

PROCEEDINGS OF A GENERAL COURT-MARTIAL

The Military Judge called the court-martial to order at 0901, 5 May 2005, at Fort Bliss, Texas, pursuant to the following orders:

Court-Martial Convening Order Number 24, Headquarters, United States Army Air Defense Artillery Center and Fort Bliss, dated 14 October 2005.

END OF PAGE.

DEPARTMENT OF THE ARMY
Headquarters, U.S. Army Air Defense Artillery Center and Fort Bliss
Fort Bliss, Texas 79916-0058

14 October 2004

COURT-MARTIAL CONVENING ORDER
NUMBER 24

1. Pursuant to paragraph 1, General Order No. 3, Department of the Army, 19 January 1981, a general court-martial is convened with the following members:

COL JOHN E. SEWARD, AD, HHC, USASMA
COL KENDAL W. CUNNINGHAM, AD, HHB, 6TH ADA BDE
LTC JOSEPH A. SIMONELLI JR., AD, HHB, 5-52D ADA, 11TH ADA BDE
LTC MICHAEL S. MALONEY, AD, HHB, 6TH ADA BDE
MAJ KEVIN F. CIOCCA, AD, HHB, 31ST ADA BDE
MAJ PAUL M. DAVIS, QM, HHB, USAADACENFB
MAJ CAROLYN S. BIRCHFIELD, AD, HHB, 3-2D ADA, 31ST ADA BDE
MAJ TINA L. HOLT, QM, HHB, 32D AAMDC
CPT ROGER T. DELAHUNT, AD, HHB, 2-43D ADA, 108TH ADA BDE
CPT AHMAD H. YASSIN, AD, HQ/A BTRY, 3-6TH ADA, 6TH ADA BDE

2. In all cases in which the accused submits a request pursuant to Article 25(c), UCMJ, that enlisted members serve on the court-martial panel, the court will be constituted as follows:

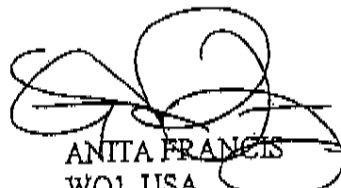
COL JOHN E. SEWARD, AD, HHC, USASMA
COL KENDAL W. CUNNINGHAM, AD, HHB, 6TH ADA BDE
LTC JOSEPH A. SIMONELLI JR., AD, HHB, 5-52D ADA, 11TH ADA BDE
LTC MICHAEL S. MALONEY, AD, HHB, 6TH ADA BDE
MAJ KEVIN F. CIOCCA, AD, HHB, 31ST ADA BDE
CSM RICHARD S. CLEM, USA, HHB, 3-43D ADA, 11TH ADA BDE
SGM PATRICIA A. MCNAIR, USA, HHC, USASMA
SGM RYAN P. JONES, USA, HHB, 1-7TH ADA, 108TH ADA BDE
1SG EVARISTO TORRES JR., USA, D BTRY, 3-43D ADA, 11TH ADA BDE
1SG CHARLIE E. DAVIS, USA, 208TH SIG CO, 108TH ADA BDE

3. All cases referred to the general court-martial convened by Court-Martial Convening Order Number 14, this headquarters, dated 15 September 2003, in which the court has not yet assembled, and which are scheduled for trial on or after 15 October 2004, will be brought to trial before the court-martial hereby convened.

BY COMMAND OF MAJOR GENERAL VANE:

DISTRIBUTION:

- 1 - Each Panel Member
- 1 - Reference Set
- 1 - Record Set


ANITA FRANCIS
WO1, USA
Legal Administrator

PERSONS PRESENT

LTC MARK SPOSATO, Military Judge;
1LT DAVID TRAINOR, Trial Counsel;
MAJ CHRISTOPHER CARRIER, Assistant Trial Counsel;
MR. JOHN P. GALLIGAN, Civilian Defense Counsel; and
CPT STEVEN SLAWINSKI, Defense Counsel.

PERSONS ABSENT

The members.

SSG Michelle Lane was the detailed court reporter and had previously been sworn [but the transcription of this portion of the record was done by Robert Michael].

The Trial Counsel announced the legal qualifications and status as to oaths of all members of the prosecution, and that they had been detailed by COL Mark Rivest.

The Trial Counsel further stated that no member of the prosecution had acted in any manner which might tend to disqualify them.

The Military Judge advised the accused of his rights to Defense Counsel.

The accused stated he understood his rights to counsel, and requested that he be represented by Mr. Galligan and CPT Slawinski.

The detailed Defense Counsel announced the legal qualifications and status as to oaths, and that he had been detailed by LTC Edward O'Brien.

The Defense Counsel stated that he had not acted in any manner which would tend to disqualify him in the court-martial.

The Civilian Defense Counsel announced his licensure and status with regard to his bar memberships.

The Civilian Defense Counsel further stated that he had not acted in any manner which would tend to disqualify him in the court-martial.

The Civilian Defense Counsel was sworn in by the Military Judge

1 in accordance with Article 42(a).

2 The Military Judge announced that he had been properly certified
3 and sworn, and that he detailed himself to the court-martial.

4 The Trial Counsel announced the general nature of the charges
5 and additional charge.

6
7 The Military Judge was not challenged for cause.

8
9 The Military Judge advised the accused of his right^{WJD} to request
10 trial before panel members, to include one-third enlisted members,
11 and that no member of that panel would be junior in rank or in the
12 same company-sized unit as the accused. He further advised the
13 accused that he could request trial before a Military Judge alone.

14
15 The accused stated he understood his rights to forum selection.

16
17 The Defense Counsel requested to defer forum selection.

18
19 The Military Judge granted that request.

20
21 The accused was arraigned on the following charges and
22 specifications:

23
24 THE CHARGE SHEET FOLLOWS AND IS NOT A NUMBERED PAGE.

25
26 END OF PAGE

27
28

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) BRAND, Willie V.		2. SSN	3. GRADE OR RANK SPC PC	4. PAY GRADE E4 E-3
5. UNIT OR ORGANIZATION		6. CURRENT SERVICE		
		a. INITIAL DATE 7 JAN 97		b. TERM 8 years
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED Restriction to Post B155 None		9. DATE(S) IMPOSED 24 Jan 05 to 17 Aug 05 N/A
a. BASIC 1891.50	b. SEA/FOREIGN DUTY 1891.50	c. TOTAL 1891.50		

II. CHARGES AND SPECIFICATIONS

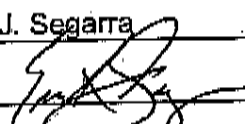
10. CHARGE: I Violation of the UCMJ Article 128, Assault

Specification 1. In that SPC Willie V. BRAND, U.S. Army, did, at or near Bagram Airfield, Afghanistan, between on or about 5 December 2002 and on or about 10 December 2002, commit an assault upon Dilawar (a/k/a BT 421, BT-421, or PUC 421) by unlawfully striking Dilawar in the legs around 30 times, with a means likely to produce grievous bodily harm, to wit: a knee.

Specification 2. In that SPC Willie V. BRAND, U.S. Army, did, at or near Bagram Airfield, Afghanistan, between on or about 5 December 2002 and on or about 10 December 2002, unlawfully strike Dilawar (a/k/a BT 421, BT-421, or PUC 421) at least twice in the leg with his knee.

Specification 3. In that SPC Willie V. BRAND, U.S. Army, did, at or near Bagram Airfield, Afghanistan, between on or about 5 December 2002 and on or about 10 December 2002, unlawfully strike Dilawar (a/k/a BT 421, BT-421, or PUC 421) at least once in the leg with his knee.

Specification 4. In that SPC Willie V. BRAND, U.S. Army, did, at or near Bagram Airfield, Afghanistan, between on or about 30 November 2002 and on or about 4 December 2002, unlawfully strike Habibullah (a/k/a BT 412, BT-412, or PUC 412) at least twice in the leg with his knee.

Name of the Accuser Erick J. Segarra	Grade O-3	Organization CDR, HHB USAADACEN&FB
Signature 		Date 4 JAN 05

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 4th day of January, 2004, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

David Trainor
Typed Name of Officer

OSJA Forces Command, Fort McPherson
Organization of Officer

O-2
Grade

Judge Advocate

Official Capacity to Administer Oath
(See R.C.M. 307(b) - must be a commissioned officer)

Signature


12.

On 19 JAN, 2005, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

Erick J. Segarra

Typed Name of Immediate Commander

HHB, USAADACEN&FB

Organization of Immediate Commander

CPT/O-3

Grade

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1558 hours, 20 JANUARY 2005 at

76th Military Police Battalion

Designation of Command or

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE ¹

Thomas T. Koesters

Typed Name of Officer

Commander, 76th MP BN

Official Capacity of Officer Signing

LTC/O-5

Grade

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

HQ, USAADACEN&FB

FORT BLISS, TX 79916

19 APRIL 2005

Referred for trial to the general Court-martial convened by CMCO #24

dated 14 October 20 04, subject to the following instructions:² none

By COMMAND of MAJOR GENERAL VANE
Command or Order

ANITA R. FRANCIS

Typed Name of Officer

Legal Administrator

Official Capacity of Officer Signing

CW2

Grade

Signature

15.

On 20 APRIL, 2005, I caused to be served a copy hereof on (each of) the above named accused.

ANTHONY T. SCHAEFER

Typed Name of Trial Counsel

O-3

Grade or Rank of Trial Counsel

Signature

FOOTNOTES: 1 - When appropriate commander signs personally, inapplicable words are stricken.
2 - See R.C.M. 801(a) concerning instructions. If none, so state.

CONTINUATION SHEET DD FORM 458, Specialist Willie V. BRAND,

Item 10, Continued:

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 93, Maltreatment

Specification 1. In that SPC Willie V. BRAND, U.S. Army, did, at or near Bagram Airfield, Afghanistan, between on or about 5 December 2002 and on or about 10 December 2002, maltreat Dilawar (a/k/a BT 421, BT-421, or PUC 421), a person subject to his orders, by striking Dilawar in the legs around 30 times with his knees.

Specification 2. In that SPC Willie V. BRAND, U.S. Army, did, at or near Bagram Airfield, Afghanistan, between on or about 5 December 2002 and on or about 10 December 2002, maltreat Dilawar (a/k/a BT 421, BT-421, or PUC 421), a person subject to his orders, by striking Dilawar at least twice in the leg with his knee.

Specification 3. In that SPC Willie V. BRAND, U.S. Army, did, at or near Bagram Airfield, Afghanistan, between on or about 5 December 2002 and on or about 10 December 2002, maltreat Dilawar (a/k/a BT 421, BT-421, or PUC 421), a person subject to his orders, by striking Dilawar at least once in the leg with his knee.

Specification 4. In that SPC Willie V. BRAND, U.S. Army, did, at or near Bagram Airfield, Afghanistan, between on or about 30 November 2002 and on or about 4 December 2002, maltreat Habibullah (a/k/a BT-412, BT-412, or PUC 412), a person subject to his orders, by striking Habibullah at least twice in the leg with his knee.

CHARGE III: VIOLATION OF THE UCMJ, ARTICLE 134, False swearing.

Specification: In that SPC Willie V. Brand, U.S. Army, did, at or near Bagram Airfield, Afghanistan, on or about 21 December 2002, in a Sworn Statement, wrongfully and unlawfully subscribe under lawful affirmation a false statement in substance as follows: that he had not been abusive with any of the detainees at Bagram Airfield, which statement he did not then believe to be true.

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) BRAND, Willie V.		2. SSN	3. GRADE OR RANK PFC	4. PAY GRADE E-3
5. UNIT OR ORGANIZATION HQB, USAADACEN&FB Fort Bliss, Texas 79916			6. CURRENT SERVICE	
7. PAY PER MONTH			a. INITIAL DATE 7 JAN 97	b. TERM 8 years
a. BASIC 1641.00	b. SEA/FOREIGN DUTY	c. TOTAL 1641.00	8. NATURE OF RESTRAINT OF ACCUSED Restraint to Fort Bliss	
			9. DATE(S) IMPOSED 24 Jan 05 to 17 Aug 05	
			N/A	

II. CHARGES AND SPECIFICATIONS

10. Additional Charge I Violation of the UCMJ, Art 119, Manslaughter

Specification. In that PFC Willie V. BRAND, U.S. Army, did, at or near Bagram Airfield, Afghanistan, between on or about 5 December 2002 and on or about 10 December 2002, while perpetrating an offense directly affecting the person of Dilawar (a/k/a BT 421, BT-421, or PUC 421), to wit: assault consummated by a battery, unlawfully kill Dilawar by striking Dilawar in the legs with his knees.

Additional Charge II, Violation of the UCMJ, Art 124, Maiming

Specification. In that PFC Willie V. BRAND, U.S. Army, did, at or near Bagram Airfield, Afghanistan, between on or about 5 December 2002 and on or about 10 December 2002, maim Dilawar (a/k/a BT 421, BT-421, or PUC 421) by disabling Dilawar's legs and destroying his leg muscle tissue with repeated unlawful knee strikes.

Name of the Accuser David Polite	Grade O-2	Organization HQB, USAADACEN&FB
Signature <i>David Polite</i>	Date 3 Feb 05	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 3rd day of FEBRUARY, 2005, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

Anthony T. Schaefer
Typed Name of Officer

OSJA, USAADACEN&FB, Fort Bliss, TX
Organization of Officer

O-3
Grade

Judge Advocate

Official Capacity to Administer Oath
(See R.C.M. 307(b) - must be a commissioned officer)

Anthony T. Schaefer
Signature

12.

On 3 Feb, 2005, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

David Polite

Typed Name of Immediate Commander

HHB, USAADACEN&FB

Organization of Immediate Commander

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1355 hours, 03 FEBRUARY, 2005 at

76th Military Police Battalion

Designation of Command or

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE¹

Thomas T. Koesters

Typed Name of Officer

Commander, 76th MP BN

Official Capacity of Officer Signing

LTC/O-5

Grade

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

HQ, USAADACEN&FB

FORT BLISS, TX 79916

19 APRIL 2005

Referred for trial to the

general

Court-martial convened by

CMCO #24

dated

14 October

20

04subject to the following instructions:²none

By

COMMAND

of

MAJOR GENERAL VANE

Command or Order

ANITA R. FRANCIS

Typed Name of Officer

Legal Administrator

Official Capacity of Officer Signing

CW2

Grade

Signature

15.

On 20 APRIL

, 2005

, I caused to be served a copy hereof on (each of) the above named accused.

ANTHONY T. SCHAEFER

Typed Name of Trial Counsel

O-3

Grade or Rank of Trial Counsel

Signature

FOOTNOTES: 1 - When appropriate commander signs personally, inapplicable words are stricken.

2 - See R.C.M. 301(e) concerning instructions. If none, so state.

1 MG Michael Vane convened the general court-martial and referred
2 the charges and specifications to it.

3
4 The Defense Counsel requested to defer motion notification and
5 pleas.

6
7 The Military Judge granted the request to defer.

8
9 The Military Judge stated that at an R.C.M. 802 conference prior
10 to the Article 39(a) Session, there were several things discussed
11 with counsel. The Military Judge further stated that there was a
12 defense motion for appropriate relief in the nature of re-opening the
13 Article 32 Investigation which was marked as AE I, and the
14 government's response was marked as AE II. He further stated that
15 the counsel had indicated they were not prepared to proceed on the
16 motion for appropriate relief, and that he scheduled an Article 39(a)
17 Session for 0830, on 7 June to take up all pretrial motions including
18 the re-opening of the Article 32 Investigation, and that there were
19 several other motions potentially outstanding as well as discovery
20 issues which the parties would work through before the 7th of June.
21 He further stated that the case was docketed for trial the week of 18
22 July depending upon how the motions session proceeded. The Military
23 Judge stated that he would sign a pretrial order in the case, and
24 that it would be provided to both parties by email.

25
26 The Civilian Defense Counsel stated that the Military Judge
27 accurately summarized the 802 Conference. He further stated that the
28 defense agreed to the motions, but that there was an outstanding
29 issue of Mr. Galligan being provided access to certain classified
30 information, and that he understood the Trial Counsel was attempting
31 to get that approved, but there were still substantial amounts of
32 evidence that Mr. Galligan had not had access to. He further stated
33 the defense would request a sanity board, but that could create
34 additional issues, and that there would be a motion to dismiss
35 Specifications 1, 2, and 3 of Charge I.

36
37 The Trial Counsel agreed with the Military Judge's summary of
38 the R.C.M. 802 conference.

39
40 The session terminated at 0914, 5 May 2005.

41
42 An Article 39(a) Session was called to order at 0909, 7 June
43 2005.

1 All parties present at the last session were again present. The
2 members were still absent.

3
4 The Military Judge stated that the following exhibits were to be
5 litigated today:

6
7 AE I was the defense motion for appropriate relief for a new Article
8 32 Investigation;

9
10 AE II was the government response to the motion for appropriate
11 relief;

12
13 AE III was the pretrial order signed on 5 May;

14
15 AE IV was the supplemental matters dated 11 May 2005 submitted by the
16 defense related to the request for a new Article 32 Investigation;

17
18 AE V was additional supplemental matters from the defense dated 13
19 May 2005, which requests in the alternative to a new Article 32
20 Investigation that the Article 32 Investigation be re-opened;

21
22 AE VI was a motion to dismiss or abate trial until immunity was
23 granted for two witnesses;

24
25 AE VII was the government response to the abated trial request;

26
27 AE VIII was a defense motion to dismiss based on unreasonable
28 multiplication of charges and multiplicity;

29
30 AE IX was the government response to the defense request to dismiss
31 for unreasonable multiplication of charges;

32
33 AE X was a defense motion in limine relating to the death of Dilawar
34 and Habibullah;

35
36 AE XI was the government response to the motion in limine;

37 ^{qurs}
38 AE XII was ~~the~~ government motion in limine;

39
40 AE XIII was the defense response to the motion in limine to prohibit
41 the defense from calling the alleged victims terrorists;

42
43 AE XIV was the government response to a supplemental defense
44 discovery request;

1 AE XV was a response to the motion to compel defense discovery;
2
3 AE XVI was a court order directing a sanity board;
4
5 AE XVIII was the defense response to the government motion to
6 prohibit defense from referring to the alleged victims as terrorists;
7
8 AE XIX was the defense response to the government motion in limine to
9 introduce 404(b) evidence;
10
11 AE XX was the defense motion to compel discovery.
12
13 AE XXI was the defense notice of plea, forum and motions.

14 The Military Judge stated that there were several motions
15 that the defense had given notice on, but had not submitted written
16 briefs. He further stated that at an R.C.M. 802 conference, the
17 parties briefly discussed the posture of the case with Mr. Galligan,
18 and ascertained that there was an issue with the current trial date
19 of 18 July 2005.
20

21
22 The Civilian Defense Counsel requested a continuance of three to
23 four weeks to begin on 15 August 2005.

24
25 The Assistant Trial Counsel objected to any further delay.

26
27 The Military Judge inquired about the logbooks that were used at
28 the Bagram facility.

29
30 The Trial Counsel stated that he had spoken with the compiler of
31 the logbooks and they were on the trail of the books. He further
32 stated that they've got a computer printout from the computer
33 compilation of the log entries for some of the pertinent dates in
34 December 2002. He further stated that he believed the logbooks were
35 irrelevant, and requested the Military Judge review the books in
36 camera.

37
38 The Military Judge stated that if the parties did obtain the
39 ICRC report, he would review that in ~~camera~~ ^{Chambers}, and that he'd give the
40 defense the opportunity to orient him on what they believed ~~were~~ ^{were} ~~was~~ ^{was} ~~was~~ ^{was}
41 relevant before he did the in ~~camera~~ ^{Chambers} review. He further stated that ~~the~~ ^{the} ~~release~~ ^{release} ~~from the release~~ ^{from the release}
42 the prosecution would have until 20 June to obtain ~~the~~ ^{the} release ~~from the release~~ ^{from the release}
43 authority, and that on 20 June, if they had not heard anything, then
44 the Military Judge would conduct an in camera review and make a
45 determination of whether or not to abate the proceedings until it was

1 released.

2 The Civilian Defense Counsel stated that the defense was looking
3 for information that would indicate that during a period of time that
4 Dilawar and Habibullah were in the custody of U.S. Army officials,
5 that repeated complaints were being voiced through agencies such as
6 the ICRC about their treatment, and that this was being passed on to
7 superior military authority that complaints were being voiced, and if
8 the Army had done what it should have done in response to those
9 complaints, these incidents which were the basis of criminal charges
10 might have been completely averted.

11
12 The Civilian Defense Counsel made argument on the admissibility
13 of the documents to be provided to the defense.

14
15 The Trial Counsel made argument on the admissibility on the
16 documents to be provided to the defense.

17
18 The Civilian Defense Counsel made further argument on the
19 admissibility of the documents to be provided to the defense.

20
21 The Military Judge stated that he did note there were ~~changes~~ *articles about the*
22 and that AE XVII was a publicity order that was signed on 2 June *case in*
23 which directed that all of the potential court-martial panel members *The local*
24 disregard anything that they had heard in the media, and disclose *newspaper,*
25 anything that they had read about this matter on voir dire, and that
26 the members were supposed to sign acknowledgement of the order.

27
28 The Military Judge stated he wanted to conduct an in-camera
29 review of the ICRC report, and then he'd make a determination if
30 anything was relevant in the report, and whether the proceedings
31 would be abated until it was released.

32
33 The Civilian Defense Counsel argued one other factor for the
34 delay, and that was that the court directed that a sanity board be
35 conducted.

36
37 The Military Judge stated that the suspense date for that to be
38 completed was 5 June.

39
40 The Civilian Defense Counsel stated that the sanity board had an
41 error and that it was now scheduled on 16 June 2005.

42 *to be conducted was*
43 The Trial Counsel stated that there was a sanity board set at
44 the end of May, and that PFC Brand did not appear at the board. The
45 board was rescheduled, and that the reason for his non-appearance was

1 the Trial Counsel's fault, and that the staff had not notified
2 Captain Segarra that he was to have been there. The Trial Counsel
3 stated that they did reset the hearing as soon as the Trial Counsel
4 was aware, and that it was now set for June 16th.

5
6 The Civilian Defense Counsel stated that the defense was not
7 appraised of that, and that they had learned about it after the fact.

8
9 The Military Judge ascertained from both parties that they did
10 not know when the sanity board was going to be completed. He further
11 stated that he'd take the matter of continuance under advisement.

12
13 The Military Judge ascertained that the defense preferred a
14 delay ~~for~~ 15 August 2005.

15 *until UNS*
16 The Military Judge stated that there might be another motions
17 session on 28 July 2005 subject to the Military Judge's rulings.

18
19 There was no objection by either party to ~~the~~ *UNIS* motions ~~that~~ *Segarra UNS*
20 being set for 28 July 2005.

21
22 The Military Judge heard the motion for appropriate relief for a
23 new Article 32 or to re-open the Article 32, AE I, II, IV, and V.

24
25 The Civilian Defense Counsel made argument on the motion for a
26 new Article 32 or to re-open the Article 32.

27
28 The Article 32 report and script were marked as AE XXII per the
29 Military Judge's direction.

30
31 The Trial Counsel made argument on the motion for a new Article
32 32 or to re-open the Article 32.

33
34 The Military Judge ascertained from the parties that neither
35 side had any witnesses to call for this motion.

36
37 The Civilian Defense Counsel made rebuttal argument on the
38 motion.

39
40 The Trial Counsel made rebuttal argument on the motion.

41
42 END OF PAGE

43

1 The Defense Counsel stated that relevance of the witnesses was
2 discussed, and that the defense had asked for the witnesses to be
3 present.

4
5 The Military Judge stated that if the parties didn't desire to
6 call COL Pence then he had no evidence before him.

7
8 The Civilian Defense Counsel requested to call COL Pence.

9
10 COL Pence was unavailable to testify telephonically, but was
11 rescheduled to testify at 1400, 7 June 2005.

12
13 The Military Judge stated that that motion for appropriate
14 relief would be held in abeyance, and that they would move to the
15 next motion to compel discovery, AE XX, and the response was AE XV.

16
17 The Defense Counsel made argument on the motion.

18
19 The Military Judge directed that the prosecution provide paper
20 copies of what the defense requested from the CD Roms.

21
22 The Military Judge ascertained from the Trial Counsel that the
23 sanity board would be 16 June 2005.

24
25 The Military Judge stated that both sides were to ensure that
26 the accused be present as needed to complete that sanity board, and
27 that he expected the defense to go out of its way to ensure the
28 accused was available in the future to satisfy the defense request
29 for a sanity board.

30
31 The Military Judge stated that they would hear AE VI, the
32 defense motion to dismiss charges or abate the trial. The
33 government's response was AE VII.

34
35 The Civilian Defense Counsel made argument on the motion to
36 dismiss or abate the trial.

37
38 The Trial Counsel made argument on the motion to dismiss or
39 abate the trial.

40
41 The Civilian Defense Counsel made rebuttal argument on the
42 motion to dismiss or abate the trial.

43
44 The Trial Counsel made rebuttal argument on the motion to
45 dismiss or abate the trial.

1 The Military Judge stated he'd take that motion under
2 advisement. He further stated that they would move to AE X, a
3 defense motion in limine. The government response was AE XI.

4
5 The Civilian Defense Counsel made argument on the motion in
6 limine.

7
8 The Trial Counsel made argument on the motion in limine.

9
10 The Civilian Defense Counsel made rebuttal argument on motion in
11 limine.

12
13 The Military Judge stated that he'd take that motion under
14 advisement and rule appropriately. He further stated that the motion
15 to dismiss for multiplicity, AE VIII would be heard next. The
16 government response was AE IX.

17
18 The Civilian Defense Counsel made argument on the motion to
19 dismiss.

20
21 The Trial Counsel made argument on the motion to dismiss.

22
23 The Civilian Defense Counsel made rebuttal argument on the
24 motion to dismiss.

25
26 The Military Judge stated that he would take the motion under
27 advisement and rule accordingly.

28
29 The session terminated at 1028, 7 June 2005.

30
31 An Article 39(a) Session was called to order at 1040, 7 June
32 2005.

33
34 All parties present prior to the last recess were again present.
35 The members were absent.

36
37 The Military Judge stated that he would hear AE XIII, the
38 government motion in limine to introduce 404(b) evidence. The
39 defense response was AE XIX.

40
41 The Trial Counsel made argument on the motion in limine.

42
43 The Defense Counsel made argument on the motion in limine.

44 The Trial Counsel made rebuttal argument on the motion in
45 limine.

1 The Defense Counsel made rebuttal argument on the motion in
2 limine.

3
4 The Military Judge stated that he would take the motion under
5 advisement. He further stated they'd take up AE XII, the government
6 motion in limine to prohibit defense from referring to the alleged
7 victims as terrorists. The defense response was AE XVIII.

8
9 The Trial Counsel made argument on the motion in limine.

10
11 The Civilian Defense Counsel made argument on the motion in
12 limine.

13
14 The Trial Counsel made a rebuttal argument on the motion in
15 limine.

16
17 The Military Judge stated that he would take that motion under
18 advisement. He further stated that he intended to rule on all of the
19 motions ~~at~~ the week of 20 June and email the rulings.
20 *WMS*

21 The Military Judge stated that he would wrap the motion in *VPS*
22 limine to prohibit autopsy photographs into his ruling about the *motion in*
23 reference to deaths. *limine in*
24 *detainee WMS*

25 The Military Judge directed that the photographs the government
26 intended to offer be provided to the defense no later than 10 June
27 2005.

28
29 The Military Judge stated that the motion to dismiss charges and
30 specifications based upon apparent destruction of Bagram guard
31 logbooks was already discussed, and stated that it was premature to
32 file the motion.

33
34 The Civilian Defense Counsel stated that he apologized, and did
35 not intend to file the motion to dismiss.

36
37 The Military Judge ascertained from the defense that the defense
38 intended to go forward on selective prosecution of cases.

39
40 The Civilian Defense Counsel made a proffer on the selective
41 prosecution motion.

42
43
44
END OF PAGE

1 The Military Judge directed that a brief be filed on the motion
2 for selective prosecution. He further inquired into the defense's
3 motion to suppress statements of the accused.

4
5 The Civilian Defense Counsel made a proffer on the suppression
6 of the statements in violation of Article 31.

7
8 The Military Judge stated that that would wrap into the next
9 ~~notice of motion~~ to produce the interpreters, Bovarnick and Hayden.

10 ^{session any defense motion was} ^{that was} ^{COL was}
11 The Civilian Defense Counsel proffered on the motion to produce
12 witnesses, and that there were more witnesses that were going to be
13 requested.

14
15 The Military Judge stated that the last notice of motion was for
16 unlawful command influence.

17
18 The Civilian Defense Counsel proffered that they were still
19 pursuing the motion for unlawful command influence.

20
21 The Military Judge stated that he would hold the motions in
22 abeyance if he moved the trial date, and that if he moved the trial
23 date, he would reestablish dates for motions.

24
25 The Civilian Defense Counsel stated that one other issue is that
26 the defense had requested a grant of immunity for a CPT Wood, and
27 that the convening authority denied the request. He further stated
28 that they requested from the Trial Counsel provide a legal memo
29 associated with the convening authority's denial of the request.

30
31 The Trial Counsel stated that there was an action and an oral
32 recommendation, and that the action was provided to the defense of
33 the denial.

34
35 The Military Judge ascertained from the prosecution that it was
36 COL Rivest who provided the recommendation. He further stated that
37 the defense could interview COL Rivest as to the basis for denial.

38
39 The session terminated at 1105, 7 June 2005.

40
41 An Article 39(a) Session was called to order at 1154, 7 June
42 2005.

43 All parties present prior to the last recess were again present.
44 The members were absent.

1 COL Stephen Pence, U.S. Army, was called, telephonically, as a
2 witness for the defense, was sworn, and testified in substance as
3 follows:
4

5 **DIRECT EXAMINATION**
6

7 **Questions by the Trial Counsel:**
8

9 I am COL Stephen Pence of the 150th Legal Support organization.
10 I was the investigating officer for an Article 32 pretrial
11 investigation for the case of U.S. v. Brand.
12

13 **Questions by the Civilian Defense Counsel:**
14

15 It is correct that prior to the Article 32 being conducted at
16 Fort Bliss, various telephone conference calls were arranged between
17 myself, detailed Defense Counsel, the Civilian Defense Counsel, and
18 the members of the prosecution team. There were two or maybe three
19 phone calls that related to witnesses that would be produced. I
20 don't have any requests in front of me, but I'll do my best to
21 remember the groupings. I don't recall the defense requesting the
22 interrogators who had conducted interrogations of Detainee Dilawar
23 and Habibullah. I remember saying, during our telephone
24 conversations, that if you had witnesses to please put them in
25 writing, and let me know what purposes you were calling them for. I
26 don't remember you specifically asking for interrogators. I'm not
27 saying you didn't, but I remember you did request some witnesses to
28 generally talk about the atmosphere. When we had these
29 conversations, we were pretty much going over why the defense was
30 asking that they be produced. I ~~do~~ recall that, in response to my
31 inquiry, you indicating to me that you had no personal contact with
32 any of the witnesses. I do not recall you telling me you were making
33 the request primarily off statements that these individuals had made
34 and which were part of the CID file. There is a record of this, but
35 I just want to be accurate. I don't recall you saying that. I do
36 recall that I did ask you to make a list of witnesses, that we went
37 over those, each of those witnesses in detail, one by one, and I did
38 make a determination as to each of those. I don't think it would be
39 fair to say that one of the determinations I made generally with
40 respect to your requested witnesses is that I didn't see any
41 relevance in the production of those witnesses who would talk about
42 the condition in the Bagram facility. I did not make that generally
43 of all witnesses. Of the witnesses you had identified, you said you
44 wanted to bring witnesses who would talk about the conditions
45 generally. I asked you what they would say. You said you did not

1 know what they would say, and I said, absent you having some evidence
2 that they knew something about the charges that were then pending,
3 that I was investigating, that I did not find them to be relevant.
4 You did not tell me that your request was based upon the statements
5 that those individuals had made and that they were part of the CID
6 file. I think you said it was based on the fact that you had seen
7 their name in some statement. I recall that the defense made a
8 request for COL David Hayden, but I don't recall you requesting MAJ
9 Jeff Bovarnick. I do recall you requesting JAG officers. I do not
10 recall why I denied the production of those individuals. I do recall
11 in the telephone conversation after my denials that the defense would
12 be permitted to call and testify about the conditions of the
13 facility, one witness being ISG Jones. I recall that I told you that
14 you could call someone regarding the conditions. I did not say they
15 were relevant, but I did allow you to call someone, and for some
16 reason, they were not called. As to if the reason they were not
17 called was because I had made a determination during the Article 32
18 hearing that the one witness who had been agreed upon in advance of
19 the Article 32 hearing I basically reversed my earlier ruling and
20 concluded that the witness was no longer deemed by me as being
21 relevant, I would have to review the testimony. I can't recall what
22 exactly I said, but I do remember saying that those witnesses were
23 not relevant if they did not have information pertaining to the
24 matter and the allegations we were investigating, and at the time,
25 you could not produce any information that indicated that they had
26 any relevant information other than it seems like I recall you said,
27 "Well, I won't know until I talk to them." You did not tell me that
28 your request was based upon their statements that were made part of
29 the allied papers and furnished to the defense as part of the CID
30 report. I think your statement was that you saw their names were
31 included in reports, and you had seen their names mentioned by other
32 people. It wasn't one. I remember you had a long list of names, and
33 I went through and asked you to please detail on each one of them,
34 and asked if you had information that any of them would have
35 information pertaining to the allegations which I was investigating.
36 And you told me you did not have any information, and that you would
37 have to talk them first. You told me that you wanted to have
38 interpreters present because your review of the case file was that
39 these were interpreters who were present during the interrogation of
40 Dilawar and Habibullah, and I believe I told you the same thing, "Do
41 you have information that they know anything about the allegations
42 that I was investigating?" And you told me you did not. I found
43 that they did not have any relevant information. I made that
44 determination because the allegations were that there had been abuse
45 of a prisoner, that this particular individual, Willie Brand, had

1 abused and hit and maimed, and I believe involuntary manslaughter was
2 one of the charges, to a particular prisoner. And those were the
3 charges I was investigating, and I allowed both sides to call, and I
4 reviewed the documents and called witnesses that were relevant to
5 whether or not that offense had occurred, basically, is it an assault
6 with the associated charges. It would not be fair to say that I did
7 not view as relevant any information that the defense sought to
8 present regarding the general conditions in the facility or treatment
9 by interrogators. You are combining ^{the two} ~~two~~. I did not find, when you
10 said, "I want to bring information in about the general conditions,"
11 I did not find that that was relevant. I am not saying now that
12 specific evidence by any of these individuals dealing with treatment
13 of detainees by chaining and stuff like that is a relevant matter.
14 I'm saying at the time when you asked to bring people in regarding
15 the general conditions of the prison, I did not find that relevant to
16 the particular charges. I recall the defense asking for the
17 production of a second forensic pathologist, LTC Ingwersen, and I
18 think she had a report or something that was in the file. I remember
19 that I denied her because it was cumulative. I don't have all of the
20 evidence in front of me, but I made the determination based on an
21 autopsy report that was introduced that detailed and described the
22 physical condition. And when you asked for Ingwersen, I believe,
23 from what I recall and the record of it, but the best that I can
24 recall right now is that you could not point to anything that she
25 would say that had ^{had} ~~had~~ already been said. I recall after having the
26 telephone conversations concerning the production of witnesses, when
27 we conducted the Article 32 hearing, there was a by name discussion
28 of all of those witnesses again where the defense repeated its
29 request for their production at my direction. I think I had asked
30 you to please make sure that we list for the record all of the
31 witnesses that you said that you wanted. At that point in time, I
32 don't recall if you synopsised the expected testimony that was
33 contained in the pretrial statements that had been provided to you in
34 the allied papers, but I said you could not produce any statement
35 that was relevant to the investigation. I can recall only that I
36 remember that I had asked you if you had any evidence that they have
37 any relevant information pertaining to the assault charges and
38 maiming charges that we were investigating. Let me put it thusly,
39 you did not have any information saying that you did not know that
40 unless they were called, and I found that they were not relevant. In
41 my capacity as the investigating officer, I reviewed the entire
42 packet provided to me that included statements made by the witnesses
43 that you had sought to help produce. When you mentioned the name of
44 people you wanted to produce, I had already reviewed the pretrial
45 statements provided by the witnesses if they were in the packet.

1 Again, whatever you're looking at, I don't have in front of me. I
2 did review what was in the packets provided by the government. I do
3 not recall any defense requested witness who was produced in my final
4 analysis that was produced by me as the investigating officer. I
5 think I granted one defense requested witness, as the record will
6 say, but I don't know that I denied all requested defense witnesses.
7 I thought you had asked for some witnesses that I called. There was
8 a verbatim tape made of the proceedings as to what occurred. I did
9 not make any rulings outside of that that aren't on the record. The
10 copies of the Article 32 tapes are not in my possession.

11 12 CROSS-EXAMINATION

13 14 Questions by the Assistant Trial Counsel:

15
16 I recall that some of the witnesses requested by defense were
17 unavailable because they had invoked their right to counsel, or their
18 right to remain silent, and I made a finding of that as they came up.
19 Regarding the conference calls and the session at the beginning of
20 the Article 32, that was not like a discussion that just took place
21 and was conducted in generalities as opposed to specifying a named
22 individual and what a named individual would say that would be
23 relevant.

24 25 EXAMINATION BY THE COURT-MARTIAL

26 27 Questions by the Military Judge:

28
29 I recall reviewing my report before I signed them. I did not
30 look at the transcript or listen to the tapes. I did review the
31 report. To my recollection, the report or transcript reflects my
32 determinations as to the production of defense requested witnesses.

33
34 There being no further question from either side, the witness
35 was excused and the phone was disconnected.

36
37 The defense did not provide any further evidence on the motion.
38 The Trial Counsel stated that the IO did not include the
39 unavailability of witnesses in the IO's report.

40
41 The Military Judge stated that if the prosecution locates the
42 portion of the tape where the IO was talking about the availability
43 of witnesses, the prosecution could submit the tapes as Appellate
44 Exhibits.

1 The Military Judge stated that he would start with the Article
2 32 motion and work his way through the remaining motions that were
3 under advisement, and that when he made his determination on the
4 Article 32 matter, he would take up the motion for continuance, and
5 then if granted, he would reestablish a suspense date.

6
7 The session terminated at 1216, 7 June 2005.

8
9 An Article 39(a) Session was called to order at 1310, 28 July
10 2005.

11
12 All parties present prior to the last recess were again present.
13 The members were absent.

14
15 Ms. Deborah Carpenter was the court reporter for this date and
16 had been previously sworn.

17
18 The following Appellate Exhibits were marked pursuant to the
19 Military Judge's orders to have exhibits marked from the prior
20 session:

21
22 AE XXIII, Article 32 Audiotapes and a Memorandum;

23
24 AE XXIV, defense response to the government's motion in limine
25 to prohibit the defense from calling the victims terrorists;

26
27 AE XXV, email on the sanity board update;

28
29 AE XXVI, Article 32 email, findings of fact by Military Judge;

30
31 AE XXVII, email message dated 7 June 2005;

32
33 AE XXVIII, email message dated 21 June 2005;

34
35 AE XXIX, continuance ^{essential WFS} findings of fact ^{+ conclusions of law WFS} by Military Judge;

36
37 AE XXX, El Paso Times article dated 22 June 2005;

38
39 AE XXXI, findings of fact ^{on defense WFS} ^{motion WFS} ~~for~~ multiplicity by Military Judge; and

40
41 AE XXXII, court ^{initial WFS} ^{member WFS} member panel acknowledgements. WFS

42
43 The Military Judge announced the following Appellate Exhibits
44 that were marked:
45

1 AE XXXIII, court's ruling with regard to the motion in limine
2 regarding references to the alleged victims as terrorists;
3
4 AE XXXIV, court's ruling on the 404(b) evidence;
5
6 AE XXXV, court's ruling on the request for abatement;
7
8 AE XXXVI, court's ruling on the motion in limine relating to
9 references to the death of the alleged victims;
10
11 AE XXXVII, defense motion to suppress statements;
12
13 AE XXXVIII, government's response to the suppression motion;
14
15 AE XXXIX, defense request to Article 13 credit;
16
17 AE XL, government response for the Article 13 motion;
18
19 AE XLI, prosecution response to the defense motion in limine to
20 exclude autopsy photographs;
21
22 AE XLII, defense motion in limine to identify prior to trial which
23 photographs the government intended to introduce;
24
25 AE XLIII, defense supplemental matters to the government's response
26 to the defense motion to compel production of matters relating to SGT
27 James Boland;
28
29 AE XLIV, government response to the motion to produce documents on
30 Boland;
31
32 AE XLV, government's sur-reply to the defense supplemental matters
33 relating to documents on Boland;
34
35 AE XLVI, government response to a discovery request relating to
36 certain log books and associated entries;
37
38 AE XLVII, government invocation of M.R.E. 506, in request for in-
39 camera review of privileged materials, the ICRC documents;
40 AE XLVIII, defense reply to the government response to the defense
41 motion for appropriate relief relating to the Boland matters;
42
43 AE XLIX, defense request for witnesses; and
44
45 AE L, defense notice of motions, pleas and forums.

1 The Military Judge stated that the following motions were still
2 outstanding: Defense motion to dismiss or abate pending access of
3 the Civilian Defense Counsel to certain classified material relating
4 to the ICRC matters; and motion in limine to exclude autopsy
5 photographs.

6 The Military Judge ascertained from the Assistant Trial Counsel
7 that the ICRC documents were not going to be released.

8 [TIME] WAS
9 The Assistant Trial Counsel stated that he made a 506 notice
10 because it was predicated on the idea that all ICRC communications
11 are protected, and there was no passage of time that ~~could be made~~ ^{would allow them to be}
12 unclassified, and that was the reason they requested the Military
13 Judge do an in-camera review of that information.

14 The Assistant Trial Counsel stated that in the instance that the
15 Military Judge determine that there were relevant matters in the ICRC
16 reports that they would have to set up a mechanism to handle the
17 classified documents.

18 The Defense Counsel stated that the defense position was that it
19 contained exculpatory information.

20 The Military Judge ascertained that the defense had seen the
21 ICRC reports in the spring.

22 The Military Judge stated that the defense would have to submit
23 something under 506 that demonstrated specific need for the
24 information and why, in the defense's view, they had a specific need
25 for that information to be disclosed. He further stated the defense
26 had until 3 August to provide the request in writing.

27 The Military Judge stated that if the defense wanted to
28 reference any document in the ICRC report, they would have to request
29 it in writing and mark it appropriately, and not send it over email.

30 The Trial Counsel stated they could help with regard to the
31 marking of documents.

32 The Military Judge directed that the defense coordinate their
33 response with the Trial Counsel to ensure it met the proper
34 classification rules. He further stated that he would not rule on
35 the 506 matter until he heard from the defense.

36 The Trial Counsel stated they would like to ~~hear~~ ^{take up with} the motion for
37 suppression, AE XXXVII and AE XXXVIII.

1 CW4 Angela Birt, U.S. Army, was called, telephonically, as a
2 witness for the prosecution, was sworn, and testified, in substance,
3 as follows:
4

5 DIRECT EXAMINATION
6

7 Questions by the Trial Counsel:
8

9 My name is Angela Birt. I'm a CW4. I'm stationed with the 11th
10 MP Detachment at Camp Victory, Baghdad, Iraq. I have been in the
11 Army just over 21 years. I've been in CID for about 16 years. I
12 would guess that I've conducted well over 500 interviews at CID. On
13 24 January 2004, I did interview PFC Brand. That interview occurred
14 in Cincinnati, Ohio, at the Embassy Suites hotel. It would have been
15 in Blue Ash, Ohio, which is near Cincinnati. The interview occurred
16 around lunchtime, and it concluded around dinnertime, about noon to
17 say about five o'clock. The people present for that interview were
18 PFC Brand, I, and SA Dan Carton. As to if I could describe the room
19 where the interview occurred, Embassy Suites hotels operates a hotel
20 service which has a large atrium in the center of the hotel, and then
21 off that are individual rooms. The front portion of the room is a
22 living area with a kitchenette and a bathroom behind another door,
23 and then there's a separate area of the room that is separated by
24 another door which houses the bedroom area, and that door was shut
25 during our interview. We conducted the interview in the front
26 portion where the living area was. As to how far away from PFC Brand
27 SA Carton and I were, we moved positions frequently during the
28 interview depending on whether I was typing or whether we were taking
29 a break. There was a couch in the room, and also a stuffed chair and
30 a chair behind the desk. So, at some points in the interview, we
31 were sitting along side of him on the couch, especially during the
32 portion where he was being advised of his rights, and then, later
33 during the interview when I was typing up portions of the statement,
34 I was sitting behind the desk, and SA Carton was sitting in one of
35 the chairs. Neither of us wore uniforms. PFC Brand was in uniform.
36 PFC Brand was made aware that we were special agents. On the 24th of
37 January, we began the interview at 1123, and the time on the
38 statement ended at 1735 with PFC Brand. If PFC Brand wanted to get
39 up and go to the bathroom or get a drink or get something to eat, he
40 was allowed to do that. PFC Brand was informed of the fact he could
41 take breaks. We offered him opportunities to use the restroom, and
42 he was provided water that we had there in the room. No one shouted
43 or threatened PFC Brand. PFC Brand was not promised anything to make
44 a statement. There were no complaints from the hotel about loud
45

1 noises or things being thrown around in the room. As to what I can
2 tell you about PFC Brand's age or how he seemed to conduct himself
3 and his demeanor during the interview, he is older than your normal
4 Private. PFC Brand has a lot of experience in corrections and law
5 enforcement. PFC Brand is articulate, educated to the extent that he
6 understood our questions, and he was able to converse with us about
7 situations. He offered some opinions on his previous experience, and
8 when we had questions that dealt with things that didn't track with
9 other things that witnesses had told us, we confronted him with those
10 things, and talked through the issues and got his point of view on
11 things. I did not observe anything odd about PFC Brand's mental or
12 emotional state. PFC Brand did not look tired that I could recall.
13 Someone was typing a statement at some point. Prior to that, PFC
14 Brand was informed of his Constitutional and Article 31 rights. PFC
15 Brand was advised of his rights at 11:23 a.m. Mr. Carton read him
16 his rights. Mr. Carton read him his rights by using the DA 3881.
17 Mr. Carton executed the script on the back of the DA 3881 with PFC
18 Brand. The DA 3881 is dated 24 January 2004 and it is signed by me,
19 Agent Carton and PFC Brand. On that form, there are initials. At
20 the conclusion of the form, we have the individual initial the date
21 and the time so that he acknowledges that that is in fact the date
22 and time the form is being executed, and he verifies the information
23 at the top of the form is correct, and then it says, "The
24 investigator, whose name appears below has told me that he or she is
25 with the United States Army Criminal Investigation Command, and is a
26 special agent, and wanted to question me about the following offenses
27 in which I am suspected/accused." The word "accused" is marked out,
28 and it bears PFC Brand's initials because he is not being accused of
29 anything. We merely suspect him based on allegations from some other
30 person. And there's a list of offenses that we want to discuss with
31 him, and at the conclusion of this, there are four or five lines
32 indicating that that's the last offense we wanted to discuss, and his
33 initials appear after that also. When I informed him of the charges
34 that he was suspected of, we talk through with PFC Brand what exactly
35 constituted assault and battery, false official statement, cruelty
36 and maltreatment and negligent homicide, and we explained to him that
37 the reason we were there was to talk about the death of the detainees
38 at the Bagram facility in December of '02. We discussed with him the
39 fact that he was suspected of having struck detainees in the legs.
40 That document is a true and correct copy of the original that was
41 signed while I was there in the room. After I read him his rights
42 and spoke with him, a written statement was made. I have the
43 statement with me. This written statement is 13 pages in total. On
44 the 13th page, the page contains PFC Brand's, I, and Mr. Carton's
45 signature. There are initials on that page, and they are PFC

1 Brand's. His initials appear at the top and the bottom of the page,
2 and then next to a correction that he made that originally said on
3 page 12, and I think he corrected it to say page 1 of 13, and his
4 initials are next to that correction. PFC Brand made that correction
5 and then initialed it himself. On page 1 of that statement, there
6 are initials next to the time and date, and then there are initials
7 at the beginning and the end of that text on that page. On page 2,
8 there is an initial next to something that was added to that
9 statement about three-quarters of the page, there are a write-in of
10 the letters, "P-P-C-T" in parenthesis and his initials appear next to
11 that as well at the top and bottom of each page. Turning to page 5,
12 there are corrections there. Near the bottom of the page, he marked
13 out the word, "They," and wrote the word, "He." He marked that out
14 himself. After I took the statement and wrote it out, I gave PFC
15 Brand an opportunity to read over it. PFC Brand did read over that.
16 It took PFC Brand some time in the area of 20 to 30 minutes, and
17 there was some issues on page 11 of 13 that he did not agree with the
18 way that I had expressed it, and obviously, I don't type as fast as
19 the talking is going on to capture what's being said to the best of
20 my ability. And some of the things that I expressed, he was not
21 comfortable with. So, he made some significant changes on that page,
22 struck out some words and added some others. Page 11 and 13, all of
23 those strikeouts and added words, PFC Brand did that after reading
24 the statement.

CROSS-EXAMINATION

Questions by the Defense Counsel:

29 Agent Carton and I were doing the typing, but I was doing most
30 of the typing. As to if these were my words on the statement, I
31 typed the words. We did ask PFC Brand leading questions.

33 The Assistant Trial Counsel objected to the question, "So, he
34 adopted your views," asked by defense. The Military Judge overruled
35 the objection.

37 I don't agree that PFC Brand adopted my views. I don't know if
38 PFC Brand was waiting for hours before we actually brought him into
39 the interview room. We asked the commander to make PFC Brand
40 available to us, but I'm not sure how the command directed him to be
41 there. We kept PFC Brand there between 1123 and 1735. The last
42 thing PFC Brand did was dated the statement when he signed it, but we
43 actually took his fingerprints when he completed that statement. It
44 takes about 10 minutes to roll a couple sets of prints. We did the
45

1 fingerprints right in the hotel room. We fingerprinted everyone that
2 we were taking statements from. SA Carton was wearing his weapon. I
3 was not wearing my weapon. SA Carton had a standard issue 6R P228 9
4 millimeter pistol. SA Carton was wearing his weapon on his right
5 hip. SA Carton wasn't wearing a jacket during the entire interview.
6 The weapon was visible. I didn't make the corrections on the
7 statement. PFC Brand did the strike-throughs and initialed the
8 corrections that he had made. I didn't correct anywhere on that
9 statement. PFC Brand corrected the statement. I don't recall making
10 any printed corrections. I'm looking at the statement, and I don't
11 see anything that appears to be my handwriting or bears my initials.
12 When I advised PFC Brand what he was suspected of, I told him he was
13 suspected of assault and battery, false official statement, cruelty,
14 maltreatment of subordinates and negligent homicide. As to how it
15 came to those offenses when the statement that he made in Afghanistan
16 in 2002 said he was only suspected of aggravated assault because the
17 circumstances had changed significantly during the course of the
18 investigation, and at that point, we felt that we were dealing with a
19 homicide, and that was the most serious offense we were
20 investigating. These circumstances changed because we had the
21 medical examiners' findings from February and March of the two
22 different cases, and the findings were homicide. So, that changed
23 the outlook of the case from the things that they did originally, but
24 I couldn't really comment on what the agent in December did. I was
25 at the Embassy Suites hotel for approximately three weeks. I talked
26 to about 90 plus people. I eventually brought PFC Brand back to the
27 Embassy Suites hotel on the 3rd of February. We brought him back
28 because there was some issues that had come up during interviews
29 conducted subsequent to his interview which we needed clarification
30 regarding information that contradicted what he had told us. Some of
31 the interviews were conducted with SA Carton and me, and some of the
32 interviews were conducted one on one between the suspects and either
33 SA Carton or I, it was dependant upon how in-depth we thought the
34 interview might be. When we took PFC Brand's interview, we believed
35 it would be an in-depth interview.

REDIRECT EXAMINATION

Questions by the Trial Counsel:

41 I remember the subsequent interview on 3 February 2004. The
42 interview on 3 February was conducted at the same hotel, but it was
43 in a different room. This interview was conducted by me and Mr.
44 Chigi. I have PFC Brand's statement and rights waiver form from that
45 day. The date on this is 3 February 2004. The rights waiver reads

1 0811, and the statement reads 10:22 a.m., sir. I signed it, Mr.
2 Chigi, and PFC Brand. There are initials on that statement. They
3 are PFC Brand's initials, and they appear in a number of locations.
4 I notice on the date and the time on the waiver certificate at the
5 comments section where he indicated that he did not request legal
6 counsel in the past 30 days, and that he understood his rights as
7 stated above on the sworn statement. Obviously, the date and the
8 time that he wrote in his status, it was E4 because he was an E4 at
9 that time, and then, at the beginning and end of each page of the
10 statement, and it's four pages in length. Mr. Chigi read PFC Brand
11 his rights. I was listening through an audio monitor while Mr. Chigi
12 read him his rights. Mr. Chigi read the same rights that I was
13 speaking about on the back of the 3881. A statement was taken after
14 the rights waiver was given. I typed that statement. I have the
15 statement right now. Looking on the first page, it is dated 3
16 February 2004, 10:22 a.m. It consists of four pages and a drawing by
17 PFC Brand. It is signed on page four by Mr. Chigi, PFC Brand, and
18 me. I have the drawing with me also. This drawing is basically a
19 depiction of a man that is drawn in stick form, and it bears some
20 writing, and the writing was done by Mr. Chigi, and it was adopted by
21 PFC Brand at 9:35 by his signature and initials at the bottom. The
22 copy that I have is unclear in the margins, but it says, "PUC 421 at
23 time of 15 to 30 common peroneal strikes," and then it indicates leg
24 irons and hand irons. At the time the interview was taken, PFC Brand
25 was not shouted at, threatened or promised anything. This interview
26 was at the Embassy Suites, and there were no complaints about noise
27 or things being thrown around coming from our room. Mr. Chigi was
28 not armed.

RECROSS-EXAMINATION

Questions by the Defense Counsel:

33
34 That second interview began at about 8:11 in the morning. The
35 second interview wrapped up at about 10:22 a.m. After he signed the
36 statement, we had nothing further for him that day. SA Carton was
37 not at that interview, but on that particular day, I believe he was
38 conducting a different interview. SA Carton was interviewing an
39 individual that was in Columbus, Ohio, at the CASH, at the Combat
40 Support Hospital. I am reading off my AIR of 3 February, and it
41 indicates that SA Carton interviewed 1LT Noel Briones. SA Carton was
42 not at the hotel. Mr. Chigi is a polygrapher. Mr. Chigi was taking
43 a statement from PFC Brand because PFC Brand had indicated that he
44 was willing to be interviewed by Mr. Chigi in lieu of a polygraph
45 examination. I believe the polygraph machine was set up in the room.

1 As to if the polygraph machine was in view of PFC Brand when he was
2 giving a statement, the interview occurred, and then once he began to
3 make admissions about the information that we were going to talk to
4 him about, he was then removed from the area where that machine was,
5 and I took a statement from him in a different setting where my
6 computer was set up. Mr. Chigi started the interview, and I finished
7 the interview. I typed up the statement. I asked leading questions.
8 As to if Mr. Chigi's questions were the three polygraph questions
9 that he usually asked suspects, I think you'd probably have to ask
10 Mr. Chigi about that if you're referring to the questions that he was
11 going to take the test on, or if you're just referring to the normal
12 dialogue they were having amongst the two of them. I listened in on
13 their conversation because it's customary that when an exam is going
14 to occur that the exam is monitored. So, we were set up for
15 monitoring, and unfortunately, due to circumstances, we didn't have
16 the ability to watch through a one-way mirror. So, the audio
17 monitoring was the best we could come up with under the
18 circumstances. I didn't stay in the room because Mr. Chigi prefers
19 to interview by himself. Mr. Chigi's dialogue with PFC Brand lasted
20 maybe 45 minutes to an hour. I'm not really sure about the time. My
21 interview lasted the other hour or so. I typed the statement up on
22 my laptop. Neither I nor Mr. Chigi brought our weapons that day.
23 Mr. Chigi never brought a weapon on the trip that I'm familiar with,
24 and mine was not on me. My weapon was in my room. If I recall this
25 particular interview correctly, the interview started in his room and
26 ended up in mine, but it's possible that I took my laptop down to his
27 room. My weapon was secured in a locked container in my room. As to
28 if Mr. Chigi made the sketch that PFC Brand signed, Mr. Chigi wrote
29 the writing on it. Mr. Chigi wrote everything on it except for the
30 actual drawing, and at the bottom, just next to 9:35, there is PFC
31 Brand's initials and his signature. The drawing was done by PFC
32 Brand, and the narration was done by Mr. Chigi. I was present and
33 listened to portions of the drawing, and I watched Mr. Chigi write in
34 what everything meant. There are no corrections on the sketch or
35 statement. PFC Brand was not ordered to be at the Embassy Suites for
36 this interview. The second time he agreed to come in. We contacted
37 him by telephone and asked him to come in. I don't even think his
38 unit knew he was there. PFC Brand was aware of my listening in via
39 the baby monitor. The polygraph was not conducted because after PFC
40 Brand made the admissions, there were no testable issues in Mr.
41 Chigi's opinion. PFC Brand admitted to the issue that we were trying
42 to resolve. The issue was that he struck the detainee. This
43 particular admission had to do with 37, but not more than 40 times in
44 striking the detainee, and that was much more than he admitted to in
45 his original statement.

EXAMINATION BY THE COURT-MARTIAL**Questions by the Military Judge:**

As to if, on the two occasions I interviewed PFC Brand, his status was that he was free to go, we don't do nonconsensual interviews with soldiers because we don't feel that they feel free to go. That's why they are always advised of their rights. We didn't actually tell PFC Brand that he could leave whenever he wanted on either occasion. PFC Brand was not placed under apprehension on either occasion. PFC Brand came to the hotel room on his own volition, and left on his own volition. If he had wanted to invoke his rights, the interview would be over.

REDIRECT EXAMINATION**Questions by the Trial Counsel:**

PFC Brand was told that he didn't have to make a statement. That's part of the rights advisement. PFC Brand was told that if he wanted a lawyer, he could have one because that's also part of the rights advisement. PFC Brand understood that.

RECROSS-EXAMINATION**Questions by the Defense Counsel:**

I'm aware that PFC Brand has only a high school education. I think that most people with high school education appear to be highly articulate and able to read and write.

EXAMINATION BY THE COURT-MARTIAL**Questions by the Military Judge:**

I indicated that PFC Brand had some law enforcement experience. I understood his experience to be that he indicated to us that he had a background with the military where he was in corrections and he had previously deployed to Kosovo with the military as a correctional specialist, and attended training in that particular MOS as a military policeman and as a corrections specialist, a 95 Charlie.

END OF PAG

REDIRECT EXAMINATION**Questions by the Trial Counsel:**

PFC Brand didn't seem scared or frightened or, in any way, apprehensive when I was conducting either of the interviews. *WPS*

RECROSS-EXAMINATION**Questions by the Defense Counsel:**

As to what guidance was given to PFC Brand regarding the polygraph, he thought he was coming there on the second interview to ~~take~~ a polygraph. At the time that we contacted PFC Brand, we told him we'd like for him to come in and we'd like for him to take a polygraph. And he agreed to clarify the issues with the polygrapher that his rights would be read to him and he would be offered the opportunity to take one. I know that he was aware that polygraph examinations cannot be used in court at any time because that's part of the polygraph statement of consent that Mr. Chigi executed. It's not a form that I currently have in front of me, but I'm sure that you can probably take a look at it. I know that that form is read to every person prior to the initiation of an examination or a test.

There being no further questions by either side, the witness was warned and disconnected.

CW2 Daniel Flores III, U.S. Army, was called, telephonically, as a witness for the prosecution, was sworn, and testified in substance as follows:

DIRECT EXAMINATION**Questions by the Trial Counsel:**

I am CW2 Daniel Flores III, and I'm stationed in Ansbach, Germany. I have been in the Army just over 17 years. I have served in CID for just over 10 years. The training that I have received relating to taking interviews from witnesses or suspects is the basic CID course, and several other training courses. I have conducted over 200 interviews during my time with CID. On 21 December 2002, I had the opportunity to come into contact with PFC Willie V. Brand. The reason for meeting with PFC Brand that day was to interview him as there were a couple of detainee deaths in the Bagram collection point. Before I interviewed him, I read him his rights. I used the

1 DA Form 3881. I verified that the information on that form was
2 correct, and let PFC Brand verify that. I read PFC Brand's rights on
3 the form. What I normally do every time is I have a similar DA 3881
4 that I advise him that I'm going to turn it over and read it, and
5 turn the "I" to "You". So, when I advise them of their rights, it
6 makes sense to them as I'm reading it to them, and they follow along
7 on the form with their information on it. Once we've gone through
8 all of their rights, I ask them if they understand their rights, and
9 ask them if they're willing to discuss the offenses under
10 investigation at that time, or if they request legal counsel. At
11 that point, if everything is correct, they sign it, and I sign it,
12 and I ask them to place the time on the top of the form, and then
13 initial it. I always read everything on the back page of DA 3881.
14 There would not be a reason why I wouldn't have done it on that
15 particular day. I am looking for the DA 3881 right now, and have it
16 here. Looking over the DA 3881, I signed it and SPC Brand signed it
17 as well. The date and time on this form is 21 December 2002, and the
18 time is 0310. There are initials by the time. Those initials are
19 SPC Brand's. SPC Brand's name and social security number also ^{was}
20 appears on that page. Going to Section 8, I told PFC Brand ~~that he~~
21 was suspected of aggravated assault because, at that time, it was
22 based on our ^{was} ~~trial~~ Counsel's recommendation, and that was the only
23 information that we had at the time of the investigation. We didn't
24 suspect anything else at that time. I explained to PFC Brand what
25 actions I thought PFC Brand might have done. I told PFC Brand that
26 the actions were the striking of either of the detainees. PFC Brand
27 was apprised of the fact that I was asking him about striking
28 detainees. After I read him his rights, I had him initial the form.
29 When I took this statement, we were in my office at Bagram airfield.
30 That was in a combat zone at the time. I carried a weapon. SPC
31 Brand had a weapon as well. SPC Brand cleared his weapon prior to
32 entering the office, and then we had him lay it up against the wall
33 beside him. I was roughly about a foot and a half to two feet away
34 from PFC Brand when I was questioning him. The lighting in the room
35 was with overhead lights, and an open window area with a piece of
36 plexi-glass over it. The time on the DA 3881 is 0310 Zulu time. I
37 would not have conducted an interview at 3:10 in the morning local
38 time. Afghanistan is about four and a half hours ahead of Zulu time.
39 Zulu is Greenwich meantime. That interview would have occurred
40 roughly about 2300 local time. After I read PFC Brand his rights, I
41 took a statement from him. That statement was placed into paper
42 form. I typed it up on a computer, printed it out on a printer, and
43 it was basically a narrative form followed by a question and answer.
44 After I took the statement from PFC Brand, I gave him the opportunity
45 to read it. My policy is once I print the statement the first time,

1 I hand it to the person, let them look it over, and if there are any
2 corrections or additions or anything they want to remove from the
3 statement, I have them pen and ink that. I will then make those
4 corrections on the computer, print it again, and let them review it
5 again. If there are any other corrections, I'll repeat it until the
6 statement is exactly how they want it to read, and then I will have
7 them sign it and swear to it. That's what happened in this case. I
8 remember that PFC Brand took roughly about 15 minutes to read over
9 the statement. Looking at the statement, there are initials on it.
10 The initials are there because SPC Brand put in the time on the top
11 of the form, and he initialed it to show that he placed the time in
12 there, and at the bottom of every form, it has SPC Brand's initials
13 to show that it is indeed his statement and his words. The statement
14 that I took from PFC Brand is four pages. On the first page, SPC
15 Brand wrote in 0430 Z in the time because it has his initials there.
16 That's the time that PFC Brand completed reading the statement,
17 agreed that everything in the statement was exactly as he wanted it,
18 and he went ahead and placed the time in there.

CROSS-EXAMINATION

Questions by the Defense Counsel:

23
24 Three-ten Zulu time is about 11:10 at night. Four-thirty Zulu
25 time is approximately 12:30 in the morning. I was taking such a
26 statement at such a late hour in the morning because there were
27 different shifts working at the Bagram collection point at the time,
28 and we had asked the supervisors of the 3rd 77th Military Police Company
29 to send us people when they were scheduled for shift work so that we
30 could complete the investigations and not have to disturb anyone's
31 sleep. PFC Brand was told to be there by his chain of command. If
32 he was on that late shift, then he was to come to us during that time
33 so we could fill out the interview. I did have my weapon on me at
34 the time. It was a combat zone. PFC Brand had his M-16 right next
35 to him against the wall. My weapon was a 9-millimeter. I
36 coordinated with Major Bovarnick who was our trial counsel at the
37 time. We were interviewing everybody who was working in the Bagram
38 collection point who was associated with the detainees. During the
39 course of the interview, there were no mortars or any live fire that
40 I can remember. I advised PFC Brand that he was suspected of only
41 assault. The determination of who was to be advised of what was made
42 by Major Bovarnick, our trial counsel at the time. I don't know
43 exactly how he made that determination of what I suspected PFC Brand
44 of, but at that point, we didn't have any reason to suspect that
45 anyone had committed any other criminal type offense other than the

1 blows that they were calling peroneal blows to the detainees for
2 compliance blows.

3
4 **REDIRECT EXAMINATION**

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

7
8 I assumed PFC Brand was told to come to my by his chain of
9 command, but I don't know that for sure because I didn't see anybody
10 tell him. We had asked for all of the soldiers involved to come to
11 our office for interviews during their scheduled time off work. When
12 I read PFC Brand his rights, I think he understood them. He did not
13 give me an impression that anyone was coercing him to waive his
14 rights.

15
16 **RECROSS-EXAMINATION**

17
18 I was alone in the room with PFC Brand at the time. If I was
19 not alone, I would have had somebody sign the witness section of the
20 DA 3881. I was the only witness.

21
22 **EXAMINATION BY THE COURT-MARTIAL**

23
24 **Questions by the Military Judge:**

25
26 I would describe PFC Brand's demeanor when I questioned him on
27 21 December 2002 as ready, willing and able to discuss the offense
28 under investigation. PFC Brand didn't appear to be sleepy. PFC
29 Brand didn't appear to be distracted in any way. I am not sure if
30 this would have been the start of PFC Brand's shift. We had asked
31 their leadership to send people to us for interviews during their
32 scheduled shift so that we wouldn't disturb anybody's sleep time,
33 either just before their shift started or as their shift ended. That
34 way, they would be able to continue their routine as much as
35 possible. I did not make any threats or promises to PFC Brand in
36 order to obtain his statement. I only confronted PFC Brand with the
37 facts that we had at the time. To the best of my recollection, I
38 understood that the detainee, according to the autopsy conducted by
39 Dr. Henderson had died as a result of homicide, and the first one due
40 to a pulmonary embolism, due to the strikes that they were being
41 given, and the second one was the amount of damage to the leg.

42
43 **END OF PAGE**
44

RECROSS-EXAMINATION**Questions by the Defense Counsel:**

I saw the preliminary autopsy reports on Dilawar and Habibullah. The preliminary reports were signed. The first autopsy was signed by Dr. Ingwersen, and the second one was signed by Dr. Rouse.

REDIRECT EXAMINATION**Questions by the Trial Counsel:**

When I saw these signed autopsy reports, it was in January 2003.

RECROSS-EXAMINATION**Questions by the Defense Counsel:**

When I took PFC Brand's statement, I saw the preliminary autopsy reports. We were still waiting for the pathologist to finish them up and send them to us. I did see the preliminary reports before I took PFC Brand's statement on 21 December 2002 if I remember correctly. I saw both reports.

There being no further questions by either side, the Military Judge warned the witness and was disconnected.

Mr. George Chigi III, civilian, was called, telephonically, as a witness for the prosecution, was sworn, and testified in substance as follows:

DIRECT EXAMINATION**Questions by the Trial Counsel:**

My name is George Chigi III, and I work at the CID office on Fort Hood, Texas. My position here is the polygraph examiner assigned to Fort Hood, Texas. I was formerly in the Army from 1961 to 1991. I was assigned to CID from 1975 to 1991. It was about 15 to 16 years. I conducted over several thousand interviews while I was with CID and in my present position. On February 4, 2004, I did have an opportunity to come into contact with PFC Brand. I came into contact with him at that time because on 10 December 2002, an individual, an Afghan civilian by the name of Mr. Dilawar was found dead in his cell in Afghanistan at Bagram airfield. During the course of the investigation, there was an allegation that SPC Brand had struck Mr. Dilawar a number of times using what they call

1 peroneal strikes. And we were interviewing SPC Brand to ascertain
2 whether or not he had struck Mr. Dilawar because the injuries to Mr.
3 Dilawar while he was in confinement were believed to have caused his
4 death. Prior to conducting the interview with PFC Brand, I did have
5 an opportunity to conduct an interview with a SPC Cammack. SPC
6 Cammack gave me information that made me want to speak again to PFC
7 Brand. This interview with PFC Brand occurred in a hotel that I
8 can't even tell you the name of the hotel. The hotel might have been
9 the Embassy Suites. It was in Cincinnati, Ohio. At the time I did
10 the interview, SPC Brand and myself were the only two people in the
11 room, but SA Birt was monitoring the interview from another room. I
12 had an opportunity to discuss his Article 31 rights and his
13 Constitutional rights with him. I advised SPC Brand of his rights
14 utilizing the standard DA 3881, which is the rights warning procedure
15 waiver certificate. I have a copy of the DA 3881 with me. The DA
16 3881 is dated 3 February 2004 with a time of 0811. The DA 3881 was
17 signed by Willie Brand and me and SA Birt. PFC Brand initialed the
18 DA 3881 in several places. I read the form to him from top to bottom
19 and then he initialed it in a number of places and then signed it. I
20 did this before I began asking him questions. When the interview
21 occurred, I was not armed. I was not in a uniform. I remember that
22 PFC Brand's demeanor during the interview was relaxed and very
23 cooperative. That's really all I can tell you. As to what I
24 remember about PFC Brand's age, education or intelligence or what he
25 seemed to be, I know from the forms that he was born in 1978, and
26 seemed to be of average intelligence or above average intelligence,
27 and very cooperative. I do not recall if PFC Brand was in uniform, I
28 believe he was in uniform, but I'm not sure. He was in the room with
29 me probably about 45 minutes to an hour before I asked him any
30 questions about the incident under investigation, and from that point
31 in time, he was asked questions probably for another 13 or 20 minutes
32 before he told me that he had struck Mr. Dilawar more times than he
33 had initially stated, and once he had done so, SA Birt came in and
34 took a statement from him. PFC Brand was in the room with us
35 probably about two and a half hours. Going back to the rights waiver
36 form, I explained to PFC Brand what I suspected him to have done. I
37 told him I was going to ask questions about Mr. Dilawar, and we
38 believed that he died as a result of the injuries that he received
39 while he was in confinement. So, I was going to ask him questions
40 about negligent homicide meaning the death of Mr. Dilawar, the
41 assault on Mr. Dilawar, and whether or not he was struck by PFC Brand
42 and making a false statement about it meaning that if he deliberately
43 lied, I'd end his statement. I made him factually aware that I was
44 going to inquire as to whether he had struck a detainee in the leg
45 with his knee. I told him that there were allegations that he had

1 struck the detainee more times than he said he had, and that's what I
2 was going to ask him questions about. I never shouted, threatened,
3 or promised anything to PFC Brand to get him to make a statement.
4 PFC Brand seemed to understand the rights that I told him. These
5 rights were where he could get an attorney or stop his statement or
6 not make a statement. No one complained about the noise coming from
7 the room or anything being thrown around during or after the
8 interview. If PFC Brand wanted to get a drink, go to the bathroom,
9 or get something to eat, he would be allowed to do that. PFC Brand
10 was informed of the fact that he could eat or drink. After I read
11 PFC Brand his rights, I did take a statement from him. I have that
12 statement with me. The statement is four pages long with a drawing
13 in the back of that. Looking at the fourth page, the signatures of
14 Willie Brand, SA Birt and I appear on this page. This statement was
15 drafted by SA Birt. PFC Brand was given an opportunity to read the
16 statement and make changes if he chose to. PFC Brand read the
17 statement to the best of my knowledge, and he stated that he
18 understood it, and initialed it, and then signed it. He was given
19 the opportunity to make changes in that statement.

20 CROSS-EXAMINATION

21 Questions by the Defense Counsel:

22
23
24 I am a polygrapher. My purpose for coming to the Embassy Suites
25 that day was to administer a polygraph to PFC Brand. This was not to
26 be an exculpatory polygraph. I advised him exactly what was on the
27 polygraph statement form, which basically says that the polygraph
28 examination can be stopped by him at any time, that he has a right to
29 an attorney, that questioning may occur before, during and after the
30 instrument portion of the polygraph examination, and that anything he
31 said or did during the examination may be used against him at any
32 administrative or judicial proceeding. I also told him that the
33 examination would not be conducted without his voluntary consent, and
34 that he can withdraw that at any time, and the examination would be
35 stopped, and if he chose to stop, that that fact alone would not be
36 held against him. When I read him those rights, he did sign a waiver
37 certificate. I have that waiver certificate. The time on that
38 waiver certificate is 0816. This was after PFC Brand signed the
39 rights warning procedure waiver certificate. I did not say to him at
40 any point that a polygraph couldn't be used against him at any court.
41 I have no idea if PFC Brand was under the impression that we could
42 use the polygraph in court. I have a dialogue that I get into with
43 the suspects that I interview or examine. I went through that
44 dialogue with PFC Brand. Once I finished explaining everything that
45

1 we were going to do, I asked him about the statements that were made
2 that he had struck Mr. Dilawar more times than he had indicated that
3 he had, and that's when he started to tell me what he had done, and
4 then told me that he had struck Mr. Dilawar 15 to 30 times, and it
5 was more times than he had said. SA Birt came back into the room
6 shortly after he changed his statement. She did not re-advise PFC
7 Brand of his rights. PFC Brand was still under the impression that
8 he was there for a polygraph. At the point that SA Birt came into
9 the room, I went out and told her that since he told me what he had
10 done, and we had resolved the issues for which the polygraph
11 examination was going to be conducted, there was no need to do an
12 examination. So, she came back in to take a statement from SA Brand
13 regarding his statement. I never told PFC Brand that the polygraph
14 was off. I went next door and told SA Birt that we resolved the
15 issue, and there were no testable issues. So, she agreed, and she
16 went back in to take a statement from PFC Brand. I don't know if PFC
17 Brand knew there was no need for the polygraph examination in those
18 exact words or not. I might have informed PFC Brand, but I'm not
19 sure. PFC Brand didn't need to know that when SA Birt entered the
20 room it wasn't the normal method of taking a polygraph. PFC Brand
21 could have been under the impression he was still taking the
22 polygraph when SA Birt took the statement. I don't know if I told
23 him that we were finished or not. We were there for another hour
24 while SA Birt spoke with PFC Brand because if I started my interview
25 at 8:00, and the drawing was done at 9:30, SA Birt would have come
26 in, and she was there for about another hour. I did the drawing.
27 PFC Brand didn't do any of the drawing. PFC Brand signed the
28 statement that he gave to SA Birt at 10:22 a.m. I didn't take any
29 statement. SA Birt took the statement from PFC Brand. I was sitting
30 in the room when PFC Brand was giving his statement, but she gave the
31 statement to him, he read it, and he signed it. I don't think PFC
32 Brand thought he was still there to render a polygraph examination.
33 I don't remember if I told him that we weren't doing the polygraph or
34 not. The polygraph machine was still visible in the room. After he
35 did the statement, the interview was over. I don't think anyone said
36 anything about the polygraph after the statement was over. SA Birt
37 was in charge, and I don't know what she did with him. I believe he
38 left the room. When we completed the interview, I thought we all
39 left the room. PFC Brand went on his way. I don't recall if the
40 issue of the polygraph was really resolved ~~for~~ PFC Brand. I don't
41 know if I told him it was over, and that we didn't need to do it. I
42 don't remember if that was the case or not. I do not think SA Birt
43 had her weapon on her.

44
45 There being no further questions by either side, the witness was

disconnected
~~disconnected~~ *UPS*

1 warned and ~~disconnected~~.

2 The session recessed at 1441, 28 July 2005.

3 An Article 39(a) Session was called to order at 1454, 28 July
4 2005.

5
6 All parties that were present prior to the last recess were
7 again present. The members were absent.

8
9 The Military Judge stated that he had AE LI, a copy of the
10 accused's ERB and DA 2-1 marked.

11
12 The Trial Counsel made argument on the motion to suppress.

13
14 The Defense Counsel made argument on the motion to suppress.

15
16 The Military Judge directed that the rights advisement for the
17 polygraph to PFC Brand be marked as AE LII.

18
19 The Trial Counsel made rebuttal argument on the motion to
20 suppress.

21
22 The Military Judge stated that he'd take the motion to suppress
23 under advisement, and that they would hear the Article 13 motion, AE
24 XXXIX and XL.

25
26 PFC Willie Brand, the accused, was called as a witness for the
27 defense, was sworn, and testified in substance as follows:

28
29 **DIRECT EXAMINATION**

30
31 **Questions by the Assistant Trial Counsel:**

32
33 I am PFC Willie Brand. I am the accused in this case.

34
35 **Questions by the Defense Counsel:**

36
37 My status in December 2004 with regards to the Army was AWOL. I
38 was in the reserves. I was called on to active duty on January 4th,
39 but I didn't get the notice until January 11th or thereabouts^{was}. I had
40 to report to my unit at 1600 Seymour Avenue in Cincinnati, Ohio. I
41 did report. My unit was the 377th MP Company. That was the reserve
42 unit when I was assigned in Afghanistan. I was told that I was being
43 called back to active duty in 2005 because I needed to come down here
44 and stand trial, but I didn't know about it until I got to my unit.
45 I was in Cincinnati waiting to come to El Paso for a little more than

1 two weeks. I was supposed to have been paid for those two weeks, but
2 I'm not sure if I was. Eventually, I was paid for this trip. I had
3 to quit my job to come back to active duty. I was a security guard
4 before this. I made it to El Paso on January 24th. I was housed in
5 the barracks at 900 Alpha, the single soldier barracks. My family
6 was not allowed to accompany me ~~to~~ ^{was} Fort Bliss. I have a wife and
7 four minor children. I asked the people in my unit to have my family
8 come down to Fort Bliss with me in about my first week here at Fort
9 Bliss, and I asked numerous times afterwards. I asked my reserve
10 company in Cincinnati. My reserve unit said that travel with family
11 was not authorized. The people at Fort Bliss said that I was unable
12 to leave post, and they wouldn't give her housing at the time to come
13 down, and they would basically have to live off post, and I couldn't
14 see them. This was told ~~me~~ ^{to us} almost immediately after I arrived here.
15 I don't remember the day or month. Regarding my pay, I was finally
16 paid on March 15th when I began my active duty stint. I did not ask
17 for casual pay specifically, but it was brought up by my commander,
18 and it was ruled out that it would take me further in debt rather
19 than help me. So, that didn't happen either.

20
21 The Military Judge directed that the company commander and First
22 Sergeant, potential witnesses, exit the courtroom.

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

25
26 It was ruled out that casual pay wouldn't help me because it
27 would put me further into debt at the time. I was in debt at the
28 time due to the fact that I wasn't getting paid, and rent was due
29 back home among other bills. My family was living at an apartment in
30 Cincinnati that we had to pay rent. The rent was \$550.00 per month
31 for a three-bedroom apartment. The expenses for household goods and
32 clothing was about \$500.00 for food, \$550.00 for rent, gasoline was a
33 little high, I think it was \$150.00 a month, a cell phone bill of
34 \$200.00 a month. My wife does not work. I am the sole breadwinner
35 for my family. My family did suffer. They suffered because ~~since~~ ^{was}
36 the rent wasn't getting paid for a couple of months. They were about
37 to get evicted. They had little money for food. They had to make it
38 last longer, not to mention I was far away, and my wife was bad at
39 taking care of money the way she should. Neither my unit back home
40 nor here, ~~did~~ ^{did} garrison command ~~do~~ ^{did} anything to help me get paid that I
41 could tell. They did not take me to any finance office until after
42 my first pay came through on March 15th. They took me to finance
43 because there was some discrepancies with my pay. I don't really
44 remember what the discrepancies were, but they were like minor
45 things. To my knowledge the discrepancies were fixed. I didn't

1 understand how they backdated the orders. I was under the impression
2 that they backdated them from when I got to Fort Bliss and not all
3 that time that I was backing home. I eventually did get paid. I got
4 back pay. My family, eventually, was allowed to come down to Fort
5 Bliss with me. This was May 2nd. I had to ask my command numerous
6 times for my family to come down and live with me. It was a problem
7 trying to get them to come back down and live with me. It was a
8 problem because I was told that I wouldn't be allowed any travel with
9 my family. It would be all up to me to provide money for that. I
10 did not have the money for that. I had to borrow some money for them
11 to come down and live with me. I had to borrow just a couple hundred
12 for them to come down and live with me. They got down here by
13 Greyhound. My orders had expired once since I've been down here at
14 Fort Bliss. My orders expired on July 2nd. I was taken off active
15 duty, and I was told officially I was out of the Army, but I still
16 had to show up to work and stuff, and I got orders two weeks after
17 they had already expired. The orders could have been either the 14th
18 or 15th of July. I got a new ID card the very next day after I got
19 the orders. On AE XXXIX, the last page, these are the orders I
20 received. During the time between 2 July and 15 July, I did not have
21 an ID card that was valid. I was kicked off of the DEERS system. My
22 family was off the DEERS system and not allowed to get health
23 benefits or they were not allowed to be seen by the doctors. There
24 was a crisis where my wife needed to go to the doctor. The nature of
25 her problem was that she was going to optometry, and I forgot the
26 second part, but she had to have a normal papsmear ^{Similar} and it was
27 possible that it was cancerous, and also a dental problem. She was
28 refused at William Beaumont. In fact, she had an appointment also
29 for some kind of counseling or something, and everything was denied
30 because she was kicked off DEERS even though the appointment had been
31 made prior to her being kicked off. We have not been placed back on
32 DEERS yet. We have already gotten our new ID cards, but they said
33 we're still not in DEERS. We had to go re-enroll, but I've been
34 working too much to get back over there to DEERS. I have been
35 basically cleaning stuff and moving stuff around at building one.
36 Building one is the garrison command. I don't do my normal duties as
37 a military policeman. I basically just clean our restrooms, clean
38 out rooms they didn't want junk in anymore. Because of that, I
39 didn't have time to go to the DEERS section to get my family
40 situation cleared up. I have not been allowed to take leave at all
41 during this time because I'm restricted to post. I asked to take
42 leave just on post. I'm living with my family now since May 2nd on
43 post housing. My commander said I could not take leave on post. I
44 cannot go off post without an E6 or above taking me with permission
45 from my commander. Sergeant Raymer usually takes me as an escort. I

1 have been off post maybe three times since January because Sergeant
2 Raymer invited me to a barbecue to his house, and the other time I
3 went with the garrison chaplain, and we went out to church. I've had
4 to go to medical appointments as well. I am escorted to my medical
5 appointments off post, but they don't stay. I have been to two
6 appointments off post. With regard to my uniforms, I've had to pay
7 for those uniforms on my own. I'm in Class A's. I was issued Class
8 A's by the Army eight and a half years ago. I asked my unit if they
9 could supply Class A's, but the unit's response was that it was up to
10 me because I should be getting a clothing allowance. I asked them
11 before I found out I needed them, and before I was eventually paid.
12 I was not getting money when I found out I needed Class A's. I could
13 not have afforded my Class A's. I paid a little over \$200.00 for my
14 Class A's and awards.

CROSS-EXAMINATION

Questions by the Trial Counsel:

19 I don't have a car here. I have not had a car since I got here.
20 If I leave post, someone pretty much has to drive me anyway. When I
21 arrived here, I was given a counseling statement concerning my pass
22 privileges. The enclosure to AE XL is the counseling form I
23 received. This form has my signature on there. I put my signature
24 there because I was told to. Someone explained to me what the
25 counseling was about. The front page of this says, "PFC Brand, you
26 are assigned to HHB, Center. Your pass privileges have been revoked,
27 and you will reside in the barracks, and you are limited to the
28 boundaries of Fort Bliss, Texas. Your pass privileges will be
29 reviewed once a month to determine if you have earned them back.
30 Violation of this counseling will result in transferring this
31 counseling to an appropriate jurisdiction for the recommendations and
32 actions. You will reside in room 142 Alpha." It would be fair to
33 say that my pass privileges were pulled. There is nothing on there
34 about leave. I do reside on post. In order for me to leave post,
35 someone would have to give me a ride. I'm restricted to the limits
36 of post. I am not restricted to my house. I am not restricted to my
37 place of work. I'm not restricted from going to the PX or the movie
38 theater. At first, I was restricted from seeing my family. After my
39 family moved down here, I was not prohibited from seeing them. In
40 the motion that my counselor has filed, I have not had an opportunity
41 to read it. In my motion, I indicated that I was not issued a new
42 Class A uniform for this trial, and that I had to pay for it out of
43 pocket. I did own a Class A uniform that I was issued more than six
44 years ago, but that uniform is too small for me to fit into now.

1 When I got here to Fort Bliss, I told CPT Segarra that my uniform was
2 at home because it didn't fit. I did not tell CPT Segarra that I had
3 thrown my Class A's away because I thought I was ETSing. I didn't
4 tell Maryanne Plummer back at the 377th, at any point, in the last
5 year, I didn't have any of my uniforms in fact because they were in a
6 storage locker, and I hadn't paid on it and they were taken. When I
7 left the 377th, I had BDU uniforms from the 377th. I got the uniforms
8 from the 377th prior to coming here. The 377th gave me two winter
9 uniforms prior to coming here. I turned in or DXed uniforms to get
10 the new ones. I turned in uniforms at the 377th to get the two BDU
11 uniforms I came down here with. Sergeant Plummer's relative sewed the
12 patches on one uniform, and the other uniform was sewn on when I got
13 down here. I did not pay for that sewing yet.

14
15 The Defense Counsel objected to the question, "When was last
16 time you showed up for drill at the 377th," for relevance. After
17 argument from both sides, the Military Judge overruled the objection.

18
19 The Defense Counsel objected to the question, "Let me rephrase
20 the question, how many drills have you made in the 377th since you've
21 came back from Afghanistan in 2003," for relevance. The Military
22 Judge sustained the objection.

23
24 In the motion from my counsel, AE XXXIX, the LESEs were provided
25 from me. At the bottom of the LES, it says, "Casual pay is 050211
26 and in parenthesis, 045. At the top, for base pay, I received
27 \$3,117.90 between 1 through 28 February. BAH was \$1,487.70. I am a
28 PFC. This is not what a PFC makes in one month. As to if that would
29 be my pay for two months, I have no idea what my base pay is.
30 Looking at the enclosure six, the date that's covered in this period
31 is 31 March 2005. This was the whole month of March. My base pay
32 for March is \$1,641.00 and my BAH is \$783.00. Enclosure five, the
33 date on this is the date on that is 1 April 2005. My base pay there
34 is \$1,641.00. Enclosure four is the same date as enclosure five.
35 Going to enclosure three, I agree that this covers May of this year.
36 My base pay was \$1,641.00. In the LESEs that I've submitted, it
37 shows that I received casual pay on 02/11/05. I didn't receive pay.
38 I got there January 24th, and I assume I didn't receive pay. I have
39 no idea why my LES would say that I received pay if I didn't get it.
40 As to why my LES shows that I get paid for two months in February
41 while the rest of them show that I got \$1,641.00, I get paid twice a
42 month every month. My wife came down to stay with me in May. I was
43 not drawing BAH after she got here. My LESEs would show that. When
44 I went to a barbecue at SGT Raymer's house, I took my family. SGT
45 Raymer took us there. If he hadn't have taken us to the barbecue, I

1 would have needed an E6 or above with permission from my commander to
2 go. As far as transportation, I couldn't have gone. I left the post
3 one time with the chaplain; I don't know if it was when the Pope
4 passed away because I don't watch TV. I did not have some ~~order~~ ^{order from my}
5 battery go with me when I left with the chaplain. I said that my
6 wife had a pap smear that was possibly cancerous. As to why I
7 haven't taken the time to get put back into DEERS to take care of my
8 wife's problem, I have to be at work. On the 15th of July, when I
9 received my orders, SGT Raymer took me down to finance and to DEERS
10 to get all of that stuff fixed. We got all we could get done that
11 day. We barely made it to get the ID cards and things. From what I
12 understood, when you get your ID card you were automatically enrolled
13 in DEERS, but that's not the case from what I have been hearing
14 lately. I was given clerical jobs, and they are different from
15 people in HHB, because only the people who are down here ~~for~~ UCMJ
16 processing or such are doing the same duties that I am. Everyone
17 else has a specific job like leaves and passes, personnel operations,
18 and things of that nature. My duties here are just cleaning up.
19 That's all they have me do. That's all they said I'm allowed to do.
20 I clean up and move furniture. I don't understand what you mean if I
21 have been assigned to guard the old Fort Bliss area. I do very
22 little besides cleaning like moving furniture, take the trash out,
23 and just be in the area.

REDIRECT EXAMINATION

Questions by the Defense Counsel:

24
25
26
27
28
29 I have a high school education. I have no other education
30 beyond that. In high school, I did okay. I wasn't stellar. I was
31 on the honor roll a couple of times. I didn't go to college. I did
32 aspire to go to college. I never did go to college. I can't afford
33 a car to go off post. There are certain places that I can walk to
34 off from Fort Bliss. There is a strip up on Dyer that I can walk to.
35 I don't recall where old Fort Bliss is. I could have figured out
36 that I got paid on 15 March 2005. My LESes reflect the pay I got
37 that month, and I get paid at the middle and end of the month. In my
38 first LES, there is no statement that I got paid in February.
39 Normally, I get paid at the end of the month. I am just guessing
40 that it was the 15th of March that I got paid.

41
42 There being no further questions from either party, the accused
43 resumed his seat.

44
45 The defense rested on the motion for Article 13 credit.

1
2 CPT Eric Segarra, U.S. Army, was called as a witness for the
3 prosecution, was sworn, and testified in substance as follows:
4

5 DIRECT EXAMINATION

6 Questions by the Trial Counsel:
7

8
9 I am CPT Eric Segarra, the commander for HNB, Garrison. PFC
10 Brand is one of my soldiers. When PFC Brand came here, I told him
11 that his pass privileges were revoked. PFC Brand's privileges were
12 revoked as a result of a flag in his file. When PFC Brand came here,
13 he did not have a Class A uniform. I asked him why he did not have a
14 Class A uniform. PFC Brand told me that he threw it away right
15 before he left his unit, the 377th. This was the reason why I didn't
16 have the Army provide him a Class A uniform, but we did paperwork so
17 that he could receive a Class A uniform and he would pay for it at a
18 later date. PFC Brand has paid for his uniform. It has come out of
19 his pay. There was a brief lapse in PFC Brand's orders. I found out
20 about this lapse after the fact, when I got his new orders. PFC
21 Brand did not come to me and tell me that it was a problem for him.
22 In fact, I didn't get notification. PFC Brand has never been
23 restricted to the confines of the company area. In order to move
24 around Fort Bliss, he does not need permission. PFC Brand does not
25 need an escort from Fort Bliss. PFC Brand performs duties that I
26 expect all other PFCs to perform. I have not singled him out because
27 of this court-martial to give him odd or bad duties. Initially, when
28 PFC Brand was called back to active duty, he was required to move
29 away from his family and into the barracks. I was not required to
30 bring his family down here, and I'm still not required to this day.
31 I brought his family down here because when I met with him, we spoke,
32 and I felt like it was the right thing to do. So, I asked for an
33 exception to policy from COL Greenwald, the former garrison
34 commander, and he granted it. It took a little bit of time because
35 we tried to do it through military means getting authorization and
36 orders. But we couldn't get orders. So, we had to do it outside of
37 military means. Essentially, we did him a favor. PFC Brand has not
38 been restricted to those quarters. When I got him his quarters, the
39 fact that he didn't have a vehicle, I asked that we got him quarters
40 near the commissary so they would be able to walk to the commissary
41 and the PX. The shoppette was right there. So, that would help them
42 out. He has not been restricted to his quarters that I can remember.
43 I have not restricted his ability to see his family after hours. PFC
44 Brand has never had to sign into the CQ office. The only time he
45 really ever has to show up is for ~~the~~ formation and his job. While

1 PFC Brand is at work, he's not required to be by the side of anyone,
2 unless he is on a detail, he would have to report to that person, but
3 never had to stay in his visual sight.

4 5 CROSS-EXAMINATION

6 7 Questions by the Defense Counsel:

8
9 PFC Brand needs an NCO escort to leave post because he has no
10 off post pass privileges. So, I review his pass privileges. There
11 is an exception. If he has something that requires him to go off
12 post, he would request it, and I will review it and make
13 accommodations. He doesn't have a vehicle. So, we require having a
14 soldier go with him. For example, when we picked up his family from
15 the bus depot, SGT Raymer was the one that went with him to go pick
16 up his family. This is the bus depot in downtown El Paso.
17 Basically, PFC Brand has not been allowed to leave post since 24
18 January without my permission. PFC Brand does what I would expect
19 any E4 or below to do. There are a variety of MOSes of E4s and E3s
20 that do a variety of different things. I am aware that PFC Brand's
21 MOS is that of an MP, but there are taskings such as garrison
22 taskings. I've called upon SJA, for example, SPC Ortiz who works at
23 the SJA to do taskings, and people here don't like it too much. PFC
24 Brand does taskings and he works at the headquarters. At the
25 headquarters, he does administrative things, filing, paperwork, helps
26 out in the supply room. Occasionally, there is nothing to do, and
27 he's sitting there, and I give him the opportunity to take time off
28 to do what he needs to do for the court-martial, but there are
29 moments where he has nothing to do, and when those times come, I try
30 to give him another job. I did not help PFC Brand arrange his
31 uniform, and I'm not aware of anyone helping him with his uniform.

32 33 EXAMINATION BY THE COURT-MARTIAL

34 35 Questions by the Military Judge:

36
37 I'm not aware that PFC Brand's family was not re-enrolled when
38 his pay was stopped. I knew it lapsed, but he was directed to go
39 back to DEERS and get them re-enrolled. He has never asked me to go
40 back to the hospital and get re-enrolled in DEERS. I would allow him
41 that opportunity if he had asked me to. I would make sure he put
42 family first mission always. As far as I know, his tasks are not so
43 rigorous that he would have no time to go over to DEERS to take care
44 of it in the last two weeks. In fact, I've mentioned there are times
45 that he's had nothing to do, and he could have done it.

RECROSS-EXAMINATION**Questions by the Defense Counsel:**

DEERS is in building 500. That is far away from PFC Brand's house or where he works, however, we have made more than enough efforts to help him out, and we've gone out of our way to assist him to get his family around and to get him around. So, if they needed a ride or needed an escort for anything, all he had to do was ask us, and we've always done it. We've got a van, and my battery has driven that family around everywhere including to school at their elementary.

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

SSG John A. Raymer, U.S. Army, was called as a witness for the prosecution, was sworn, and testified in substance as follows:

DIRECT EXAMINATION**Questions by the Trial Counsel:**

My name is SSG John A. Raymer. My duty station is Fort Bliss, Texas, HHB Center. I am familiar with PFC Brand. When PFC Brand came on active duty, he had a Class A uniform, but it was too small for him, and we started working on getting him fitted for a new one. I know that he was missing his jacket I believe. I think he had his pants, and I took him over to clothing sales and started getting him fitted so we could get him a new uniform. This wasn't right away. This was after I actually took charge of him around mid-February. Around the 15th of July, I had an opportunity to take PFC Brand over to DEERS. When we got over there, we got him a new ID card because his ID card had expired. Before his ID card had expired, we were trying to get his orders taken care of because we knew they were expiring. So, we had to get him amended orders. Once we actually received the orders, I received them from Mr. Garham at the AG office. He sent them to me via email, and I printed them off the day before we took him to get his ID card. When he went to get the ID card, I didn't know there was a problem to get him and his family into DEERS as far as I knew. I took him over to finance, and when we got to finance, I drove around almost all afternoon. But what had happened was he was actually dropped from the system, and everybody kept pawning us off as far as getting his finances taken care of, and what had happened, because he was a reservist called to active duty,

1 then he had to get put back in the system. So, we finally got that
2 taken care of on the 15th to where he got put back in the system, and
3 that following Monday we were going to submit a 2142 so that he could
4 receive his pay. PFC Brand has not told me that there was a problem
5 with him and his family being in DEERS. If he would have told me he
6 was having problem with his family because he wasn't in DEERS, I
7 would have taken him down to get it done.

CROSS-EXAMINATION

Questions by the Defense Counsel:

13 I would not accompany PFC Brand on all of his off post outings.
14 I think there was one that I had not escorted him on. I think that
15 was the one that was for his wife to go somewhere, but I had SGT
16 Chapman take PFC Brand's spouse over to her appointment off post.
17 PFC Brand does not have a car. As to when PFC Brand came to Fort
18 Bliss, how many trips we made to finance or different offices to get
19 his pay situation rectified, once I found out that he did have a
20 problem, I didn't find out until late because I was in battle-staff
21 school. I was at school when PFC Brand arrived. I graduated from
22 that course on the 5th of February. I found out about his situation
23 close to the end of February. I'm not sure of the times or dates,
24 but what I did, I started making plans and tried to help him get
25 situated and get paid. I think he first got paid some time in March.
26 He never got paid in February as far as I know. I believe it was
27 like four or five trips to get PFC Brand's pay corrected. I believe
28 I was the only person from HHB, Center working on that. Our S-1
29 clerk was also assisting me because I'm just the operations Sergeant
30 for HHB. That S-1 clerk would be SPC Bigger. My reception at the
31 different finance offices when I was trying to take care of this was
32 actually like they were taking care of us. We'd go in, and they'd
33 said they could get that taken care of, and then we'd turn around,
34 and we'd have to go do something else because we needed some other
35 paperwork. It was like three different times that they kicked his
36 paperwork back saying that he needed something else. I believe it's
37 because he was in reserve status, but I'm not sure in their policies
38 and as far as how they work.

END OF PAGE

REDIRECT EXAMINATION**Questions by the Trial Counsel:**

PFC Brand doesn't receive any jobs that are more menial or worse than any other PFCs because he's on a court-martial here.

EXAMINATION BY THE COURT-MARTIAL**Questions by the Military Judge:**

PFC Brand was working directly for me, but then the garrison Sergeant Major asked for a detail helping them move from one building to another, and of course, we didn't have a whole lot for PFC Brand to do at the orderly room. So, we offered his services longer than SPC Sanchez. They were moved from the credit union over to the building across from Building 240. That has been going on for about a month. They actually moved within the first week, but they started cleaning up in the basement. I guess HHB Center is going to be moving underneath the orderly room in the basement of building one. If PFC Brand needed to take care of his DEERS, I could have gotten him excused to take care of the DEERS. He did not approach me and say he still didn't have DEERS squared away since this last time. I would see PFC Brand almost on a daily basis at PT.

There being no questions from either party, the witness was warned and withdrew.

The session recessed at 1515, 28 July 2005.

An Article 39(a) Session was called to order at 1525, 28 July 2005.

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

SSG Maryanne C. Plummer, U.S. Army, was called, telephonically, for the prosecution, was sworn, and testified in substance as follows:

DIRECT EXAMINATION**Questions by the Trial Counsel:**

I am SSG Marianne C. Plummer. I'm a squad leader on the

1 military side of the house at the 377th MP Company in Cincinnati,
2 Ohio. Earlier this year PFC Brand had come in to go to Fort Bliss,
3 and he did not have his uniforms with him at that time. PFC Brand
4 told me that he had thrown them away because he was so close to
5 ETSing, he didn't feel he needed them anymore. The unit had to have
6 our acting supply Sergeant drive down to Fort Knox, Kentucky and get
7 ~~him~~ two uniforms for him, and we issued those to him. That was not
8 something we were required to do if he didn't give me old uniforms.
9 They would have to be actually uniforms and an even exchange. I took
10 the uniforms home and had my mother sew the patches on for him. She
11 sews on patches for the folks at the center, and charges normally.
12 PFC Brand did not pay for that. In the past, PFC Brand has come to
13 the 377th or me and told me he didn't have uniforms and gave an
14 explanation why not. In late Winter or early Spring of '04, after he
15 had gone to the CID interview, he had come in to make up his time,
16 and he was in civilian clothes. I asked him where his uniforms were
17 because the proper procedure was to report in uniform. He stated
18 that he couldn't get to his uniforms because they were in a storage
19 locker, and then later he stated something to the effect that he
20 probably wouldn't be able to get them back because the storage locker
21 had been repossessed and he couldn't get in.

CROSS-EXAMINATION

Questions by the Defense Counsel:

27 I took it that he threw all of his uniforms away. We got him
28 two sets of hot weather BDUs to replace his old uniforms. We did not
29 get him any Class A's at that time. I assumed that his Class A's
30 were with the rest of his uniforms. He never told me that he has his
31 Class A's, or that they didn't fit him. In my reserve unit, we wear
32 our Class A's at least once a year, normally in December at our Class
33 A inspection, and if throughout the year we have funeral duties we
34 may ask the reservists to wear them then to perform funerals.
35 Usually, we don't wear Class A's. Everyone knows that in December,
36 we always do Class A inspections. We didn't differentiate between
37 PFC Brand's BDU uniform or his Class A's when he said that he threw
38 his uniforms away because the First Sergeant would have been the one
39 to talk to him about that. So, I was there when he stated that he
40 threw them away, but I don't recall whether or not he was asked about
41 his Class A's. PFC Brand was not present for the Class A inspection
42 in December of last year.

44 There being no further questions from either party, the witness
45 was warned and disconnected.

1 The Defense Counsel made argument on the motion for Article 13
2 credit.

3
4 The Trial Counsel made argument on the motion for Article 13
5 credit.

6
7 The Military Judge stated that he would take the motion under
8 advisement, and that they would hear the motion to exclude autopsy
9 photographs, AE XLII and XLI.

10
11 There was no argument provided by either the defense or the
12 prosecution, and the Military Judge took the motions ~~by~~ under
13 advisement.

14
15 The Military Judge heard the motion to compel production of the
16 documents related to ~~Mr.~~ ^{Mr.} Boland, AE XLIII.

17
18 The Civilian Defense Counsel made argument on the motion to
19 compel.

20
21 The Assistant Trial Counsel stated that the government has and
22 will provide the documents within 24 hours.

23
24 The Military Judge ascertained from the defense that providing
25 the documents requested would resolve the matter.

26
27 The Civilian Defense Counsel stated that the insanity board
28 request had not yet been completed.

29
30 The Trial Counsel stated that the accused's board was suspended,
31 and that the doctor who interviewed the accused had to be contacted
32 to conclude with the psychoanalysis. He further stated that the
33 sanity board results would be completed some time this week.

34
35 The Military Judge directed that the Trial Counsel contact the
36 doctor and the doctor has until the end of next week to complete the
37 results.

38
39 The Military Judge ascertained that the defense was prepared to
40 enter forum selection so that the Trial Counsel could ~~create the vice~~
41 ~~order~~ ^{a panel.} ~~was~~ ^{Amange for}

42
43 After the Military Judge advised the accused of his forum
44 rights, the accused requested to be tried by a panel with enlisted
45 members.

1 The Military Judge stated that the Trial Counsel was on notice,
2 and that as soon as they created the vice order; provide a copy to
3 the defense.

4
5 The Military Judge stated that, based on AE XLVI, it appeared
6 there were no logbooks.

7
8 The Civilian Defense Counsel stated that they did not have
9 further motions, but that they would stand on their prior motion, and
10 made argument on the motion to dismiss.

11
12 The Trial Counsel made argument on the motion to dismiss.

13
14 The Military Judge stated that he would consider this motion and
15 rule on it based on what he had before him, and that ~~they~~ ^{he} would hear ^{the}
16 the notice of motions, AE L. ^{other motions}

17
18 The Military Judge ascertained from the defense that there was
19 no formal motion ~~for the motion~~ ^{to dismiss} because of lost logbooks,
20 a selective prosecution motion, ^a motion for unlawful command influence,
21 ^{unl} or motion to compel production of legal advice associated with denial
22 ^{of} immunity for CPT Wood. ^{unl}

23
24 The Military Judge stated that they would hear AE XLIX, the
25 motion for production of witnesses.

26
27 The Trial Counsel advised the Military Judge of witnesses that
28 the government would produce.

29
30 The Civilian Defense Counsel made argument why Thomas Gandy
31 would be a relevant witness.

32
33 The Trial Counsel made argument why Thomas Gandy was not a
34 relevant witness.

35
36 The Civilian Defense Counsel made argument why COL Hayden and
37 MAJ Bovarnick would be relevant witnesses.

38
39 The Assistant Trial Counsel made argument why COL Hayden and MAJ
40 Bovarnick were not relevant witnesses.

41
42 The Civilian Defense Counsel stated that if the government would
43 agree with an instruction that the PUCs were being maltreated, and
44 provide that to the panel members, they would not request those
45 witnesses.

1 The Trial Counsel stated that they would not agree with that
2 instruction, and further argued on that motion.

3
4 The Defense Counsel made argument why COL Ingwersen was a
5 relevant witness.

6
7 The Trial Counsel made argument why COL Ingwersen was not a
8 relevant witness.

9
10 The Defense Counsel made rebuttal argument why COL Ingwersen was
11 a relevant witness.

12
13 The Civilian Defense Counsel made argument why Mr. Ahmadzai was
14 a relevant witness.

15
16 The Military Judge stated that he would take the witness
17 requests under advisement, and rule on the motions as quickly as he
18 could.

19
20 The Civilian Defense Counsel requested that the Military Judge
21 consider the ICRC issue.

22
23 The Military Judge stated that if the ICRC evidence was
24 utilized, he'd have to close the court, and that he will review it
25 appropriately.

26
27 The Military Judge set a suspense date for any proposed findings
28 instructions of 11 August 2005.

29
30 The Military Judge directed that the members be scheduled to
31 appear for trial at 1000, 15 August 2005.

32
33 The session terminated at 1610, 28 July 2005.

34
35 An Article 39(a) Session was called to order at 0804, 15 August
36 2005.

37
38 All parties present prior to the last recess were again present.
39 The members were absent.

40
41 SPC Brian Ortiz was now detailed reporter for the case, and had
42 been previously sworn.

43
44 The following Appellate Exhibits were marked:
45

1 AE LIII, email witness prioritized request;
2
3 AE LIV, findings of fact, accused's statements;
4
5 AE LV, request for instructions;
6
7 AE LVI, request for instructions;
8
9 AE LVII, request for instructions;
10
11 AE LIX, findings of fact, Article 13 credit;
12 ~~Government MRE 506 notice. UMS~~
13 AE LX, ~~classified exhibit not provided;~~
14
15 AE LXI, government response to discovery request;
16
17 AE LXII, email traffic under M.R.E. 505;
18
19 AE LXIII, Defense notice of motions;
20
21 AE LXIV, classified exhibit ~~not provided;~~ [Sealed] UMS
22
23 AE LXV, classified exhibit ~~not provided;~~ [Sealed] UMS
24
25 AE LXVI, classified exhibit ~~not provided;~~ [Sealed]
26
27 AE LXVII, email traffic, requested witnesses;
28
29 AE LXVIII, request for instructions;
30
31 AE LXIX, memorandum advice on immunity to CG;
32
33 AE LXX, request for instructions;
34
35 AE LXXI, findings of fact, defense motion to compel;
36
37 AE LXXII, defense request for discovery;
38
39 AE LXXIII, findings of fact, defense request for dismissal due
40 to lost evidence;
41
42 AE LXXIV, findings of fact, autopsy photographs;
43
44 AE LXXV, email, request for witnesses;
45

1 AE LXXVI, findings of fact, M.R.E. 506; and

2
3 AE LXXVII, the flyer.

4
5 The Civilian Defense Counsel stated that he objected to the
6 Military Judge's denial of witnesses, and asked the court to
7 elaborate in more detail as to why an interpreter would not be
8 granted.

9
10 The Military Judge stated that he noted the objection, and that
11 he had put ~~details~~ in the denial.

12 *his reasons up*

13 The Military Judge stated that he had AE LXXVIII, a government
14 request to take judicial notice of Article 136 of the UCMJ, and that
15 the case of U.S. v. Halley was attached to that provision of Article
16 136.

17
18 The Assistant Trial Counsel made argument on the request for
19 judicial notice.

20
21 The Civilian Defense Counsel had no objection to the judicial
22 notice request.

23
24 The Military Judge stated that he would take judicial notice of
25 Article 136 of the UCMJ.

26
27 The Military Judge stated that AE LXXIX was the government
28 request for definition ~~on~~ maltreatment taken from the benchbook.

29 *the ok mms*

30 The Military Judge re-advised the accused of his rights to forum
31 selection.

32
33 The accused stated he understood his rights, and that he
34 requested to be tried before a panel composed of enlisted members.

35
36 The Military Judge stated for the record that the case was
37 referred to CMCO 24, dated 14 October 2004, and that CMCO 7, dated 2
38 August 2005 was an amending order.

39
40 The Defense Counsel did not object to the convening orders.

41
42 The Trial Counsel stated that the prosecution had not received
43 any documentation per the prosecution's discovery request.

1 The Trial Counsel stated that due to the change in 404(a), if
2 the defense placed the character of the victims as violent, that the
3 prosecution would put the accused's character in issue for violence.
4 He further stated that the defendant made statements to the New York
5 Times and 60 Minutes, and that if those statements were inculpatory,
6 they were going to use the statements.

7
8 The Civilian Defense Counsel stated that they had no notice of
9 this, and that they objected to using these statements.

10
11 After Argument by both sides, the Military Judge directed the
12 article be marked as an Appellate Exhibit, and that he'd take it
13 under advisement and they would discuss it at a later Article 39(a)
14 Session.

15
16 AE LXXX, M.R.E. 404(b) notice;

17
18 AE LXXXI, New York Times Article was marked.

19
20 The Trial Counsel stated there was an issue with a Dr. Joye
21 Carter not arriving, and that they had sent a subpoena and ITO.

22
23 The Trial Counsel requested that Dr. Joye Carter and all
24 witnesses, except for the defendant's mother, be sequestered.

25
26 The Defense Counsel stated they didn't know where the doctor
27 was, and that they did have her phone number.

28
29 The Military Judge asked what the parties wanted to do, and that
30 he was prepared to do whatever was necessary to ~~deliver~~ the witness.
31 *Produce*

32 The Defense Counsel stated they did not desire an adverse
33 witness as an expert, and that they would withdraw the request to
34 have Dr. Carter available. He further stated at a break, the defense
35 would give another phone call to find where she was located.

36
37 The Military Judge stated that if the parties believe it
38 necessary, he would sign a warrant of attachment.

39
40 The Civilian Defense Counsel stated that they had items to be
41 used to illustrate points in their opening statement, and that they
42 would desire the prosecution not to see them.

43
44 The Military Judge stated that the prosecution had to see the
45 documents because they could be objectionable.