted what I did. I gave him two Common Peroneal Strikes when he spit at me when I was trying to feed him, on his

right leg, not very long before we found him unconscious. SSG White and I found him unconscious. I struck him on his right leg. I don't recall when I first heard the term Common Peroneal Strike. In our unarmed self defense course, for quite a while, we were taught how to deliver it and never told not to deliver it. It was commonly used when someone was fighting, or combative. 412 was a very combative person. I would describe him as a very violent person. He would try to hurt anyone that would take him to the bathroom or feed him, or he would try to escape. I did not try to hurt or kill him. I was upset because he spit on me and I reacted. It was the wrong reaction and I was spoken to by SGT Boland, and he told me I was wrong in my actions and I apologized for losing my temper. I agreed that I was wrong and left it at that. I'm not sure how long after that 412 died. It was my understanding that those strikes are commonly used in a combative situation. It was my understanding when I spoke to the NCO that I was wrong in that situation but he never told me not to use them again. My shift was 12 hours and we used logbooks to pass on info to the next shift. We used a hardback basic notebook with lined paper for us to write things down. I did not have any specific instruction as to make sure that he did not try to combat anymore. When we got him back to his cell, they opened up the door and I saw that he was about to go back in. I turned around and looked back to the [inaudible] which should have been done before anything had been done there, and that was the last I saw of him until they hollered for me when he collapsed, and I went into the cell. SPC Brand was not present during the incidents that I described about the bathroom and going to the top of the stairs and meeting with the interpreter. I do not remember the name of the interpreter that I met up with. I could describe him; you might have a description of who the interpreters were. The interpreter told me he would be coming to talk to him, the interpreter told me he was scheduled to be talked to by MI. I have no knowledge of whether or not he actually talked to MI. Last time I saw the interpreter talk to 421 they were talking for approximately one minute, the interpreter never told me 421 was complaining about anything. The interpreters did not come to the cell block areas very often but he was walking down the hallway to where the coffee machine was and he just happened to be passing us while we were going through there. When a detainee was going for an interview one interpreter and one MI would accompany him, they kind of took over at that point once we got them in there we were asked to leave they would shut the door and they would come out and let us know when they were ready and we would escort them back to their cell. I do not know the last time that 421 was taken to MI, the logbook would show you that. I was trained for my mission at Fort Dix. I have told people on various occasions that I do not believe I was properly trained for my mission. When I was first trained it was my belief I was going to go to GTMO, it was only later I learned I was going to some "sandy place." We were at Fort Dix for two months maybe a little bit longer. I got two weeks worth of training at Fort Dix to prepare me for my mission at Bagram Prison Facility. I did not consider it adequate for my mission because a lot of the training was specified on NBC and things like that and when we got to the mountains the moment we were stepping off there they looked at us and said there was no threat here so they told us to take our gas masks off and they locked them up. I think that if Fort Dix had proper notice that we were going there and they were going to take away our NBC stuff and lock it up from us the time that we wasted doing NBC at Fort Dix could have been spent getting up used to what we were going in to when we got to Bagram. When I was at Fort Dix I did learn how to handcuff someone, it was like how civilian police handcuffed a person. I do not recall if we learned how to chain someone to a fixed object. The chaining that we did in the isolation cells was not taught to us at Fort Dix they had some mock isolation cells down there but they were not MP's that were training us and they had a very bad idea of the way things were

supposed to be done and the only thing they centered on us dealing with was entering and exiting a cell with an unruly person. I do not feel the examples presented at Fort Dix were realistic at all. Our Commander was rarely seen while we got our training. I did in my statement on 24 January 2004 to CID say the training at Fort Dix gave us no skills; it left more people confused than trained.

The IO told DC to submit copies of the referenced statements, if the defense wanted them considered. "I will clearly consider the testimony, but if you want me to take those statements I will need copies of those made in the record."

I do not remember if they taught us hooding at Fort Dix. I do not believe they did because it was not very realistic training. I did take orders from someone in MI as to what was to be done to detainees. Sometimes they would say keep them awake for the next twelve hours or six hours or something like that. If he fell asleep we would just yell at him or kick the door of his cell and tell him to wake up, occasionally they would keep him on a meal schedule where they would hold a meal back a extra hour or two to give them time to talk to him because they wanted him hungry when they talked to him.

The TC objected to the current line of questioning unless we are talking specifically about Mr. Dilawar and the possible impact on whether it was a contributing factor to his death.

[Neither the DC nor IO made comment.]

I do remember saying in my 10 December statement that Mr. Dilawar was cuffed onto a stretcher, I do not recall the date it may have been the 9th of December. I thought you were talking about when we did CPR on him not the time when he had to be taken to the ISU. When we did CPR he was put on a stretcher, people were even told to get on top of him and try to continue the CPR. We could not get a medic out there, he would not get out of bed. It was two hours before we had someone on site. The medic was SPC Melone, I do not know who called out for the medic. I was originally the medic for our unit so when something happened with him they hollered for me and as soon as I saw what he had I told them to call an ambulance. The ambulance was called for but the medic did not come. That happened on the deaths of both detainees. The medic did not respond, it was the same medic. It was approximately two hours after that medical assistance arrived. I do not know how long PUC 421 had been in some form of chained condition while that was happening. I think you have the instances mixed up between PUC 421 and 412, the situation you are referring to involved PUC 412. When I first knew of PUC 421 SPC Morden and SSG Berkley were already up there and they had him laying on the floor and when I came around the corner to see what was going on Morden made eye contact with me and was shaking his head no. He was feeling on his neck and he said, "Brian, I cannot feel anything," and we immediately started CPR at that moment. I do not know who called for the medic all I know is that we hollered that we needed him. I stayed there and tried to take care of PUC 421. I am not sure of the time that had elapsed since the last time I had seen 421. I believe it was back when I saw 421 talking with the interpreter. I was told he was getting ready and they were coming to talk to him from MI. On that day I do not remember SPC Willie Brand being there on the 10th. I think you are speaking of the airlock incident, the one we talked about earlier when it took several guards to subdue him, to restrain him and get him back up to the isolation cell. That is when I remember Berkley and Morden and five other guards of joining in.

I do not remember Brand being among them. When the ambulance finally arrived -- I am pretty sure it was just medics that came; none of them ever stated who they were or anything, they just came picked him up and left. I have to say it was just medics there because doctors do not commonly travel in ambulances. I did try to administer CPR on the PUC and yes, I am a previously trained medic. I did believe for a while that I had a pulse. I was last working in the MOS as a medic -- I think it was sometime in 1998. Then I changed my MOS. Giving CPR and looking for a pulse are pretty basic. You do not forget those just because you no longer work in that MOS. I was giving chest compressions as well as blowing into the mouth. I believe air was going into the lungs. I do not know if you are talking about the pulse of PUC 412 or 421. I remember there was one time where they said he had a pulse for a minute and a moment later they said they did not feel it. I do remember at one point doing that. I never saw PUC 412 or 421 with their pants down so that I saw their bare legs. I did not at any time see any bruise or anything like that on the thighs of either of these individuals. None of them ever complained about bruising or injury to their thighs. None of that was ever passed on to me by MI, an interpreter or someone in superior authority. I only learned about severe bruising to the thighs as being a problem only after this investigation started I did not even know about the bruising on the thighs until the third time I had spoken to CID and they had brought someone in who was not CID from the Bagram site and he had explained to me that there was bruising on the thighs. That was somewhere around the 16th of December when I was interviewed by CID. When I returned to CID it was because they called for us, because a couple of hours after PUC 412 died I went and gave my statement and two hours after PUC 421 died I went in and gave my statement and then they told me they needed me at a certain time so at that time frame I went up there and saw them. After the death of PUC 412 SFC Hawkins had given us a speech about a change in the manner that the PUCs were to be treated. He was the only one in leadership that gave us any thing like that. I do not really recall what it was that he was saying other than that things had to start changing and he went back through a few of the guidelines and he said, "We do not know what is going on," and at that time we had believed that it was possible the injuries had been sustained before they came to the facility. He did not know what it was and he was just basically saying, "You know what you guys have to do. You know what the guidelines are. We have to cover our own butts and hope that these deaths came from somewhere else." The Commander or the First Sergeant never said anything to us. The XO was with Hawkins during that conversation his name was 1LT Buelterman. He was there when SFC Hawkins said we had to make sure we were following the guidelines to make sure our butts were covered, because at that time we did not know what the cause of death was and they were telling us it was probably from injuries sustained before they came into the facility. I do not know who said that. For a little while that was the rumor and then we started hearing that PUC 412 had died from kidney failure, then we heard he died of dehydration, then we heard he had died of something else. The story kept changing on us. A lot of rumors circulated; there was a lot of confusion. In my statement of 16 December 2002 I said that I was ordered not to talk about it. I do not remember who gave me that order. It was not an order not to talk to CID or anybody like that; it was an order not to talk about it among ourselves because it was an ongoing investigation, and, just like anytime you want to talk to people in an investigation, you do not want them talking and getting their stories straight. Even though that was ordered, rumors and talk about it continued. That discussion that we had in Qatar was maybe not in violation of that command because we thought that this thing was over with, after the third time we had spoken with CID, and then we had been cleared. We thought this thing was over with. Nobody was talking about homicide or anything like that. It

was always, at most, aggravated assault. In my 16 December statement, I do remember saying that PUC 421 was not walking like he was impaired when he walked in front of me to go to the bathroom. I did not see anything that would cause me to say anything was wrong with him by the way he was walking. He had the leg shackles on, so he could only take very small steps, but other than that I did not see anything out of the ordinary that would suggest to me that something was wrong with him, even as a trained medic. I was told by CID the third time I spoke with them in December 2002 that the detainees had been badly bruised. I still did not think that they were conducting a homicide investigation. I also said in that same statement that Brand had told me PUC 421 was combative. I do not remember exactly what it was that Brand told me because anytime we had a combative situation, they talked about it in the meeting before the shift and they told us what the prisoner's number was and what he did and we needed to watch him. I can remember that a lot of stuff was put out about these two people. I do not remember specifically what he might have conflicted with Brand about. I would go as far as to say we received more information about these two being combative than everybody else who came through that facility, and there were at least a couple hundred PUC's. These two stand out in my mind. I did tell CID that, I am sure that it is in one of my statements. It is possible CID left it out because when they talked to me we sat down we talked about the situation and then they would start doing official questions and answers. I would sit down with CID and have a conversation with them generally about what the purpose of the interview was. Those discussions would go on about 15 to 20 minutes before we started the official interview. In Afghanistan when I gave my statement I talked to a SA Potter.

The IO asked the DC about the relevance of the line of questioning.

The DC stated it was relevant, "because we do not have the witness here. All we have is statements and the defense is trying to determine if they are complete statements."

The IO stated, "The defense is welcome to ask if that is his complete statement, but what he may or may not have been told I am not sure that is relevant."

The Article 32(b) Investigation recessed at 0916 hours, 23 March 2005.

The Article 32(b) Investigation reconvened at 0920 hours, 23 March 2005.

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

Continuation of cross-examination:

I did not observe either PUC 412 or 421 kick at the door of the facility where they were detained but when I came on duty with PUC 412 I was told that he had kicked at the door and I saw the damage that he had done to the door. The door was made of very cheap wood and it was starting to splinter and there were marks on the door where he had kicked. I am sure that incident was logged on the logbook. One of the rumors was possible dehydration.

The TC objected on the grounds of relevance and stated that "the witness had stated that he had very limited interaction with 421."

EXAMINATION BY THE IO

Questions by the IO:

When I was talking about the kicking on the door I was talking about PUC 412.

RE CROSS-EXAMINATION

Questions by the DC:

I do not remember one way or the other whether or not there were any problems with feeding or providing water to PUC 421. I do not remember hearing any problems about that. I did see him being combative as I described earlier. I had a conversation with another soldier by the name of Nichols; he admitted to me he had delivered Common Peroneal Strikes. He struck PUC 412 and he just said -- and he may have been saying it as an exaggerated number, but he said he knows the guy could have gotten up to fifty peroneals, but he said the guy earned every one of them -- meaning, by the way he was always combative with everyone. In my statement of 30 January 2004, I did say that SPC Brand called to me and asked for me to help him out. He told me that this guy was acting up. This guy was not Dilawar. CID had heard a similar story and they had asked me about it. I told them of this incident and they kept telling me this was Dilawar and I kept telling them I was pretty sure that it was not. It was around the time that we had shown up. It was right after we got there. They kept saying, "No, it was Dilawar," and I finally just kind of said, "Okay, it was Dilawar." But the more that I thought about that after I made the statement, I know it was long before he got there. That incident was right after we showed up at the facility. CID was telling me I was wrong about the person. SA Birt was the one who told me that; she pretty much insisted I was wrong. So I finally just said that I would go along with the story. That was not included in any of my statements. CID told me I was mistaken about the individual in January 2004. Looking back now, I feel like they were forcing me to say something that was not true, but I was trying to concentrate on, one, if I had heard another story similar to what they were asking me about and, two, whether or not it was that person or not. I told them I was pretty sure that it was not Dilawar-- that it was before then. It was right after we got to the facility and they were telling me, "No, it was Dilawar." So I finally just kind of gave in and said, "Okay, it was Dilawar." In my mind, CID had it wrong. The more I sat down and thought about that the more positive I am in saying that it was not Dilawar. In the two-year time frame between my interviews, and Afghanistan, and being re-interviewed in 2004, I had no contact with CID. I thought everything was closed. They did not explain to me why it was being reopened, not that I remember. The last time I spoke with CID in Afghanistan, one of them told me that this case will reopen and close about 20 to 30 times in the next ten years and you will most likely not know about it. So when we were called in to talk to CID two years later, I just figured I was just going on what the original CID people had told me -- that this case was just opening and closing. But they were wrong again. For the most part the relationship with the MI and the MP personnel went pretty well. At times it was a little rocky. They would have to tell our Commander they were going to start doing something, and usually we would not hear what it was. We would only hear our Commander got into an argument, saying we were not going to do it. For the most part, the relations between MPs and MI went pretty well. Often times we did not even hear what the disagreements were; we would just hear that the Commander got into an argument with whoever it was that was in charge of MI, and that he

would say he was not going to do something. I think he went out there and told them we were no longer going to do anything with keeping them awake. I do know he did that one time, because they built their own cells inside the interrogation room. They were told that, if they wanted to keep somebody awake, they would have to take somebody down there and keep them awake. The times that I administered peroneal strikes, I never intended to hurt anyone, or kill anyone. As a medic, if I believed blows by anyone else or me had caused any harm, I would have immediately sought medical assistance. When I observed someone in distress like 421, I took immediate steps. I would fill in as the medic when the assigned medic did not show up.

REDIRECT EXAMINATION

Questions by the TC:

I did mention that I delivered blows to Mr. Habibullah. I did not log those blows in the logbook; I knew pretty much right away that I had done something wrong and my actions were wrong. I delivered those blows because I was angry at Mr. Habibullah. I wanted, essentially, revenge for my perception that he had spit on me. I did not hit him to hurt him; just to tell him not to spit on me, by inflicting pain on him. I never did a 95C corrections course. I am familiar with what a 95C does: it is a prison guard. Someone who went to that training would have more training and experience on how to handle detainee situations. I also never went on a deployment where I had to deal with detainees. Someone who had previously been on a deployment and had to deal with detainees might have a better familiarity with the proper procedures and have better training. When I was informed that there was a problem with Mr. Dilawar, SPC Morden was with him. SPC Morden is a trained EMT, as am I. I am an EMT in the civilian world I had to go to training for that for two nights a week for about five months. I did say that there were lots of rumors of what might have killed the two men, some of it was someone else might have done it, some of it was it was dehydration, and the list went on. It would be fair to say a lot of people were hoping that it was not going to be the actions of the people in the confinement facility. I did not really think my actions led directly to Mr. Habibullah's death because, who would ever think that hitting someone in their leg would kill them? I said in my sworn statement that I was the guard over top of him and my job was to keep him safe, keep him fed, keep him watered and get him to the bathroom, and I did not do that. And because of that, there was some guilt where I felt like I was responsible. I could not get him to drink. I could not get him to eat. And I was the person in charge of him when he died and I was the one who hit him shortly before his death. Nichols said all the strikes he delivered were to Mr. Habibullah; he did not say anything about delivering strikes to Mr. Dilawar. The incident which I described, when I said that CID convinced me to say in a sworn statement that PFC Brand and I had delivered blows to Mr. Dilawar -- that is a different incident from the thirty blows PFC Brand told me about in Qatar. There was an incident where PFC Brand and I went in and struck a detainee; it was not Mr. Dilawar. I have given CID a number of statements before the statement regarding PFC Brand, Dilawar and I. I have given CID a number of statements where I have not told the truth.

EXAMINATION BY THE IO

Questions by the IO:

I acknowledge that I did deliver a couple of peroneal blows to Mr. Habibullah (412) because I thought he had spit on me. I did testify that, after I delivered those, someone had seen me and counseled me about those. SGT Boland was the one who counseled me about those. He counseled me a couple of minutes after that. He saw me do it, he told me that under the circumstances that it was wrong and that we could not have that kind of behavior. Those were two blows delivered to Mr. Habibullah (PUC 412). There was only one incident when I struck him when he spit on him.

The IO read from a statement on January 29, 2004 in order for witness to clarify.

That incident that I was recounting that was the one I said they had asked me about a story that they had heard, and asked me to clarify it. When I was trying to recall that, I told them I was pretty sure that it was not Dilawar, and that it was long before that. I gave in and said it was Dilawar. I am not saying that that was in fact Mr. Habibullah; I said that was long before them, right when we came into the facility. I am saying that it was not either one of those men. The individual that you have just read to me about is some other detainee. I do not know who that detainee is. I do not remember. That incident did happen before I gave peroneal blows to 412, when I thought the spit on me. I am pretty sure this happened right when we got to the facility, which was a couple months before 412 came in. I only delivered blows to those two detainees. After I got counseled for the blows to 412, I was told never to use Common Peroneal Strikes in that situation. It was my understanding I could use the blows when they were physically combative. Before I testified today, I have not told someone with the government that this was not an accurate recounting of what had happened. I said that on Sunday when I was asked about it I have sat around and thought about it a lot and I know that it was not this guy. The first time I advised someone of that was this past Sunday; it was 1LT Trainor.

RECROSS-EXAMINATION

Questions by the DC:

I just told the IO that the first time I told someone my statement was incorrect was this Sunday. I did repeatedly tell the CID agent taking my statement that it was not true.

REDIRECT EXAMINATION

Questions by the TC:

I signed the sworn statement, I read the statement, and I took an oath to the truth of the statement at some point I told the agent that she was right. The agent convinced me that I must have been mistaken. Now upon reflection over time I have reached the conclusion that was not true and the agent was mistaken.

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

The Article 32(b) Investigation recessed at 0916 hours, 23 March 2005.

The Article 32(b) Investigation reconvened at 0920 hours, 23 March 2005.

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

The IO goes over all of the exhibits.

The IO explained that the logbooks would not be relevant to his decision-making.

The DC wanted the objection noted about the logbooks.

The TC explained that they will continue to coordinate with CID about the logbooks.

The accused did not want to make a statement.

The TC made closing statement.

The DC made closing statement.

The Article 32(b) Investigation adjourned at 1032 hours, 23 March 2005.



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
HEADQUARTERS, US ARMY AIR DEFENSE ARTILLERY CENTER AND FORT BLISS
1733 PLEASANTON ROAD
FORT BLISS, TEXAS 79916

17 March 2005

ATZC-GC

MEMORANDUM FOR

PFC Willie V. Brand, Headquarters and Headquarters Battery, US Army Air Defense Artillery
Center and Fort Bliss, Fort Bliss, Texas 79916
CPT Steven G. Slawinski, US Army Trial Defense Service, Region IV (Fort Bliss Field Office),
Fort Bliss, Texas 79916
John P. Galligan, 315 South Main Street, Belton, Texas 76513

SUBJECT: Protective Order

1. In order to protect national security and pursuant to authority granted under Rule for Courts-Martial 405 and Military Rules of Evidence 505 and 506, I hereby order:

a. That the procedures for protecting against unauthorized disclosure of classified information set forth in this Order, the Military Rules of Evidence, Rules for Courts-Martial, executive orders, statutes, and regulations will apply to all matters concerning the Article 32, Uniform Code of Military Justice, pretrial investigation of charges against Private First Class Willie V. Brand, and any subsequent judicial and administrative hearings.

b. As used herein, the term "classified information or document" refers to:

- i. any classified document (or information contained therein);
- ii. information known by the defendant or defense counsel to be classifiable;
- iii. classified documents (or information contained therein) disclosed to the defendant or defense counsel as part of the proceedings in this case;
- iv. classified documents and information which have otherwise been made known to the accused or defense counsel and which have been marked or described as: "CONFIDENTIAL", "SECRET", or "TOP SECRET".
- v. all documents or information disclosed or made known to the accused or defense counsel related to inspections, visits, and coordination made by representatives of the International Committee of the Red Cross with US forces in Afghanistan.

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c. All such classified documents and information contained therein shall remain classified unless they bear a clear indication that they have been officially declassified by the Government agency or department that originated the document or the information contained therein (hereinafter referred to as the "originating agency").

d. The words "documents" or "associated materials" as used in this Order include, but are not limited to, all written or printed matter of any kind, formal or informal, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, papers, correspondence, memoranda, notes, letters, telegrams, reports, summaries, inter-office and intra-office communications, notations of any sort bulletins, teletypes, telex, invoices, worksheets, and all drafts, alterations, modifications, changes and amendment of any kind to the foregoing, graphic or aural records or representations of any kind, including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tapes, sound recordings of any kind, motion pictures, any electronic, mechanical or electric records or representations of any kind, including without limitation, tapes, cassettes, discs, recording, films, typewriter ribbons and word processor discs or tapes.

e. The word "or" should be interpreted as including "and" and vice versa; "he" should be interpreted as including "she" and vice versa.

f. Those named herein are advised that direct or indirect unauthorized disclosure, retention, or negligent handling of classified information could cause serious and, in some cases, exceptionally grave damage to the national security of the United States, or may be used to the advantage of a foreign nation against the interests of the United States. This Order is to insure that persons subject to this Order will never divulge the classified information disclosed to them to anyone who is not authorized by the originating agency and in conformity with this Order.

g. Persons subject to this Order are admonished that they are obligated by law and regulation not to disclose any classified national security information in an unauthorized fashion.

h. Persons subject to this Order are admonished that any breach of this Order may result in the termination of their access to classified information. In addition, they are admonished that any unauthorized disclosure, possession or handling of classified information may constitute violations of United States criminal laws, including but not limited to, the provisions of Sections 641, 793, 794, 798 and 952, Title 18, United States Code, and Sections 421 and 783(b), Title 50, United States Code. In addition, for those persons who are attorneys, a report will be filed with their State Bar Association.

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2. Appointment of Investigation Security Officer. Ms. Joan Sand, DPTMS, Fort Bliss, Texas, is appointed the Investigation and Court Security Officer.

3. Personnel Security Investigations and Clearances. This case will involve classified national security information or documents, the storage, handling, and control of which requires special security precautions mandated by statute, executive orders, and regulations, and access to which requires a special security clearance.

a. The Convening Authority has been advised that the Investigating Officer has the requisite security clearance to have access to the classified information and documents which will be at issue in this case. The Investigating Officer is to have unfettered access to that classified information necessary to prepare for this investigation, subject to requirement in paragraph 3f, below.

b. The convening authority has been advised that the Government Counsel and military paralegals working on this case have the requisite security clearance to have access to the classified information and documents which will be at issue in this case. The Government Counsel and military paralegals are to have unfettered access to classified information necessary to prepare for this investigation, subject to the requirements in paragraph 3f, below.

c. As a condition of receiving classified information, any retained defense counsel will agree to the conditions specified herein and execute all necessary forms so that the Government may complete the necessary personnel security background investigation to make a determination whether defense counsel is eligible for a limited access authorization. Any retained defense counsel will also sign the statement in paragraph 3d. Upon the execution and filing of the statement set forth in paragraph 3d by any retained defense counsel requiring access to classified information, the Government shall undertake, as expeditiously as possible, the required inquiries to ascertain defense counsel's eligibility for access to classified information. Any detailed military defense counsel given access to the information protected by this order shall not share this information with retained civilian defense counsel until the civilian defense counsel has satisfied the provisions of this order pertaining to gaining access to the information.

d. There are two conditions precedent to obtaining access to the classified information at issue in this case.

i. All individuals, other than the Investigating Officer, Government and detailed defense counsels, military paralegals, and personnel of the originating agency, can obtain access only after having provided the necessary information required for, and having been granted, a security clearance or Limited Access Authorization by the Department of the Army, through the Investigation Security Officer; and

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ii. Each person, other than the Department of Army employees named herein and personnel of the originating agency, before being granted access to classified information must also sign a sworn statement that states:

MEMORANDUM OF UNDERSTANDING

1. I, _____, understand that I may be the recipient of information and intelligence that concerns the security of the United States and that belongs to the United States. This information and intelligence, together with the methods of collecting and handling it, are classified according to security standards established by the U.S. Government. I have read and understand the provisions of the espionage laws (sections 793, 794 and 798 of title 18, United States Code) concerning the disclosure of information relating to the national defense and the provisions of the Intelligence Identities Protection Act (section 421 of title 50, United States Code) and I am familiar with the penalties provided for the violation thereof.
2. I agree that I will never divulge, publish or reveal, either by word, conduct, or any other means, such information or intelligence unless specifically authorized in writing to do so by an authorized representative of the US Government or as otherwise ordered by the Court. I further agree to submit for prepublication review any article, speech, or other publication derived from or based upon experience or information gained in the course of United States v. PFC Willie V. Brand. I understand this review is solely to ensure that no classified national security information is contained therein.
3. I understand that this agreement will remain binding upon me after the conclusion of the proceedings in the case of United States v. PFC Willie V. Brand.
4. I have received, read and understand the Protective Order entered by the Convening Authority on 17 March 2005 in the case of United States v. PFC Willie V. Brand relating to classified information, and I agree to comply with the provisions thereof.

Signature/Date

WITNESS SWORN
AND SUBSCRIBED

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Any MOU with a retained defense counsel shall include a statement expressing his understanding that the failure to abide by the terms of this Order will result in a report to his state bar association. Each such person executing the above statement must file an original with the Investigating Officer and provide an original each to the Investigation Security Officer and the Government Counsel.

e. All other requests for clearances for access to classified information in this case by persons not named in this Order, or requests for clearances for access to information at a higher level of classification, shall be made to the Investigation Security Officer, who, upon approval of the Convening Authority, shall promptly process the requests.

f. Before any person subject to this Order, other than Government counsel, detailed defense counsel, and personnel of the originating agency who have appropriate level security clearances, receives access to any classified information, that person shall be served with a copy of this Order and shall execute the written agreement set for in paragraph 3d.

g. This Order shall apply to any defense counsel of the accused, PFC Willie V. Brand, and to any other persons who may later receive classified information from the US Department of the Army in connection with this case.

4. Handling and Protection of Classified Information.

a. All counsel shall seek guidance from the Investigation Security Officer with regard to appropriate storage and use of classified information.

b. The Investigation Security Officer will provide appropriate physical security protection for any materials prepared or compiled by the defense, or by any person in relation to the preparation of the accused's defense or submission under MRE 505. The materials and documents (defined above) requiring physical security include, without limitation, any notes, carbon papers, letters, photographs, drafts, discarded drafts, memoranda, typewriter ribbons, magnetic recording, or other documents or any kind or description. Classified materials prepared by the defense shall be maintained by the Investigation Security Officer in a separate sealed container to which only the defense counsel shall have access.

c. Classified documents and information, or information believed to be classified shall be discussed only in an area approved by the Investigation Security Officer, and in which persons not authorized to possess such information cannot overhear such discussions.

d. No one shall discuss any classified information over any standard commercial telephone instrument or any inter-office communication system, or in the presence of any person who is not authorized to possess such information.

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e. Written materials prepared for this case by the accused or defense counsel shall be transcribed, recorded, typed, duplicated, copied or otherwise prepared only by persons who are cleared for access to such information.

f. All mechanical devices of any kind used in the preparation or transmission of classified information in this case may be used only with the approval of the Investigation Security Officer and in accordance with instructions he or she shall issue.

g. Upon reasonable advance notice of the Investigation Security Officer, defense counsel shall be given access during normal business hours, and at other times on reasonable request, to classified national security documents which the government is required to make available to defense counsel but elects to keep in its possession. Persons permitted to inspect classified documents by this Order may make written notes of the documents and their contents. Notes of any classified portions of these documents, however, shall not be disseminated or disclosed in any manner or form to any person not subject to this Order. Such notes will be secured in accordance with the terms of this Order. Persons permitted to have access to classified documents will be allowed to view their notes within an area designated by the Investigation Security Officer. No person permitted to inspect classified documents by this Order, including defense counsel, shall copy or reproduce any part of said documents or their contents in any manner or form, except as provided by the Investigation Security Officer, after he or she has consulted with the Convening Authority.

h. Without prior authorization of the Department of the Army, there shall be no disclosure to anyone not named in this Order by persons who may later receive a security clearance or limited access authorization from the Department of the Army in connection with this case (except to or from government employees acting in the course of their official duties) of any classified national security information or national security document (or information contained therein) until such time, if ever, that such documents or information are declassified.

i. The defense shall not disclose the contents of any classified documents or information to any person except those persons identified to them by the Investigating Officer as having the appropriate clearances, and a need to know.

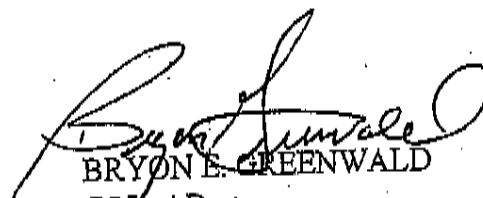
j. All persons given access to classified information pursuant to this Order are advised that all information to which they obtain access by this Order is now and will forever remain the property of the United States Government. They shall return all materials which may have come into their possession, or for which they are responsible because of such access, upon demand by the Investigation Security Officer.

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k. A copy of this Order shall issue forthwith to defense counsel, with further order that the defense counsel advise the accused named herein of the contents of this Order, and furnish him a copy.

5. Nothing contained in this Order shall be construed as waiver of any right of the accused.



BRYON E. GREENWALD
COL, AD
Commanding

ATZC-JA-TDS

16 March 2

MEMORANDUM FOR Investigating Officer

SUBJECT: Pretrial Investigation Witness and Evidence Request -- United States v. PFC Willie V. Brand, HHB, Garrison Command, Fort Bliss, Texas 79916

1. IAW Article 32, Uniform Code of Military Justice (UCMJ) and Rule for Court-Martial (RCM) 405(g)(1)(B), the Defense in the above case requests the following classified and/or "secret" documents be present at the pretrial investigation:

a. Any reports or narratives specifically regarding Afghan detainees "Dilawar" and "Habibulah" at Bagram Detention Facility prepared by military police, military intelligence interrogators, and medical investigators between 25 November 2002 and 31 December 2002.

b. Any notes or narratives regarding the command or member of the Command Judge Advocate's office meeting with members of the International Committee of the Red Cross at Bagram Detention Facility between 1 January 2002 and 31 December 2002.

3. POC is the undersigned (915) 568-1679.

STEVEN SLAWINSKI
CPT, JA
Defense Counsel

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

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

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY:
PRINCIPAL PURPOSE:
ROUTINE USES:
DISCLOSURE:

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

1. LOCATION Embassy Suites Hotel, Cincinnati, OH 45237	2. DATE 24 Jan 04	3. TIME 1123	4. FILE NO. 0134-02-CID369-23533
5. NAME (Last, First, MI) BRAND, Willie V.	8. ORGANIZATION OR ADDRESS 377 th Military Police Company US Army Reserve, 1600 Seymour Avenue Cincinnati, OH 45237		
6. SSN	7. GRADE/STATUS SPC/E-4		

PART 1 - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

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

suspected ~~of~~ Assault / Battery, False Official Statement, Cruelty/Maltreatment of Subordinates, Negligent Homicide

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

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

- or -

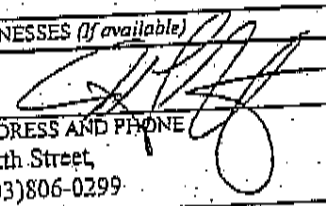
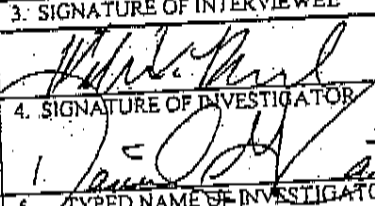
(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want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

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

5. COMMENTS (Continue on reverse side)

Section B. Waiver

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

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

Section C. Non-Waiver

- I do not want to give up my rights:

☐ I want a lawyer.

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

2. SIGNATURE OF INTERVIEWEE

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

0134-02-C10369-2350

PART II - RIGHTS WARNING PROCEDURE

THE WARNING

1. WARNING - Inform the suspect/accused of:

- a. Your official position
- b. Nature of offense(s).
- c. The fact that he/she is a suspect/accused.

2. RIGHTS - Advise the suspect/accused of his/her rights as follows:

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

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

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

- or -

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

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

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

THE WAIVER

"Do you understand your rights?"

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

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

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

"Do you want a lawyer at this time?"

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

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

SPECIAL INSTRUCTIONS

WHEN THE SUSPECT/ACCUSED REFUSES TO SIGN THE WAIVER CERTIFICATE:

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

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY:

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

PRIOR INCRIMINATING STATEMENTS:

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

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

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

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

COMMENTS (Continued)

0134-02-CID369-235

SWORN STATEMENT

File Number : 0134-02-CID369-23533
Location : Cincinnati, OH
Date : 24 Jan 2004 *WMB* Time: 1735 *WMB*
Statement of: BRAND, Willie Ve
SSN :
Grade/Status:
Org/Address : 377th MP Company, US Army Reserve, 1600 Seymour
Avenue, Cincinnati, OH 45237

WMB I, Willie V. BRAND, want to make the following statement under oath: I graduated from high school in 1998. I went in the Reserves in 1998 and attended Basic Training and MP Advanced Individual Training (AIT) at Fort McClellan, AL. I was assigned with the 377th MP Company, Cincinnati, OH where I served until now. In May 99, I went to Camp Ripley, MN and attended a two week 95C (Correctional Specialist) conversion course, so I hold both a Basic MP MOS and the Corrections Specialty. I volunteered to deploy with the 391st MP Bn, Columbus, OH to Kosovo from 1 Sep 2001 to 9 May 2002. We went to Fort Polk, LA and Fort Lewis, WA and conducted almost the same training we did for the Afghan mission. We ran a mock correctional facility and performed as both guards and prisoners; so we could see both sides of things. Our mission in Kosovo was as a guard company in a correctional facility. We got their meals, took them to the bathroom, escorted cleaning crews, made them comply with facility rules. We only used force when threatened or attacked. We sometimes had to put our hands on detainees to move them securely from place to place, but there were no events or conflicts between the guard and detainees. I worked the gates, the towers, roving patrols, the tactical operation center.

About two weeks after I got back from Kosovo, I heard from Corey JONES, that the 377th MP Company was called up for the Afghan mission. JONES was in Kosovo with me. When I decided to go to Afghanistan, we did ten or so days in Cincinnati, getting ready to deploy, mostly it was administrative preparation for movement. We went to Fort Dix, NJ and there we completed Basic Rifle Marksmanship, got our shots, completed forms, and did mock confinement facility operations. The training at Fort Dix was done mostly by us within the platoons, working from a training schedule. I'm assigned to 1st Platoon and was with them during our tour in Afghanistan. For the first couple of months I was there, my platoon worked gates only; we rotated into the Bagram Control Point (BCP) and did our right seat side (on the job training) with 2nd Platoon, I think.

Q: What types of training did you do at Fort Dix?

INITIALS *WMB*

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STATEMENT OF SPC Willie V. BRAND, TAKEN AT Embassy Suites,
Cincinnati, OH, DATED 24 Jan 2004, CONTINUED:

WV: A: Besides hip-pocket training, there was escort procedure, handcuffing techniques, things to run tasks.

Q: How did this training differ from the MP doctrine training you previously received?

A: At the 95C conversion course, they had us role play as detainees first, so we could see the view from the prisoner point of view first. It provided valuable framework for how we should act as guards and what it was like on the other side. At Fort Dix, they had role players as our detainees the training was abbreviated. We did not run all four towers. The PUCs told us we were being way too rough with us, they took time outs and explained. This pause threw off our training rhythm. We did do some good training on escape attempts and the order of what steps to take. Blow the whistle, tell the guy to halt three times in his language, fire a warning shot, then only fire on him if he reached the exclusionary zone.

Q: Was the training adequate to prepare your unit to conduct operations at the Bagram Collection Point (BCP)?

A: Yes,

Q: Did the training you got from Fort Dix personnel concur with MP doctrine you knew from previous training?

A: Yes, the practical exercises could have been better, but the task, condition, standard was the same doctrine I learned before.

Q: What do you mean, by hip pocket training?

A: Stuff done on the side when you have spare time, things that you can do in short time frames and that might be useful.

Q: What kinds of hip-pocket training did you get at Fort Dix, NJ?

A: Tactical reloading your firearm (when injured), survival training, map reading, nothing else pops into my mind right now.

Q: Were there any hip pocket training events that dealt with pressure point control techniques, ^(PPCT) takedowns and self-defense?

A: Yes, PPCT but no strikes. The technique that was taught for a combative person was to use a pressure point to take them to the ground and then to hold them there until they wore themselves out, no blows. The training was given by SGT HANDORE. There were several techniques taught including some moves that used an arm twist, rolling your arm across the back, placing your finger under the nose. I can't recall them all.

Q: Did you ever apply these techniques on anyone at Bagram?

A: Yes, once at Bagram, there was a detainee who was in long cuffs (leg irons on his wrists) and he was being combative with

INITIALS WV

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STATEMENT OF SPC Willie V. BRAND, TAKEN AT Embassy Suites,
Cincinnati, OH, DATED 24 Jan 2004, CONTINUED:

SSG BERKLEY. I had to twist his arm behind him to gain control of him. I was either a control or roving guard that day. It was up in the Isolation Cells.

Q: Do you remember which detainee this was?

A: No.

Q: Was it one of the two men who died?

A: No.

Q: Have you ever heard the term compliance blow?

A: No, what I heard of was a thigh strike called a common pronial strike, which we were told was not procedure, but was common practice because it worked.

Q: Did anyone demonstrate any strikes or blows?

A: No.

Q: Did you ever receive a common pronial strike?

A: Once I think MORDEN did it to me as a joke. It hurt and I asked him, "Hey man, why'd you do that, it hurt?"

Q: What were you trained to do when you took over operations in the BCP? Who taught you.

A: We were taught how to chain people in a standing position, mostly in the isolation cells, sometimes (rarely) in the airlocks of general population. We were taught to escort detainees by grabbing them under the arms and moving them securely from one point to another. We changed that to put one hand on the arm and one on the shoulder. This provided better ability to control the detainee. Two people were required for escorts of most prisoners, except high value or special population detainees.

Q: For movement, how were detainees shackled?

A: Leg irons on their legs, leg irons and hand cuffs on the hands and a hood or goggles. Belly chains were used in the facility but not for movement. Later we got away from hoods and just used blacked out or taped goggles to prevent the detainees from looking around while being moved.

Q: What other techniques or practices were you trained on during your changeover within the BCP?

A: The responsibility of each position within the BCP, tower (catwalk), control, relief, iso guard, RTO and SOG.

Q: Did you receive any use of force training? If so, where?

A: Yes, at Fort Dix, NJ. We were told that we could employ force when we were threatened (life or limb), when the detainee became combative or when authorized by the SOG. We were told that we should use minimum force necessary to control the situation.

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STATEMENT OF SPC Willie V. BRAND, TAKEN AT Embassy Suites,
Cincinnati, OH, DATED 24 Jan 2004, CONTINUED:

Q: What is your understanding of a detainee being combative?

A: When they attack or assault a guard, not mere resistance. If the detainee just wouldn't do something, then we would get more people to carry them up the stairs. That's what 1st platoon went with, we just got a lot of guys.

Q: What did the other platoons do?

A: I don't know for sure.

Q: What other things were you trained on?

A: Admin duties, changing out latrines, the reward system in place for persons under control (PUC) performing task, like cleaning their own latrine. Sometimes we would let them talk as a reward, but only if they spoke in English.

Q: Were you given any guidance, direction or training about delivering strikes to PUCs who did not comply with instructions?

A: That's hard to say.

Q: When did you first see or hear of strikes being delivered to PUCs and under what circumstances?

A: During right seat side, in Iso, a PUC (who I can't recall) was supposed to be standing. They motioned for him to stand, he did, later he laid back down and they went in the cell and stood him back up. He refused to stand and they kneed him in the thigh once. The PUC hunched over and said something in Pashtun. He stayed standing for awhile. If that still didn't work, then they chained him up - so he could not sit down.

Q: Was this contrary to your training on when force could be applied?

A: When we were training at Dix, we used the guidelines there, but when we got over to Bagram, the standard changed and we did things differently.

Q: When you were at Dix, did you receive a book with the rules of engagement and/or use of force in them?

A: Yes, it had rules of engagement, but it did not address strikes at all. The rules of engagement were geared toward a combat situation, what to do if fired upon, but it really didn't address things within the facility.

Q: Were you comfortable with the standard practice in the facility of striking prisoners with compliance blows?

A: No, I thought to myself, well, this is different. But I learned a long time ago that you don't ask questions and you just do what you are told. So I did what everyone else did. Our SOG and Squad Leaders were there and saw this stuff, they made no move to correct it, so I took it that the practice was tolerated or allowed.

INITIALS *WVB*

Q 134-02-01036

STATEMENT OF SPC Willie V. BRAND, TAKEN AT Embassy Suites,
Cincinnati, OH, DATED 24 Jan 2004, CONTINUED:

WVB made no move to correct it, so I took it that the practice was tolerated or allowed.

Q: Did you ever strike a detainee with a common pronial strike?

A: Yes, a detainee (maybe one of the two who died) was kicking the door and we had adjusted his chains multiple times

Q: What was the nature of your contact with HABIBULLAH (PUC 412), the first detainee who died?

A: He was Iso Cell 7, on the first floor. I remember because it was the bigger cell. He was chained to the ceiling standing. He had leg irons on his feet, leg irons and short (hand) cuffs on his wrists. His hands were together and chained to the ceiling by a long leg iron with his hand at about the level of his head. He was also hooded. The chaining was at the direction of MI, and we made whatever adjustments they told us to. I don't recall the MI direction on him or how he was originally placed in that position, but he was like that when I came on shift. HABIBULLAH was hooded and he kept pulling up on his hood to get it off his face. We went into the cell a few times and pulled the hood back down and this went back and forth, it ending with him pinning his head to his arm or neck to prevent us from putting the hood back down. I struck him once with my right knee to his right thigh, he wouldn't stop pinching his head against his arm, so struck him in the thigh with my knee again and he loosened up and we put the hood back on and put goggles over the hood to keep it down. He said "Allah, allah, allah" - I think it's the equivalent of saying "Oh, god, oh god" it's their god.

Q: How hard did you hit him?

A: It wasn't as hard as I could knee him, but it was hard enough to hurt. I saw him tense his legs and his feet came off the floor, when his feet came back down, he still wouldn't comply and it took collectively about four strikes (two on either leg) before he relaxed and let us put the hood back down and put the goggles on. I grabbed a hold of his shirt and the back of his neck and stabilized him and then struck him with my knee. I think the other MP that was with me (either CAMMACK or BREWER) struck him in the other leg once or twice. *HE* *WVB* ~~They~~ *they* ~~kneed~~ *kneed* him about as hard as I did.

Q: Did delivering the blows hurt you?

A: No.

Q: Did you have to log the blows or advise anyone of the event?

INITIALS *WVB*

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STATEMENT OF SPC Willie V. BRAND, TAKEN AT Embassy Suites,
Cincinnati, OH, DATED 24 Jan 2004, CONTINUED:

WV: A: No, later we had to log it after the death, but at that time no we didn't have to tell anyone or record it, or pass it on.

Q: Did you have to get anyone's permission to deliver common pronial strikes?

A: No. It was used to persuade them to comply with direction. I wasn't taught to use as punishment, but as a standard practice to get them to comply with directives.

Q: Did you have any other contact with HABIBULLAH?

A: I'm not sure. I thought I recalled seeing and hearing about him, was when the ambulance was called and he was carried out on a stretcher. CAMMACK was working on him, doing CPR, but CID told me that was the second detainee who died.

Q: Did you have any conversations about the event where you struck HABIBULLAH?

A: CAMMACK and I talked about it with the SOG (probably SSG BERKLEY). Whenever something went down, he tried to make sure he was there and he told us that it was okay and to pass it on to the next shift. His reaction was no big deal.

Q: How did you feel about his reaction?

A: It wasn't according to doctrine, but that was standard practice and the NCO wasn't upset, so who was I to say any different. It was wrong from what we were taught at Dix and what we did at Kosovo, but that was how things were done.

Q: What was the procedure or standard practice for a detainee getting medical attention?

A: The doctor made regular rounds and saw people in the BCP and if he thought it was serious, they would go to the hospital. Other than that, if we saw them limping, complaining or favoring some body part that made it seem like they were injured, we would tell the doctor, so he could check on them.

Q: Were strikes reported to the doctor, so he could check on detainees who received blows?

A: No.

Q: Did people outside the guard force know the MPs was delivering blows to detainees?

A: No, I didn't even know, when I was working gates, I didn't find out it was being done until I started working inside the facility.

Q: Did HABIBULLAH ever indicate to you that he was in pain?

A: When I struck him yah, but not after, he just stood there.

Q: Do recall seeing HABIBULLAH (PUC 412) walk anywhere?

INITIALS WV

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STATEMENT OF SPC Willie V. BRAND, TAKEN AT Embassy Suites,
Cincinnati, OH, DATED 24 Jan 2004, CONTINUED:

WAB A: The only place he would have walked was to the bathroom,
under escort from the control guards. It's honestly been so
long I just can't remember.

Q: Do you recall having any other contact with HABIBULLAH (PUC
412)?

A: No. I don't think so, I can't recall.

WAB Q: DO you know who caused the death of HABIBULLAH (PUC 412)?

A: No.

Q: Did you cause the death of HABIBULLAH (PUC 412)?

A: No.

Q: When did you learn of the death of HABIBULLAH (PUC 412)?

A: I don't remember when I learned of the death, I just
remember that I found out it was the guy from Iso (HABIBULLAH)
that had been carried out.

Q: Did anyone discuss the death of HABIBULLAH?

A: Just rumors, first they said it was a heart attack, then it
was rumored the common pronial strikes caused the death. When I
was interrogated by CID, the first time, that was when I knew
for sure, because they told me the blows had caused the death.

Q: Did that surprise you at all?

A: Yeah, I didn't know that someone could die like that.

Q: How did that make you feel?

A: It was like "gosh, we shouldn't have been touching them like
that. It was a real eye opener having someone die that you
played a part in so to speak".

Q: After the first death, did the practice of delivering common
pronial strikes change?

A: They told us we had to log it, they did not ask that it be
discontinued. That was what our shift did, I don't know about
what days ^{shift} did. I know that our SOGs wanted us to be better than
the other shift, so they held us to a higher standard.

Q: Who else struck HABIBULLAH?

A: Whew, I really don't want to guess this, but myself,
CAMMACK, MORDEN, a number of different people. CAMMACK struck
him when he was in the cell with me. MORDEN told me CAMMACK
struck HABIBULLAH, the night he died for spitting on him.
CAMMACK only said the PUC spit on him.

Q: Did MORDEN tell you he struck a detainee?

A: Yes, but I don't recall which one.

Q: What shift were you working when you interacted with PUC
412?

A: Nights.

0134-02-CID369-2351

STATEMENT OF SPC Willie V. BRAND, TAKEN AT Embassy Suites,
Cincinnati, OH, DATED 24 Jan 2004, CONTINUED:

WVB Did the day shift pass on any information pertaining to PUC 412 during shift change before his death?

A: Yes, they would have passed it on to whoever relieved them. They didn't pass on anything that day to me.

Q: Do you know if PUC 412 was in standing restraints during the day shift before his death?

A: He was in standing restraints when we came on shift, but I don't know how long he had been like that.

Q: Do you know if the day shift had to apply any pressure point control tactics or common pronial strikes during the day shift before his death?

A: No.

Q: Did PUC 412 complain of any medical problems before or during your shift?

A: No.

Q: Was PUC 412 yelling a lot during the night shift?

A: Not that I recall, he was talking to himself a lot, though, he was mumbling, too.

Q: Would you or anyone else have known if PUC 412 was complaining of a medical condition during your shift?

A: No.

Q: What do you recall related to events involving the second detainee who died, BT-421, which CID has told me was named DILAWAR?

A: I recall that on the day he died, DILAWAR was mule kicking the door of the isolation cell. We could hear the sound of the kicks as he struck the door. I recall he was held within the isolation cells on the second floor of the facility. He was held within the isolation cell that was the first one on the left as you were standing at the guard station. He was positioned in leg shackles on his feet. There was a pair of short cuffs, one set on each wrist. These were fastened to leg shackles which had been fastened to the wire ceiling of the isolation cell. His arms were positioned out to his side, not directly over his head. I watched as Mr. DILAWAR would reach up and grab the loop of the leg shackles from the ceiling at the point where the short cuffs were fastened to them. He would lift both his feet off the ground at the same time and kick on the door of the cell. He did this quite a few times, more than 10 times, before we went in to do anything about it. We decided we had to do something, because I had heard that a detainee was able to knock a door off one of the cells by kicking on it. When we decided to go into the cell, we were going to turn him

INITIALS WVB

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STATEMENT OF SPC Willie V. BRAND, TAKEN AT Embassy Suites,
Cincinnati, OH, DATED 24 Jan 2004, CONTINUED:

WVB
around so he would not be able to kick on the door or see the door anymore. I was working as control, but I can't recall whom I was working with. SSG BERKLEY, SSG HANDORF and another MP went into the cell, I know there were five of us in the cell. When we went in, we loosened one of the restraints holding his arm at a time and turned him around. When we were trying to move him, DILAWAR continued to try to resist us and if there had not been so many of us in the room, he would have tried to assault us. We grabbed him by each arm and then also grabbed his legs together. We turned him around and refastened him to the ceiling with his arms spread apart. I believe SSG HANDORF came up with the idea of fastening a belly chain from the leg shackles fastened to his ankles to the ceiling. When we finished doing this, DILAWAR was able to kick backwards only slightly, but he could not kick forward anymore. I believe DILAWAR was hooded at this point also. We all left the cell, which was resecured. I don't know of any further problems with him during this shift.

Q: Did you strike DILAWAR while you were in the cell assisting in restraining him?

A: No, not at that time I did not.

Q: Did you strike DILAWAR at another time?

A: Yes, I went to the isolation cells during my shift the day before DILAWAR died. I cannot recall the exact time. They tried to keep out most of the light from within the facility and the lights were always on, so it was difficult to determine how much time had passed. I went to the isolation cells to assist SGT CURTIS who was going into DILAWAR's cell to provide him some water. I went into the cell with SGT CURTIS. We removed the hood and SGT CURTIS offered him some water. DILAWAR drank some of the water. We were trying to put the hood back on DILAWAR and he was resisting us. I was standing on the left side of DILAWAR and SGT CURTIS was standing more to the front and off to the right side of DILAWAR. I gave DILAWAR two consecutive common pronial strikes with my knee to the thigh of DILAWAR. He then became cooperative enough that we were able to get the hood back over his head. SGT CURTIS and I then left the isolation cell.

Q: During this shift, the day before DILAWAR died, did you strike DILAWAR at any time, other than you have already described within the statement?

A: I was working in the area of the isolation cells and I entered DILAWAR's cell to offer him some food or water. I

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STATEMENT OF SPC Willie V. BRAND, TAKEN AT Embassy Suites,
Cincinnati, OH, DATED 24 Jan 2004, CONTINUED:

removed his hood and offered him the food and water. I am pretty sure he declined and when I tried to put the hood back him that was not going to happen. He was being resistant by moving his head around and moving his arms. I don't recall who was in the cell with me, but I had to deliver a common pronial in order to get the hood back on.

Q: Why can't you clearly recall the circumstances of the times you delivered blows to HABIBULLAH and DILAWAR?

A: They were not the only PUCs I delivered blows to. I did it to a lot other PUCs, who did not die. It happened a lot, it was standard practice to pop someone who did not comply. These two guys died, but I probably kneed 20 or so PUCs total and I just can't differentiate between the rest of the PUCs and the ones who died. Each time I entered a cell, other guys were with me, but who was with me for each specific incident - it just don't know there were too many.

Q: Did you know that striking a PUC who was restrained and no threat to you was wrong?

A: Yes.

Q: If you know it was wrong, why did you do it?

A: It was morally wrong, but it was SOP. Really it wasn't a written down SOP, but it was standard practice and it was what was routinely done, so I just went along with what everyone else was doing.

Q: Did anyone ever talk with you about what to say to investigators?

A: Tell the truth about what you know and tell them what you should have been doing - "use the minimum force necessary". I think it was SSGT HANDORE who told me that.

Q: Did you deliberately mislead CID in your earlier interview?

A: No, I answered all the questions they asked me, but they never asked me about the other PUCs.

Q: What do you consider excessive or abusive force against detainees?

A: Based on the practice in the BCP, in that situation, I believe excessive or abusive force would be delivering common pronial strikes longer than you needed to - to get the PUC to do what you wanted, just hitting them for no reason, or choking them or twisting on their cuffs.

Q: Did you observe anyone doing the actions you described above?

A: Yes, Corey JONES would twist on detainees cuffs to get them to move faster. CAMMACK, EVANS and I told SFC HAWKINS about

Q 134-02-C10369-2351

STATEMENT OF SPC Willie V. BRAND, TAKEN AT Embassy Suites,
Cincinnati, OH, DATED 24 Jan 2004, CONTINUED:

Q: Did MI instructions always come from Rick?

A: No, there were others, multiple other MI people, men.

Q: Did you observe any MI interrogation sessions with detainees?

A: No. We dropped them off and left the area, we wouldn't even stand by the door.

Q: Did you observe any detainees come out of MI interviews shaken, or injured?

A: No broken bones, but not the same as they went in. It was obvious in the ways they walked out, limping, hurt and leaning on us.

Q: Did you observe either of the two detainees who died, come from an MI interview injured or weakened?

A: No.

Q: When did your assaults upon detainees start and when did they stop?

A: After the Relief in Place (RIP), when I started working in Isolation, it started. That was around the first part of Nov 2002. It ended when the second detainee died in early December 2002. When the first one died, we started logging strikes, when the second one died strikes were discontinued as standard practice.

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

A: No.

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

0134-02-010369-2350

STATEMENT OF SPC Willie V. BRAND, TAKEN AT Embassy Suites,
Cincinnati, OH, DATED 24 Jan 2004, CONTINUED:

WV

AFFIDAVIT

I, Willie V. BRAND, HAVE READ OR HAVE HAD READ TO ME THIS
STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 13. I FULLY
UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE
STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE
INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I
HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR
REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION,
UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

Willie V. Brand
(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to
administer oaths, this 24th day of January 2004 in Cincinnati,
OH.

Angela G. Birt
(Signature of Person Administering Oath)

SA Angela G. Birt, 3615

(Typed Name of Person Administering Oath)

Article 136 (b) 4 UCMJ

(Authority to Administer Oath)

Daniel G. Cartor
SA Daniel G. CARTOR, 3609
HQ, USACIDC, 6010 Sixth Street,
Fort Belvoir, VA 22060

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

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

LOCATION: CINCINNATI, OH

DATE: 3 FEB 04 TIME 0811

FILE NUMBER: 0134-02-CID369-23533-5H9B

NAME (Last, First MI): BRAND, WILLIE V SSAN:

GRADE / STATUS: SPC

ORGANIZATION OR ADDRESS: 377TH MP CO, USAR, CINCINNATI, OH, 45237

RIGHTS WAIVER/NON-WAIVER CERTIFICATE

The investigator whose name appears below told me that he/she is with the United States Army Criminal Investigation Command as a Special Agent and wanted to question me about the following offense(s) of which I am suspected/accused: **NEGLIGENT HOMICIDE; ASSAULT; FALSE STATEMENT**
 Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights: *WMB*

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

- or -

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

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

5. COMMENTS: Have you been advised of your legal rights and requested legal counsel in the past 30 days? *No WMB*

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

Witness# 1

Signature of Witness

*SA ANGELA C. BIER**HQ, 11th MP BATTALION, INV OPS DIV, FT BELVOIR, VA*

Witness# 2

Signature of Witness

Signature of Interviewee

Signature of Investigator/Special Agent

*George CHIGI*11th Military Police Battalion (CID)
Fort Hood, TX 76544

NON-WAIVER CERTIFICATE

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

Signature of Interviewee: _____

SWORN STATEMENT

File Number : 0134-02-CID369-23533
Location : Cincinnati, OH
Date : 3 Feb 2004 *WMS* Time: 10:22 AM *WMS*
Statement of: BRAND, Willie Ve
SSN :
Grade/Status: E-4 *WMS*
Org/Address : 377th MP Company, US Army Reserve, 1600 Seymour
Avenue, Cincinnati, OH 45237

WMS I, Willie V. BRAND, want to make the following statement under oath: I've been advised of my rights and elected to make this statement voluntarily to clarify aspects of earlier statements, about the situations and deaths at Bagram Air Base, Afghanistan in December 2002. I've been asked specific questions by SA CHIGI and SA BIRT, about things I can recall related to the death of the detainee named DILAWAR (PUC 421).

Q: How many times at the most did you strike DILAWAR (PUC 421) and under what circumstances?

A: Somewhere in the area of 37 times, less than 40 for sure. There was one time, which I did not remember before, where I told DILAWAR that "That's it", implying I was fed up with him. And I said I was going to give him "15 common pronial strikes in each leg". Then I delivered the blows. When I recounted the story later, that is the way I told it. I told people that I had to switch knees because my leg got tired. I'm not absolutely certain I delivered 30 strikes at that time. That was the number I said, but it may have been a few more or less than that. There were also another 5 to 7 times I struck him with knee strikes, during times when he was being non-compliant.

Q: Where did the 30 knee strikes occur?

A: DILAWAR was restrained in the Isolation Cell are on the top floor, in the first cell on the left, I cant' recall the number of the cell.

Q: How was DILAWAR restrained at the time you delivered the thirty blows?

A: He was chained to the ceiling. His hands were either together over his head or out to his side. He was wearing a set of short cuffs (handcuffs) and there was a long (leg iron) connecting him to the hesco wire ceiling. I can't recall the configuration of his restraints, only that he was restrained in one of the two ways I described. His legs would have been shackled together with a set of leg irons, at the ankles. His feet would have been touching the floor.

Q: Do you recall what DILAWAR did to provoke this response from you?

INITIALS *WMS*

PROSECUTION EXHIBIT 6

Page 1 of 4

STATEMENT OF SPC Willie V. BRAND, TAKEN AT Embassy Suites,
Cincinnati, OH, DATED 3 Feb 2004, CONTINUED:

WVB
A: No.

Q: Who else was present when these thirty blows were delivered?

A: I don't really recall.

Q: Which leg did you use strike him with?

A: My right at first, then my left.

Q: Where (on his legs) did you strike DILAWAR (PUC 421), during these thirty blows described?

A: Above the knee on the side. I struck him on the outside of his mid-thigh, with my kneecap.

Q: Do you remember any other times you struck DILAWAR (PUC 421)?

A: There was a time when I was in the Isolation Cell with SGT Thomas CURTIS trying to put DILAWAR's hood back on and DILAWAR was not cooperating, so I gave him a couple knee strikes.

Q: Do you recall an incident where you and CAMMACK were in the Isolation Cell with DILAWAR (PUC 421)?

A: Not specifically, but if he says it happened, it probably did. I can't recall that instance.

Q: How was DILAWAR being non-compliant? What behavior was DILAWAR engaged in that provoked a response from you?

A: Not putting his hood back on, mule kicking the door, pulling his hood off.

Q: Did your knee become sore from delivering blows to DILAWAR?

A: No, not really, but when I retold the story I do remember exaggerating and saying I hit him so much and so hard that my knee got sore. I don't know if I actually kneed him thirty times.

Q: How do you feel about the death of the detainee(s)?

A: On my shift (nights), after the first one, it was from too many strikes, so we had to log each blow so we could keep track of how many were done over time. After the second death, we stopped hitting them and stopped chaining them up over their head. We could still chain them to the door, but their hands could be no higher than their shoulders.

Q: How was it recorded after the first death?

A: It was written in the logbook, in the Iso Cell. Each Iso block of six cells, had a log book. We would write in the book, each time we hit a detainee.

Q: Did you record each blow you delivered to DILAWAR (PUC 421) in the Iso Cell logbook?

A: I thought I did, but not the 30 times I kneed PUC 421.

Q: Did you think giving common pronial (knee) strikes was wrong?

INITIALS *WVB*

STATEMENT OF SPC Willie V. BRAND, TAKEN AT Embassy Suites,
Cincinnati, OH, DATED 3 Feb 2004, CONTINUED:

WVB
A: No, not wrong, wrong. Necessary to achieve what you wanted to get them to do.

Q: Do you think delivering thirty common pronial (knee) strikes was excessive?

A: Only if I was doing it hard. I think I was hitting him say "3" on a scale of 10.

Q: Were you required to get permission to give a common pronial strike?

A: No, when I trained in the Bagram Control Point (BCP), the shift that trained us, taught us to use common pronial knee strikes as a matter of common practice.

Q: Did anyone in leadership deliver or know about the practice of delivering common pronial (knee) strikes?

A: Yes, all of them knew.

Q: Did you see anyone in leadership deliver strikes?

A: No. I heard about one time SSG BERKLEY used his hand to strike the ribcage of a detainee who was downstairs on the main floor in general population.

Q: Did you ever see anyone else strike DILAWAR (PUC 421)?

A: I saw SPC MORDEN strike and SGT BREWER. I heard SPC BROADY delivered kicks to the detainees. He supposedly stood off the side and delivered sidekicks to them.

Q: After the first death, were you given instructions about changes in policy for delivering strikes or recording them?

A: Just to record them, not to stop doing it. There was also no requirement to get permission nor any limit placed on the number of strikes you could give.

Q: Where did you learn to give common pronial (knee) strikes?

A: During my right seat ride (OJT) in the BCP, I was taught by other 377th MPs. We were told it "hurt like a bitch" and I learned this when MORDEN came up beside me and gave me one as a joke and it hurt like hell.

Q: How do you feel about the deaths of those two men?

A: It was an accident, but it could have been avoided if we knew what a common pronial strike could do.

Q: Do you feel responsible for the deaths of those two men?

A: Well, Kinda. Everybody played their part, but yeah, I suppose so.

Q: Is there anything you wish to add to or delete from this statement at this time?

A: No.

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

INITIALS *WVB*

Page 3 of 4

FOR OFFICIAL USE ONLY

STATEMENT OF SPC Willie V. BRAND, TAKEN AT Embassy Suites,
Cincinnati, OH, DATED 3 Feb 2004, CONTINUED:

WVW AFFIDAVIT

I, Willie V. BRAND, HAVE READ OR HAVE HAD READ TO ME THIS
STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 4. I FULLY
UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE
STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE
INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I
HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR
REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION,
UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

Willie V. Brand
(Signature of Person Making Statement)

Subscribed and sworn to before me, a person authorized by law to
administer oaths, this 3rd day of February 2004 in Cincinnati,
OH.

Angela G. Birt
(Signature of Person Administering Oath)

SA Angela G. Birt, 3615

(Typed Name of Person Administering Oath)

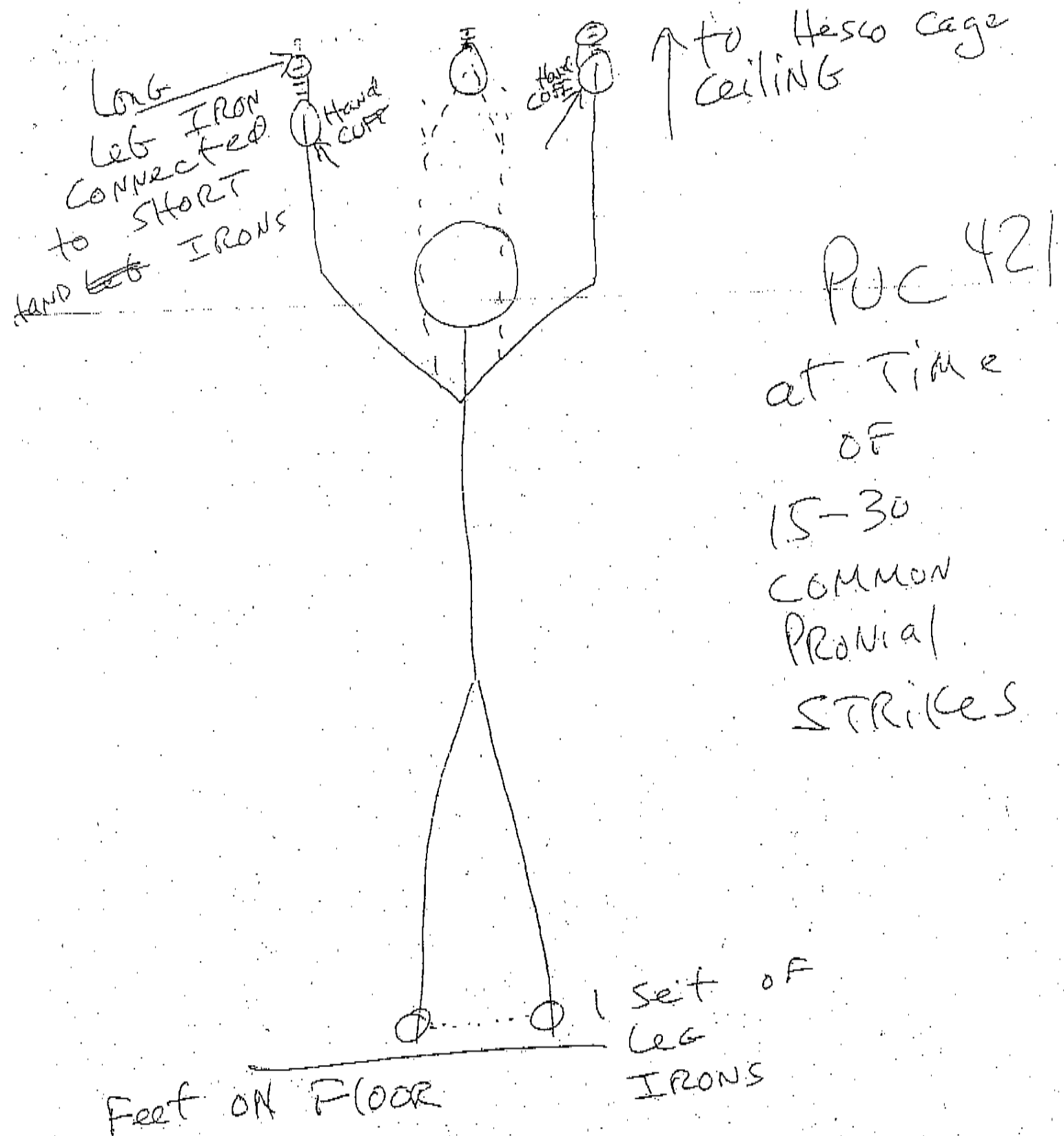
Article 136 (b) 4 UCMJ

George Chigi
(Authority to Administer Oath)

SA George CHIGI, 1724
HQ, USACIDC, 6010 Sixth Street,
Fort Belvoir, VA 22060

INITIALS WVW

FOR OFFICIAL USE ONLY



Sketch BY SA George Chigi, 1724
3 FEB 04 0935 WMB WMB

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

DATA REQUIRED BY THE PRIVACY ACT

0134-02-C10369-23533

AUTHORITY:

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

PRINCIPAL PURPOSE:

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

ROUTINE USES:

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

DISCLOSURE:

Disclosure of your Social Security Number is voluntary.

1. LOCATION 87TH MP DET. (CID), APO AE 09354	2. DATE 21 DEC 02	3. TIME 0310 WVB	4. FILE NO
5. NAME (Last, First, MI) BRAND, WILLIE E. V.	6. ORGANIZATION OR ADDRESS 377TH MP CO. APO AE 09354		
7. SSN	7. GRADE/STATUS SPC/RESERVES		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

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

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

- I do not have to answer any questions or say anything. WVB
- Anything I say or do can be used as evidence against me in a criminal trial. WVB
- (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both. WVB
- (For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.
- If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below. WVB

5. COMMENTS (Continue on reverse side)

Section B. Waiver.

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

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

Section C. Non-waiver

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

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

PART II - RIGHTS WARNING PROCEDURE

THE WARNING

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

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

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

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

- or -

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

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

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

THE WAIVER

"Do you understand your rights?"

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

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

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

"Do you want a lawyer at this time?"

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

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

SPECIAL INSTRUCTIONS

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

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

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

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

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

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

COMMENTS (Continued)

0134-02-CID369-23533

Sworn Statement

LOCATION: Bagram Airfield, Afghanistan, APO AE 09354

DATE: 21 Dec 02

TIME: 0430Z WVB

NAME: BRAND, Willie V.

SSAN

RANK: SPC/Reserves

ORGANIZATION: 377TH MP Company, Bagram Airfield, Afghanistan, APO AE 09354

I, Willie V. BRAND, want to make the following statement under oath:

I was in charge of the Isolation Cell one day that BT-412 was in one of the cells. I had problems with him all night on the night shift. He was uncooperative with everything we tried to do with him, like take him to the latrine and trying to keep his hood on him. He was very uncooperative, so I had to knee him in the right thigh one time. I kneeed him about three times in a row, which stopped him enough to cooperate for a little while. I also had to strike him one other time, but I don't remember when. I struck him once in the thigh. Those were the only times I ever struck him. I went into his cell numerous times that night to try to take him to the bathroom, he was uncooperative the entire time. That was the only time I was on Isolation that I had to deal with him, I did have to deal with him when I was on control, where we escort the detainees, but I never had to strike him during those times. I was also working the Isolation cells during one shift when BT-421 was in an isolation cell, the day before he died. He was the most uncooperative person I've ever seen in the cell. He was also combative that shift, he would kick at us and would not eat very much at all. I had to knee him on the right thigh once while I was working the Isolation cells because he was resisting putting his hood back on. The next shift, when SGT CURTIS was in charge of the Isolation cells, I went upstairs to assist the guards with getting him to drink some water, after drinking water he wouldn't let us put his hood back on, so I struck him once on the right thigh with my knee. I never had any other incidents with BT-421 after that, the next time I saw him they were doing CPR on him, which was that same night.

Q: When you struck BT-412, how hard would you say you struck him?

A: I wouldn't say extremely hard, just hard enough to get him to cooperate.

Q: On a scale of 1 to 10, with 10 being the hardest, how hard would you say?

A: I would go, maybe a 7.

Q: How hard would you say you struck BT-421?

A: I would say about the same, maybe a little less with him. He was a little more tired than the other guy and didn't resist quite as much as BT-412.

Q: Did you see anyone else strike BT-412?

A: Yes, I can't remember who it was, but somebody went into the cell with me and also struck him. They struck him on the thigh also, about once or twice. I know it wasn't SGT HUMPHREY or SPC MORDEN, but I can't remember who it was.

Q: How hard would you say they struck him?

A: About the same as I did.

Initials of Person Making Statement

WVB

Page 1 of 4 Pages

Exhibit: _____

0134-02-CID369-23533

Statement of SPC Willie V. BRAND, taken at Bagram Airfield, Afghanistan, APO AE 09354, on 21 Dec

02, continued:

Q: Did you see anyone else strike or get rough with him?

A: I don't think so.

Q: Did he ever complain about pain?

A: I don't know.

Q: Was he ever examined by a doctor or a medic while he was in the Isolation cell?

A: Not that I know of.

Q: Did anyone ever check his thighs or legs to see if there was any bruising to them?

A: No.

Q: Did you see anyone else strike BT-421?

A: Yes, I saw SGT HUMPHREY, SPC MORDEN strike him. I heard SGT BERKELY had to strike BT-412, but I didn't see it.

Q: How did they strike him?

A: SGT HUMPHREY and SPC MORDEN both kneed BT-421 in the thigh, but I can't remember what thigh or how many times. I didn't see SGT BERKELY strike BT-412, but I heard he had to strike BT-412 because he was being combative. I don't where he struck him or how many times.

Q: How hard would you say SGT HUMPHREY and SPC MORDEN struck him?

A: I would guess the same as mine.

Q: Did you see anyone else strike him or get rough with him at any other time?

A: I can't think of anything or anybody.

Q: Did he ever complain about any pain?

A: I don't speak the language, so I don't know. The doctor had made a few rounds during the night shift back then but I don't know if he saw him. I don't know if he gave him any medications or not.

Q: Did he examine him?

A: No, he doesn't usually examine the detainees unless there is a specific reason to.

Q: Did anyone ever check his thighs or legs to see if there was any bruising to them?

A: As far as I know on my shift, probably not.

Q: Is it standard procedure to physically examine the detainees on a daily basis?

A: No.

Q: Do you pass on to the next shift how many times and where you struck a detainee?

A: No, usually all we pass on is what they're eating, what kind of problems they gave us, if they need to see a doctor, or any other requests the detainees have. Some of them speak English.

Q: Is it recorded anywhere?

A: It wasn't then, but it is now.

Q: If a detainee asks for a doctor, do they get to see one?

A: Yes, but they don't go to the hospital unless its serious.

Q: Did you ever see either BT-412 or BT-421 strike anyone?

A: No, I didn't. BT-421 did try to kick us, and I heard about BT-412 swinging at a guard, but I didn't see it or know much about it.

Initials of Person Making Statement

WVB

Page 2 of 4 Pages

Exhibit: _____