

was marked and was comprised of
 1 AE LXXXII, pictures used during defense's statement;
 2 *proposal to be* *was*

3 AE LXXXIII, pictures used during defense's statement; and
 4 *was marked and was comprised of*

5 AE LXXXIV, pictures *to be* *was* used during defense's statement.
 6 *was marked and was comprised of* *was*

7 The Civilian Defense Counsel showed the AE LXXXII, LXXXIII, and
 8 LXXXIV, to the prosecution.

9 The Assistant Trial Counsel did not object to AE LXXXIII and
 10 LXXXIV, but did object to AE LXXXII *as to* *was* for relevance and prejudicial.
 11 *as being* *was*

12 After argument by both parties, the Military Judge sustained the
 13 objection *as to* *was* relevance, and if it were relevant, it would be highly
 14 prejudicial. *was* *found not even*

15 The Civilian Defense Counsel stated that he would like the
 16 ruling of voir dire questions marked for the record.

17 AE LXXXV, questions for voir dire and subsequent rulings.

18 The accused pled as follows:

19 To all Charges
 20 and their Specifications:

21 The defendant, PFC
 22 Willie V. Brand,
 23 pleads Not Guilty.

24 The session terminated at 0829, 15 August 2005.

25 An Article 39(a) Session was called to order at 0843, 15 August
 26 2005.

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

29 The Civilian Defense Counsel objected to the procedure, and that
 30 the prosecution should be required to put it on during its case, and
 31 that when they noted the objection, the Military Judge would note the
 32 objection. *[pre-admitting exhibits]* *was*

33 After argument from both sides, the Military Judge overruled the
 34 objection, and allowed the prosecution to proceed.

35 The Civilian Defense Counsel requested a ruling on the

1 admissibility of statements made to New York Times and 60 Minutes.
2 After argument by both parties, the Military Judge overruled the
3 objection for the New York Times article, and stated the 60 Minutes
4 interview was moot.

5 CW2 Daniel Flores, U.S. Army, was called as a witness for the
6 prosecution, was sworn, and testified in substance as follows:
7 **DIRECT EXAMINATION**

8
9
10 **Questions by the Assistant Trial Counsel:**

11 I am CW2 Daniel Flores. I am assigned to the Ansbach Resident
12 Agency, CID. On 21 December 2002, I was stationed in Bagram
13 Airfield, Afghanistan. I had an opportunity to interview then SPC
14 Willie Brand. PFC Brand is present in the room today, right over
15 there [pointed at the accused]. PE 2 for ID is a DA 3881, a rights
16 waiver. The other pages in this documentation are a sworn statement,
17 a DA 2823. This is the statement I took from PFC Brand on 21
18 December 2002. I know this is the statement because my signature is
19 on it as well as PFC Brand's. I typed out the actual statement. I
20 wrote the information on the rights waiver form. I recognize my
21 handwriting. This is a true and correct copy on both of these items.

22
23 The prosecution requested that PE 2 for ID be admitted into
24 evidence.

25
26 The Defense Counsel stated that they renew its objection as
27 before for voluntariness of the statement.

28
29 The Military Judge admitted PE 2.

30
31 There being no further questions, the witness was warned and
32 withdrew.

33
34 CW4 Angela Birt, U.S. Army, was called as a witness for the
35 prosecution, was sworn, and testified in substance as follows:

36
37 **DIRECT EXAMINATION**

38
39
40 **Questions by the Assistant Trial Counsel:**

41 I am CW4 Angela Birt. My present duty station is at the 11th MP
42 Battalion at Camp Victory, Iraq. On 24 January 2004, I had an
43 opportunity to interview then SPC Brand. I see PFC Brand in the
44 courtroom today. He's the gentleman in the Class A, PFC uniform
45

1 sitting directly in front of me with the name tag, "Brand," on it. PE
2 1 for ID is a rights warning procedure and a sworn statement taken
3 from SPC Brand on 24 January 2004. On the rights warning form at the
4 beginning, SPC Brand's, Mr. Carton's and my signatures are on there.
5 I did the typing on this form, and the initials and signatures were
6 done by the individuals present. This is a true and correct copy of
7 the original that was executed that day. Looking to the third and
8 continuing pages, these are the statements prepared subsequent to the
9 interview, and signed and sworn at the conclusion of the interview.
10 PFC Brand, Mr. Carton, and myself, signed this form. I know that we
11 signed it by the signatures on page 13. I typed up this entire
12 statement. This is a true and correct copy of the statement I typed
13 up after PFC Brand made corrections.

14 The prosecution requested PE 1 for ID be admitted into evidence.

15
16 The Defense Counsel did not object to the authentication, but
17 did renew their objections on voluntariness.

18
19 The Military Judge overruled the objection, and PE 1 was
20 admitted.

21
22 There being no further questions by either party, the witness
23 was warned and withdrew.

24
25 MR. George Chigi III, civilian, was called as a witness for the
26 prosecution, was sworn, and testified in substance as follows:

27
28 DIRECT EXAMINATION

29
30 Questions by the Assistant Trial Counsel:

31
32 I am George Chigi III. I'm employed at the CID office at Fort
33 Hood, Texas. My position there is as a special agent, criminal
34 investigator. On 3 February 2004, I had the opportunity to interview
35 then SPC Willie Brand. I see SPC Brand in the courtroom today. He's
36 sitting in front of me right there. He's wearing the PFC Class A
37 uniform sitting at the counsel table. PE 3 for ID is a rights
38 warning procedure waiver certificate that I utilized to advise SPC
39 Brand of his rights when I interviewed him on 3 February 2004.
40 Behind the rights warning is the sworn statement of Willie Brand also
41 on that same date. On that date, a written statement was made of
42 what PFC Brand said. Looking at this statement, this is a true and
43
44

1 correct copy of that statement. SPC Brand's, SA Birt's, and my
2 signatures are on this statement.

3 The Assistant Trial Counsel offered PE 3 for ID into evidence.
4

5 **CROSS-EXAMINATION**
6

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

9 I read PFC Brand other rights other than what was on this
10 exhibit. I read PFC Brand a polygraph examination statement of
11 consent form. He signed that polygraph examination statement of
12 consent.
13

14 The Defense Counsel objected on the grounds of incompleteness on
15 the grounds that the full rights warnings were not in PE 3 for ID.
16

17 The Trial Counsel stated that they had the rights warning of the
18 polygraph examination, and that they did not introduce it because the
19 government was not allowed to introduce evidence of a polygraph.
20

21 The Military Judge ascertained from the defense that they wanted
22 the polygraph consent form as part of PE 3 for ID.
23

24 The polygraph consent form was attached to PE 3 for ID.
25

26 The Military Judge stated that AE LIV was the court's ruling on
27 the defense motion to suppress, and that that polygraph advice form
28 was referred to in AE LIV as well as the briefs of the parties.
29

30 The Defense Counsel stated that the defense would renew its
31 previous objection based on voluntariness.
32

33 The Military Judge noted the defense's objection, but overruled
34 the objection, and admitted PE 3.
35

36 There being no further questions by either party, the witness
37 was warned and withdrew.
38

39 The Civilian Defense Counsel requested that the accused's wife
40 be allowed to sit in during the court-martial proceedings.
41
42
43

1 The Military Judge stated that he would allow the wife and
2 children sit in the courtroom provided the children behave without
3 disruption, and that, during the findings, the accused not be
4 mentioned as having a wife with four children because it was
5 irrelevant.

6 The Assistant Trial Counsel stated that the prosecution had no
7 objection to the accused's mother attending the court-martial.

8 The Military Judge granted that the mother be seated during the
9 court-martial.

10 The session terminated at 0906, 15 August 2005.

11 The court-martial was called to order at 1051, 15 August 2005.

12 All parties present prior to the last recess were again present.
13 The following members were present:

14 COL RANDY A. BUHIDAR,
15 LTC HECTOR R. CASTILLO,
16 LTC MICHAEL S. MALONEY,
17 LTC JOSEPH A. SIMONELLI,
18 MAJ DAVID M. LYNCH,
19 SGM FREDDIE ESCAMILLA,
20 SGM RYAN P. JONES,
21 1SG DAMON M. MONTAGUE,
22 1SG MARTEZ SIMS, and
23 MSG DOUGLAS J. BUTLER, court members.

24 The members of the court-martial were sworn in accordance with
25 R.C.M. 807.

26 The court-martial was assembled.

27 The Military Judge instructed the members concerning their
28 duties, the conduct of the proceedings, and that the court members
29 would be required to determine the guilt or innocence of the accused,
30 and that if found guilty, the members would have to determine the
31 sentence.

32 The Assistant Trial Counsel announced the general nature of the
33 charges.

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

2 August 2005

COURT-MARTIAL CONVENING ORDER
NUMBER 7

COL RANDY A. BUHIDAR, AD, HHB, 11TH ADA BDE
LTC HECTOR R. CASTILLO, OD, JTF-6
MAJ DAVID M. LYNCH, AD, HHB, 1-1ST, 31ST ADA BDE
SGM FREDDY ESCAMILLA, USA, A CO, USASMA
1SG DAMON M. MONTAGUE, USA, 518TH MAINT CO, 31ST ADA BDE
1SG MARTEZ, SIMS, USA, 286TH SIG CO, 11TH ADA BDE
MSG DOUGLAS J. BUTLER, USA, HQ/A BTRY, 2-6TH ADA, 6TH ADA BDE

are detailed to the special court-martial convened by Court-Martial Convening Order Number 24
this headquarters, dated 14 October 2004, vice:

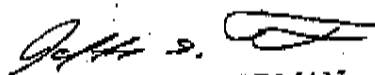
COL JOHN E. SEWARD, AD, HHC, USASMA
COL KENDAL W. CUNNINGHAM, AD, HHB, 6TH ADA BDE
MAJ KEVIN F. CIOCCA, AD, HHB, 31ST ADA BDE
CSM RICHARD S. CLEM, USA, HHB, 3-43 ADA, 11TH ADA BDE
SGM PATRICIA A. MCNAIR, USA, HHC, USASMA
1SG EVARISTO TORRES JR., USA, D BTRY, 3-43 ADA, 11TH ADA BDE
1SG CHARLIE E. DAVIS,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

for the trial of PFC Willie V. Brand, HHB, USAADACENFB, Fort Bliss, Texas 79916 only.

BY COMMAND OF BRIGADIER GENERAL LENNOX:

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- 1 - Record Set



JEFFREY S. FORMAN
CW2, USA
Legal Administrator

1 The Military Judge conducted preliminary examination of the
2 court members concerning their qualifications.

3 Both parties were provided the opportunity to examine the court
4 members concerning their qualifications.
5 *WMS*

6 The members withdrew and an Article 39(a) Session was called to
7 order at 1124, 15 August 2005.

8 The following members were called for individual voir dire by
9 both parties:

10 LTC Castillo; LTC Maloney; SGM Escamilla; SGM Jones; 1SG Sims; and
11 MSG Butler.

12 *WMS* 1SG Sims, a ~~peremptory challenged member~~, was *re-*called for
13 individual voir dire, and provided the following statement:

14 I mentioned that I was deployed with the 5th Battalion, 52nd Air
15 Defense Artillery. I was the battalion commo chief, and we provided
16 tactical ballistic missile support for the 101st, 3rd Infantry
17 Division. This was at the start of the war with Iraq. I was in Iraq
18 for maybe about four months. I was never at a prison or detainment
19 facility in Iraq. I was not in Afghanistan. I did not work with
20 detainees or prisoners of war at all.

21 The Trial Counsel stated the prosecution had no challenge for
22 cause.

23 The Defense Counsel stated that they challenge LTC Maloney for
24 cause.

25 After argument from both parties, the Military Judge granted the
26 challenge for cause.

27 The Assistant Trial Counsel peremptorily challenged 1SG Sims.

28 The Defense Counsel objected to 1SG Sims' peremptory challenge
29 under Batson.

30 After argument from the prosecution, the Military Judge denied
31 the Trial Counsel's peremptory challenge.

32 The Assistant Trial Counsel peremptorily challenged MSG Butler.

1 The Defense Counsel peremptorily challenged COL Buhidar.

2 The Military Judge granted the peremptory challenges by both
3 parties.
4

5 The Military Judge stated that the court-martial had a quorum ~~as~~
6 ~~far as numbers and enlisted panel.~~ *UAC*
7

8 The members entered, the session terminated, and the court-
9 martial was called to order at 1151, 15 August 2005.
10

11 The Military Judge informed COL Buhidar, LTC Maloney, and MSG
12 Butler that they were excused and would not be needed for any further
13 sessions of the court-martial.
14

15 The court-martial recessed at 1154, 15 August 2005.
16

17 An Article 39(a) Session was called to order at 1301, 15 August
18 2005.
19

20 All parties present prior to the last recess were again present.
21 The members were absent.
22

23 The Military Judge inquired about the ^{*status of*} ~~information about~~ Dr.
24 Carter. *UAC*
25

26 The Trial Counsel announced that the documentation was provided
27 and was marked as LXXXVI.
28

29 The Defense Counsel stated they had reviewed the flyer, and had
30 no objection.
31

32 The members entered, the session terminated, and the court-
33 martial was called to order at 1304, 15 August 2005.
34

35 COL Budihaar, LTC Maloney, and MSG Butler, excused members, were
36 not present.
37

38 The Military Judge informed the members that the accused had
39 entered pleas of not guilty to all charges and specifications, and
40 advised the members about opening statements.
41

42 The Assistant Trial Counsel made an opening statement.
43

44 The Civilian Defense Counsel made an opening statement.
45

UWS

The members ~~renewed~~ ^{*read*} PE 1, 2, and 3, which was published at
the Government's request. UWS

The Civilian Defense Counsel renewed its objection to PE 1, 2, and 3.

The Military Judge stated that the defense's objection was noted, but that he would adhere to his ruling.

The court-martial recessed at 1436, 15 August 2005.

The court-martial was called to order at 1448, 15 August 2005.

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

CSM Duane Fredrickson, 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:

I am CSM Duane Fredrickson. I am the battalion Command Sergeant Major for the 13th Psychological Operations Battalion, United States Civil Affairs and Psychological Operations Command. Other than being a Command Sergeant Major, I hold the 11B; 95B, which is now 31B; 95C, correctional specialist which is now 31C; and 00Z; MOSes. I was recruited back into the military in October 1978 after a break of service of five years as an MP. I worked for the police department, where an ~~instructor~~ ^{*was*} an instructor in the MP school for the reserves. ~~He~~ ^{*was*} worked in personnel and went through the personnel files, and found my training background, and my certification with the police department, and he recruited me to come back in as an MP instructor. When I came back in, I initially took the basic MP course, the advanced MP course, the correctional specialist course. About four months after I came back in, I was certified as a small group instructor, a methods-of-learning instructor, and numerous other schools such as SWAT school, counter-terrorism school, and NBC school. I've been an MP trainer from November 1978 to October 2000. The positions I've held as an MP trainer during that period of time, I was a junior instructor as an E5 when I came in; I was a Staff Sergeant team trainer, and then I went to the senior trainer.

The Defense Counsel objected to the witness's answer *based on UWS* relevance. After argument from both sides, the Military Judge overruled the objection.

1 As an E6, I was a lead trainer, and then I went to a senior
2 trainer as an E7. Then, I went from there to what they call a course
3 manager planner, course writer, where I had the responsibility of,
4 during the standard training era of drills, I had the responsibility
5 for 30 instructors, and then for each year of AT, I had the
6 responsibility for up to 55 soldiers. I was then promoted to
7 Sergeant Major, and I was what they called the senior trainer, master
8 trainer for a training battalion which had 105 instructors spread out
9 over six states. And I had the training management responsibility
10 for all of them, and all of the training sites that went with it, and
11 an AT every year with upwards of 250 to 500 students depending on
12 what the course year brought us for annual training. During that
13 period of time, I've had the opportunity to teach use of force to
14 MPs, and not only to the MPs, but also in the police department where
15 I worked for 31 years. In training of use of force, you are
16 basically taking rookie police officers that come through the
17 training academy, and you go out there and you teach them all of the
18 hands on management of prisoners, and how to gain control of them
19 with the least amount of force, absent deadly force. You instruct
20 the use of force trainees on the use of force continuum, levels of
21 force, nonverbal communication, verbal communication, the physical,
22 and weaponry, the use of the night stick, the MP baton as they call
23 it in the military, and the actual hands-on. We are out on mats for
24 a half a day at a time. Outside of the MP training that I've done
25 and the civilian training that I have done, there is another time in
26 1980, in the beginnings of my police career, I took martial arts for
27 three and a half years. And the police department community
28 relations came and asked me to co-teach a women's self-defense course
29 with the police department, which I did for five years. Then, the
30 police department stopped doing the self-defense course, and I
31 continued on doing it through word of mouth for church groups and the
32 like. And 13 years ago, I incorporated a business which is a
33 Minnesota corporation where one of the nine courses that we teach
34 through that business is a women's self-defense course, and that
35 women's self defense course, I probably taught 2,500 women. Going
36 back to the MP training, when I was doing the actual training myself,
37 I probably taught upwards to around 250 to 300 MPs on the use of
38 force. Under my supervision, there were probably a little over 3,000
39 MPs that were trained on the use of force even though I might not
40 have personally done that. Business wise, in the civilian world, on
41 the police department, I trained at least 12 rookie schools, and each
42 rookie school is between 60 and 100 students on the use of force. I
43 have never received any censure or reprimand for improper training
44 that I may have provided to MPs in the military. I was never sued or
45 charged with anything with the Minneapolis Police Department in 31

1 years. As a police officer, I have some experience with actual
2 application with use of force techniques. This would be during my 30
3 years experience.

4 The Trial Counsel requested that the witness be recognized as an
5 expert in the teaching of use of force to MPs.

6 The Defense Counsel objected on relevance and lack of
7 foundation.

8 The Military Judge provided the defense the opportunity to voir
9 dire the witness.

13 CROSS-EXAMINATION

15 Questions by the Defense Counsel:

16 I was in Afghanistan. I just did a ten and a half month tour
17 there. I was in Bagram Airfield, Afghanistan. I had a company
18 there. I was not there when PFC Brand was there. I wasn't there in
19 December of 2002. I wasn't in the isolation cells, the prison, or in
20 the BCP with PFC Brand. I did not personally teach PFC Brand at Fort
21 Ripley in 1999. I think PFC Brand's face looks familiar, but I do
22 not recognize him if he was walking down the street to say that was
23 his name. When I was in Bagram, I did not see chaining of the
24 detainees. I didn't work inside the ~~cell~~ ^{area}, so I couldn't tell you if
25 they were chaining the detainees. I never saw PUCs being chained or
26 hooded.

27 The Defense Counsel objected on the grounds of relevance and
28 foundation.

29 After argument from both parties, the Military Judge accepted
30 CSM Fredrickson as an expert in the teaching of use of force.

31 The Military Judge instructed the members as to what an expert
32 witness meant.

38 Questions by the Trial Counsel:

39 As an MP trainer and a civilian police officer, I am familiar
40 with the common peroneal strike. Out of all of the techniques that
41 are used, this is one that is used by most civilian police and MPs
42 when the situation calls for it and the need to administer it.
43 Without showing you, the common peroneal strike is taking the butt of
44
45

1 the kneecap and striking the upper-thigh portion, outer, of either
2 the right or the left side of the leg. And the way they are taught
3 is three quick [punching his fist to hand two times] punches with the
4 knee into the muscle on the peroneal nerve. The point of hitting the
5 outside of that thigh to explain it in layman's terms in classes that
6 I've taught, the peroneal nerve is kind of like an electrical
7 conduit, and the muscle has electricity going through it for a lack
8 of a better description. And as long as the electricity is going
9 through it, the muscle is hot and the light bulbs are on so to speak.
10 When you hit that muscle, it interrupts that electrical impulse and
11 causes the muscle to go into a spasm.

12 The Defense Counsel objected to the witness's answer for going
13 into a medical diagnosis. The Military Judge overruled the
14 objection.
15

16 The Defense Counsel objected to the witness reading notes on the
17 witness stand.
18

19 The Military Judge directed the witness close the notes up.
20

21 The witness did as directed.
22

23 The way I describe the electrical impulses in the legs, the way
24 I describe it in class is it's kind of like going to a light switch
25 and turning it on and off repeatedly. They are instructed to do two
26 taps which causes the muscle to go into spasms, and in most cases,
27 when the muscle starts to go into spasm, the person starts to fall,
28 and in many cases, I've used it at least six to eight times where the
29 person will drop to a knee or both knees, and it's very painful. The
30 object of the actual strike is to get them to drop down so that
31 they're more preoccupied with the intensity of the pain and the
32 muscle giving away which gives you the opportunity to grab
33 extremities and regain control. I, personally, have received that
34 strike well over 100 times. I have given that strike equally that many,
35 and at least six to eight times on the job where I had to actually
36 use it. The feeling that you get when someone hits you in that
37 manner is like if it was four o'clock in the morning, when you walk
38 through the bedroom and you bang your shin on the end of your bed, or
39 you bang your elbow, the crazy bone, into something. It's an
40 immediate pain where you go into a fetal curl. It's intense pain,
41 and it's radiant pain at the point of impact right through the muscle
42 structure. As to if the striking the thigh in that particular place,
43 the knee bone and thigh bone have a relationship to striking in that
44 particular area, the knee is basically the largest portion of the
45

1 leg, and routinely, it's bigger than a fist. So, they use the knee
2 because it's kind of like the pile driver, and you pile it into that
3 muscle which is a disruption point, and that's why you use it. When
4 the knee goes into the leg, it pushes the muscle against the femur
5 bone.

6 The Defense Counsel objected to the request from the prosecution
7 that the witness demonstrate a blow because it didn't relate to the
8 circumstances which PFC Brand was giving the alleged peroneal
9 strikes. The Military Judge overruled the objection.

10 I am short of six feet three inches. I'm actually six, three,
11 and I'm going through a skeletal crunch now that I'm getting older in
12 years. I weigh 230 pounds. ~~you are about five feet nine inches.~~
13 Demonstrating the strike, the students are instructed to take a step
14 to the right side or the left side of the person, avoiding the front,
15 stepping in with their non-dominant leg to brace, grab onto the
16 person, bringing the knee up, and going bang [lifting his leg to the
17 Assistant Trial Counsel's left-outer thigh], bang [lifting his leg to
18 the Assistant Trial Counsel's left-outer thigh]. They are instructed
19 to give two quick jabs. Then, the person responds by taking control
20 of the person. In my experience, it usually takes two strikes, but
21 I've had students take up to four, before they move to a fetal curl
22 response.

23 The Defense Counsel objected to the question, "If someone were
24 standing, chained in an isolation cell, and delivered up to 30
25 peroneal strikes, what would you expect, in your experience, to
26 happen to that person," for speculation. The Military Judge
27 overruled the objection.

28 If someone were standing, chained to an isolation cell, and
29 delivered up to 30 peroneal strikes, I've had a couple of students
30 that, in their zealotness gave me four, and the level and the
31 intensity of the pain caused me to scream and to use some very
32 meaningful expletive deleteds, in response to their actions. I would
33 say that if the peroneal strike was done 30 times with the person
34 incapable of dropping to the knee, giving a visual response, let's
35 say with the skeletal structure, there would be some comments, some
36 screaming, and some flailing of the body in response to the intensity
37 of the pain because it would be radiant, repetitive pain through the
38 entire skeletal structure. Talking about the 95 Charlie course, I
39 was assigned to the 3rd Battalion, 3rd Brigade, 84th Training Division,
40 Headquarters, in Eastern Michigan, and as I said earlier, the
41 battalion was broken into five states and numerous training sites in
42
43
44
45

1 May of 1999. In May of 1999, I was in Camp Ripley, Minnesota. My
2 duties there was the Chief Instructor Course Manager for the Military
3 Police courses that were being conducted at that training time. It
4 was the MOS specific BNCOC course, the MOS specific ANCOC course, the
5 basic MP Phase II course, Phase I being what they do in drill
6 training weekends, and then they come for the final two week hands-on
7 portion there, a military police investigator's course, and the 95
8 Charlie Correctional Specialist Civilian Interning Resettlement
9 Course. As to if I could tell you what the 95 Charlie Course was
10 designed to teach at that time, in 1996, the commander of the MP
11 school, with guidance from TRADOC determined that there was a need to
12 take and centralize the training in the correctional specialist field
13 so that they could not only take care of what was theorized as the
14 correctional facility, let's say like Leavenworth, but they also
15 would have the same training that would give them the ability to
16 take, in a field environment, during a combat environment, to operate
17 EPW, civilian internee camps. So, they changed the training and they
18 centralized it so that the active component would get the same
19 training as the reserve component as the National Guard component.
20 They looked at the course of the standard 95 Bravo, the standard MP.
21 They looked at all of the things that they were trained. They looked
22 at what the 95 Charlie, the correctional specialists have been
23 trained, which had the specific guard duties and prisons, they looked
24 at those two. They extrapolated the things that they had in common,
25 took those out, and then created the course, the 95 Charlie
26 conversion EPW, and CI course. That then became the course that they
27 trained not only to the active component at Leonard Wood, but they
28 also trained it to the National Guard and reserve which was called
29 TATS, which was an acronym that was used to take and define what they
30 were doing with all the courses. They were categorizing and
31 centralizing and standardizing all of the courses throughout the
32 military. The end result of the 95 Charlie course is the assumption
33 that you're taking a 95 Bravo trained soldier or a correctional
34 specialist trained soldier, a 95 Charlie, but I might add a Charlie
35 cannot be a Charlie without being a Bravo first. So, they have to
36 get basic MP skills, and then they get the correctional specialist
37 skills. So, what you do is you take that person that comes to you
38 with those minimum training standards already been done, the courses
39 that they took out, and you emphasize the courses that are specific
40 to dealing with confinement of people not only in lock-ups, but also
41 in the field combat environment where you have civilian attorneys and
42 prisoners of war. When a soldier completed the course, all of the
43 students that complete or attend the course are given a 1059 and a
44 diploma if they graduate from the course. Looking at PE 9 for ID,
45 this is a military form DA 1059 that is already filled out. I know

1 this is what it is because I've seen many of them and signed well
2 over a couple thousand of them. The signatures of the bottom of this
3 form is my signature and LTC Ronald B. Smith who was the training
4 battalion commander at the time of this school. This is a 1059 from
5 the course that I described. As far as I can tell, this is
6 definitely my signature that I signed back in May of 1999.

7
8 The Trial Counsel offered PE 9 for ID into evidence.

9
10 **VOIR DIRE OF THE WITNESS**

11 Questions by the Defense Counsel:

12 PE 9 for ID would have been one of many that I signed, but
13 that's my signature. As to if I would specifically recognize this
14 document, this is one of many that I saw in the pile. I recognize
15 the document, but I wouldn't be able to tell you that I recognize the
16 name. There were many names in the pile. Of the pile of documents
17 that I signed, all of the students had different checks on their DA
18 1059. I don't remember reading through the comments on the DA 1059
19 as they pertain to PFC Brand. I recognize this document as a 1059
20 with my signature on it. I don't remember the other stuff on there
21 specifically.
22

23 The Defense Counsel objected to admitting PE 9 for ID as the
24 witness didn't recognize the document.
25

26 Questions by the Trial Counsel continued:
27

28 Prior to the DA 1059 being signed, three or four days before
29 that, a copy of this form, absent all of the comments from block 13
30 down, are not there, but all the blocks from 13 up are filled out,
31 and a student is given a copy of it to make sure that all of the
32 information is correct so that we don't generate a whole bunch of
33 forms into the wheel. Once the form comes back with any corrections
34 that the student tells us that they need to have on there, the form
35 is then generated as it was generated on the 14th of May, and it's
36 generated with the information of all of the classes that the student
37 has attended. If the student hadn't attended the classes or was
38 unsuccessful, then there would be comments in marginal achievement or
39 failed to achieve course standards, and there would be bullet
40 comments listed below stating what they failed to achieve or what
41 their marginal standards were. It is not normal for me, in the
42 course of my work at Camp Ripley to make DA 1059. I direct the admin
43 people to fill out the forms, and I would review them in the course
44 of my duties. It's normal for me to have done that ~~at~~ that time.
45

WWS

1 There is nothing about that document that seems like it would not
2 have been something that I would have signed at the time in May of
3 1999. It was filled out the way that many of those prior to that
4 have been filled out and many since.

5 The Trial Counsel re-offered PE 9 for ID. After argument from
6 both sides, the Military Judge held off on admitting PE 9 for ID
7 until SSG Plummer's testimony.
8

9
10 **Questions by the Trial Counsel continued:**

11 At the 95 Charlie course in May of 1999, priorities of force was
12 a modular that was taught. I know that it was taught because, if you
13 look on PE 9 for ID, you will see all of the courses that were taught
14 were listed, and there was also a training schedule that was
15 generated that would list all of the courses that the students were
16 taught. I do not have any independent recollection of what day
17 priorities of force was taught in May of 1999. If I had the training
18 schedule which was the document kept by the training battalion from
19 that date would help me determine when priorities of force was
20 taught. Looking at PE 10 for ID, I see this tells me when priorities
21 of force was taught. It was taught on the 5th of May 1999,
22 specifically from 0730 to 0830 in the morning. There was training
23 material that was used at the priorities of force class; there is an
24 instructor lesson plan, a student handout, and a slide presentation
25 that's created by the MP school at Fort Leonard Wood, Missouri.
26 Before I came into court, I had an opportunity to look at this. PE
27 11 for ID is the slide presentation for the applied priorities of
28 force within a confinement facility. I know this because it says it
29 right on the front. I actually looked at this presentation on the
30 actual CD Rom. Looking at the screen before the members that is the
31 slide presentation that's used in the instruction in the class for
32 applied priorities of force within the confinement facility.
33

34 The Defense Counsel objected to the testimony because CSM
35 Fredrickson was not the instructor and did not create the slide, and
36 does not know if the slides were used in the class that PFC Brand was
37 taking in 1999.
38

39
40 **Questions by the Trial Counsel:**

41 These slides were used in the 95 Charlie course in 1999. I
42 reviewed the course materials that my instructors were teaching
43 because I had to approve the classes for the course weeks prior
44 before it was ever given to the students at that summer camp. This
45

1 course was made by the training management department at the MP
2 school at Leonard Wood, Missouri. Looking at the slides, I'm telling
3 the panel that this was the set of slides that was used in the 95
4 Charlie course that PFC Brand was at.

5
6 The Military Judge overruled the objection.

7
8 The Defense Counsel objected to the question, "As we go through
9 these slides, I want to do two things. I want you to tell the panel
10 what it was that PFC Brand would have heard in this corrections
11 course, and then I want to ask you certain questions," for
12 speculation as to what the accused would have heard. The Military
13 Judge ascertained that PE 11 for ID was offered into evidence. The
14 Military Judge directed that PE 11 for ID be substituted as a copy.
15 After argument from both sides, the Military Judge overruled the
16 defense's objection, and admitted PE 11, and further stated that the
17 CD Rom would be marked as AE LXXXVII.

18
19 **Questions by the Trial Counsel continued:**

20
21 Taking a look at slide two, once the instructor introduces
22 himself and gives a short introductory story about his or her
23 background, they get a mind-catching story about the entrance to the
24 course. Then, they tell the students that they are going through a
25 course learning the applied priorities of force within a confinement
26 facility, and that it was going to occur in the classroom, and the
27 standards would be that they would identify the levels of force and
28 the subsequent priority that they are applied. That's basically, the
29 terminal learning slide which begins the course that sets the
30 groundwork for what they are about to enter. Slide three, the gist
31 of the course is the six levels of priority of force which is the use
32 of force continuum. Looking at this, when I taught it, you draw a
33 pyramid on the board, and the pyramid, going through one through six,
34 six would be the top of the pyramid. One would be the bottom of the
35 pyramid, and you draw your six little boxes. The reason you do it
36 that way is that, your bottom one, number one, which is your verbal
37 persuasion has the most latitude for how you're going to apply it.
38 And as it goes up through one through six, the latitude and the
39 variance within the pyramid becomes smaller and smaller and smaller
40 to get to the top where the variance is virtually none. So, looking
41 at this, it would be a pyramid upside-down. The lowest level of
42 force is just your mere presence. You walk in. They see you. They
43 see what you represent. They see the brassard. They see your
44 uniform. They see your nightstick. They see your presence and your
45 authority. That's the least, and then you go into your verbal, "You

1 don't really want to do that. I'm telling you not to do that. I'm
2 ordering you not to do that." You basically work up from there. The
3 highest level of force that can be used is deadly force. The soldier
4 is taught to start at the absolute lowest level of force applicable
5 based on the situation. The basic rule for use of force, if it's
6 necessary, according to slide four, is your verbal persuasion. As I
7 stated earlier, your mere presence begins it, but verbal is your
8 number one starting point. Moving to slide five, verbal persuasion,
9 a student is taught that it's already been authorized by the facility
10 commander as part of the SOP, and they're directed to do it by their
11 supervisor. Slide six, "Verbal persuasion is used with inter-
12 personal communications skills to direct a disorderly prisoner to
13 cooperate with staff and follow orders issued, stop verbal physical
14 altercations between two prisoners, or between prisoners and staff
15 members; use during disorders; attempt to reason with those involved;
16 make evident that the order will be restored; and serve notice the
17 appropriate force will be used if necessary. You are basically
18 telling them, "You better stop." Moving to slide seven, it's show of
19 force. The show of force is where you change your body stance. You
20 change your placement of your arms, the placement of your hands. The
21 open hand becomes maybe a closed hand. The removal of the MP baton
22 from your belt if you have it, the calling for other individuals,
23 it's the show of what you are potentially giving them the opportunity
24 to stop what they were doing, to change their mind. You're basically
25 giving them the visual presence of what's there. So, you're hoping
26 that they are going to say, "You know, this probably wouldn't be a
27 bright idea. Something is going to happen to me that I'm not going
28 to like." Moving to slide eight, the authorization for that level of
29 force comes from the facility commander SOP and the immediate
30 supervisor. Going to slide nine, it's the show of force. You show a
31 disorderly prisoner that security personnel can stop the disturbance
32 and will, if necessary. Enough personal and equipment are assembled
33 at the scene to demonstrate capability of security to quell the
34 disturbance. When the soldier runs into a problem, the first level
35 is verbal force, and then show of force, asking for help. Level
36 three, moving to slide 11, that would be used if there has been prior
37 authorization given by the facility commander and the host nation
38 commander, and it's in the SOP, and the individuals are issued it to
39 carry, and they have been trained, and the training is concurrent and
40 up to date. In absence of that, it's not an option. Moving on to
41 slide 19, this is level four, physical force other than weapons fire.
42 In this part of the module, they are taught that if you have the
43 ability to have riot batons and/or the MP club, if you have the
44 ability to take and use the one and a half inch fire hose with 250
45 pounds of pressure or more, minimum amount of force, always, and

1 *WMS* avoid one-on-one confrontations. They are told that whenever they're
2 in a situation, unless you have no other alternative, in all of these
3 configurations, if you have the opportunity to back away, if you have
4 the opportunity to regroup, that should be your first option unless
5 there is imminent death or great bodily harm or destruction of
6 property or the safety of another, then you have to act. But in
7 absence of that, you pull back, regroup, and get reinforcements.

8
9 The Defense Counsel objected to the question, "Now, I'd like to
10 ask you a hypothetical. You were speaking about imminent danger. If
11 a detainee were in a confinement facility and he was in an isolation
12 cell, and his hands were chained to the ceiling, and his legs were
13 chained together, what sort of imminent danger would be there in that
14 situation that you could think of," for assuming facts not in
15 evidence. The Military Judge overruled the objection.

16
17 **Questions by the Trial Counsel:**

18
19 I would not teach my trainees that physical force could be used
20 against a detainee who had his arms chained to the ceiling, and legs
21 binded, because you don't fulfill the checkmarks. You don't fulfill
22 the authorization to do it. Moving to slide 21, this slide is
23 talking about physical force other than weapons fire, self-defense.
24 If you need to defend yourself or that of another, you can use
25 physical contact, again, in the absence of the ability to back off
26 and regroup and go back. It's when you don't have the opportunity to
27 prevent escapes. Obviously, that's time expedient, so, you're
28 probably going to have to stand in front of that person or try to
29 halt them. Prevent injury of prisoners or staff members is self-
30 explanatory. To quell a disturbance is self-explanatory. Looking at
31 these situations, they all have the need to get more help. It's not
32 going to be real logical to quell a disturbance by yourself if you've
33 got eight or ten prisoners trying to break out of the place or cause
34 a disturbance, it's not a good idea to try to walk in. It's kind of
35 like walking into a fire without the fire hose. It's a little late
36 to call for the hose after you're in the middle of a fire.
37 Preventing damage to government property and moving on prisoners
38 early, and shower, shave and haircuts, are all levels of force that
39 also have to revert back to the SOP for the facility. The force that
40 I'm talking about in this particular side, not every one of these
41 encompasses striking a detainee. Shower, shave and a haircut is that
42 if it is part of the SOP, then the prisoners are supposed to do it.
43 One guard telling the prisoner, "You're going to shave or I'm going
44 to make you get shaved," they are not taught to do that. They are
45 taught to get assistance, and if you have to take and hold a prisoner

1 down, you do so, but you're going to need to do it with the
2 assistance of other people. That is not a one on one thing, and
3 that's not a time expedient occurrence. There is not death or
4 imminent danger, disruption of property with someone that doesn't
5 want to get a haircut. So, you get three or four other guards to
6 take and help you hold the person down and give him a haircut and/or
7 shave and/or shower. Moving to slide 22, use of force other than
8 weapons fire, the installation commander authorizes this except in
9 emergency. And in the SOP, the authorization is already given based
10 on an emergency situation. I define emergency as imminent death or
11 great bodily harm, immediacy. Moving to slide 25, after every use of
12 physical force other than weapons fire, my soldiers were taught that,
13 in any instance where a guard or a group of guards use force, it must
14 be documented in the blotter, and an incident report must be written.
15 It's not only a part of the course, but it's also part of
16 regulations. At the bottom, there is a notation about medical
17 personnel, there is a duty with any remote possibility for there to
18 be injuries, the guard is to summon medical personnel and have the
19 person checked. An example of that would be that if you used your MP
20 nightstick, and you found it necessary to use it, you basically got a
21 tissue injury. It usually doesn't cut the skin especially in the
22 areas you're taught to use it. You're not taught to take and hammer
23 him over the head where you can have the skin broke open, and a head
24 laceration. So, based on the tissue areas that you're taught to use,
25 you will have inner injuries to the tissue, and in some instances,
26 there could be injuries that go deeper into the body structure that
27 have to do with kidney or liver or whatever. So, you want to have
28 medical personnel check the person out. You want to make sure that
29 there isn't a possibility of a concussion. You want to have that
30 third set of eyes to take and make sure that that person is okay, and
31 to document that they have been checked. Looking at slide 26, that
32 slide is emphasized over and over and over again in all of the
33 training, not only in this training, but in the basic hand-to-hand,
34 the basic techniques the soldiers are taught in the 95B basic MP
35 course. This is drilled at them over and over and over again, and
36 that is can a higher level of force be used before using a lower
37 level of force, absolutely, but only based on situational time
38 expediency. They are told that over and over again. They are also
39 told that looking at the level of force is like walking up a
40 stepladder. They are told that there is no requirement that they
41 start at stepladder number one where you show your presence and use
42 verbal communication. They are told that they don't have to do all
43 of the other ones before they can use deadly force. If time
44 expediency requires it, they can jump from level one or level two,
45 and go right to level six. But it has to be based on the

1 circumstances at the time, and only on that, and that's drilled at
2 them over and over again. And they're given test scenarios. They
3 are given role-playing situations where they are taught it over and
4 over again. So, it gets drilled into their head. They are not
5 required to go one through six before they can do one or the other,
6 but they're also taught that they can jump from one to three or one
7 to four, but it's based on the situation and time expediency, death
8 or great bodily harm, damage to property, their escaping or whatever.
9 It's all situational. Slide 27 is use of deadly force, and it's not
10 relevant. Giving a hypothetical, and running through the levels of
11 force, if a detainee is in the isolation cell, his hands are chained
12 above his head to the ceiling, and has a pair of handcuffs on his
13 ankles, and if he is required to wear a hood, but will not allow a
14 soldier to put it on, I would believe the soldier trained by me would
15 attempt to get the individual to comply by communicating, telling the
16 detainee what you wanted him to do and why, and tell him what you
17 were prepared to do if he wasn't going to comply. Assuming for the
18 moment that the detainee does not speak English, you get an
19 interpreter. To accomplish the task at hand, the guard would have
20 been taught to go get help, to get another guard or two to take and
21 hold on to the individual to get him to comply. That's the minimum
22 amount of force. A common peroneal strike would not have been
23 appropriate to force the detainee to put a hood on. I would have
24 considered a peroneal strike bouncing somewhere between level three
25 and level four. Another hypothetical, using the same detainee
26 hanging in the same manner, there would be no reason for anything I
27 could think of that a guard could deliver 30 common peroneal strikes
28 to a detainee who was in that position in a cell, because I would
29 categorize that as corporal punishment which is not only told in the
30 course that it's not authorized, but it's not authorized in the
31 regulation, specifically, in EPW Regulation 190-8. It specifically
32 talks about that corporal punishment will never be authorized. If I
33 had a detainee who would not put a hood on, leaving the cell is
34 absolutely an option. If there is no supervisor or SOP, if the rules
35 in the field are ambiguous, the soldier should rely on common sense
36 and good help unless time expediency tells him otherwise. I would
37 absolutely expect the soldier to rely on his training. That's what
38 the training is for.

CROSS-EXAMINATION

Questions by the Defense Counsel:

As to if I can be certain that PFC Brand was at this class in
1999, he received the 1059 that I signed, and he was at the class. I

1 guess we need to make reasonable assumptions that we don't have
2 fraudulent people coming in and enrolling in the course that aren't
3 really them. I didn't see PFC Brand at the class. I can't be sure
4 that if he was at the class, he fell asleep; he would have had a
5 tough time passing the hands-on portion of the test. I can't be
6 certain that PFC Brand was not sleeping during the classes. There
7 are 36 slides in this presentation, and the class was scheduled for
8 60 minutes. That's less than two minutes per slide. I can't be
9 certain that PFC Brand saw the PowerPoint. PFC Brand could have not
10 been paying attention. I believe there was about 53 to 60 people in
11 this class. The class was held at Camp Ripley, Minnesota, in the
12 bottom floor of the mess hall barracks building. There were windows,
13 but they were blacked over with butcher-block paper. The projector
14 was running. Hooding and chaining is taught in forced cell moves,
15 and forced cell moves only. Hooding and chaining is not taught where
16 prisoners or detainees are stationary, only forced cell moves, for
17 the specific reason of keeping the people from spitting and biting.
18 I would never teach the MPs or correction specialist to chain a
19 detainee in a stationary cell, but I would teach them in a forced
20 cell move. I would not have taught my students to keep individuals
21 chained and hooded for 12 hours, that's corporal punishment. If they
22 were in their cell, hanging around or stationary in their cell, there
23 would be no reason to hood or chain a prisoner in the course that we
24 taught. I believe there would be a time to chain and hood prisoners
25 for long periods of times if it were in the SOP. If there was no
26 SOP, they should revert back to the training that they received. I
27 would not have trained MPs to hood or chain prisoners in their
28 stationary cells. I trained the 95 Charlies to use batons in forced
29 cell moves. That was the only portion of the training they received
30 relative to baton use. The batons are used to hit detainees in order
31 to make them comply. Batons are more of a leverage than hitting.
32 That's why MPs carry batons, for a use of force picture. The reason
33 they have the uniform, the way it is presented, with brassards and
34 pistol belts and all of the niceties and the way it looks, it's the
35 presentation of the availability of the instruments of force. If
36 they had to use the instruments, they would be accessible, right
37 there based on time expediency. I have not been in a position where
38 I had to implement military techniques. I was never a 95 Charlie in
39 the combat environment. I had to deal with detainees in a prison
40 situation that did not speak English in Iraq. I had my battalion,
41 and we had the responsibility for the psychological operations of all
42 the civilian internees and prisoners in all of Iraq. This was before
43 Abu Ghraib. I did not have to use water canons at any prisoners. If
44 there was an SOP that would be the only thing that would present a
45 supplement to what has been presented. By SOP, I mean something

1 that's written or both. It could be standard procedures used prior
2 to another unit coming in to an environment, but that is put in a
3 written document. Time expedient orders from an immediate supervisor
4 are exactly what they are, time expedient orders. In my experience,
5 standard operating procedures are that they are put in written
6 documents. If the soldier was order to do things time expedient-
7 wise, it wouldn't be in writing. I don't know anything about the
8 standard operating procedures in Bagram. I stated regarding the
9 common peroneal strikes, I'm very familiar with the common peroneal
10 strikes. I have received over 100 of them, and I've given over 100
11 of them. So, obviously, they are an approved technique in dealing
12 with prisoners when necessary, and administered in two shot
13 compliance to gain compliance in absence of other means. Law
14 enforcement officers use the common peroneal strikes in the course of
15 their duties. I said two or three quick punches to the knee would
16 have somebody on their knees in pain. As to how someone could
17 deliver 15 to each leg without the prisoner dropping down to his
18 knees, because as previous counsel stated, the person was incapable
19 of doing that because they were shackled and hanging from the
20 ceiling. I was not at Bagram. If the pain was lethal or that
21 excruciating, I would expect the person that it was being
22 administered to, to give some kind of verbal and physical reaction
23 that would tell the person that they were accomplishing what they
24 were doing. I would not expect the person to be quiet so that no one
25 else would know what was going on. When it was given to me, I was
26 screaming. I first learned the common peroneal strike when I was a
27 rookie police officer in 1972 where I had it administered on me
28 repeatedly. There are not different levels of giving the common
29 peroneal strikes. You are taught that, just like when you draw your
30 weapon, you are intending to use it. You don't say to a student,
31 "Give them a light tap," or, "Give them a hard tap." If you're going
32 to use it, you use it. It would not be the technique that they were
33 taught, if they gave someone a light tap. It's an instrument that is
34 to be used with a purpose. I have not read PFC Brand's statements.
35 If PFC Brand said in his statement that he gave a strike in the force
36 of three on a scale of one to ten, it sounds like a personal choice,
37 and not that it was taught that way where you give it in levels of
38 one through ten. So, if you knee somebody in the leg with his knee
39 using the common peroneal strike, if he delivered it with the force
40 of three out of ten, the technique would be a common peroneal strike,
41 but he chose to give it a level of intensity. I have never trained
42 nor have I seen it trained where you tell the student give it levels
43 of intensity, one through ten, you give it. So, if somebody said
44 they gave a strike of a three out of ten, the technique is a common
45 peroneal strike. I could probably give a strike of a level three

1 that probably would still cause you to be in intense pain. I am
2 saying that I would not use different levels of force. SFC Buchanan
3 taught this course, and he is no longer in the military from what I
4 understand. I believe he is somewhere in Indiana. Now, there are
5 lowest to highest levels of force. If there were communication
6 difficulties with the guard, in absence of time expediency, I would
7 say that the guard would have the responsibility to do something
8 about that like getting an interpreter. If the guard couldn't get an
9 interpreter, based on time expediency, there would be no need to keep
10 going. I mean, you have to measure it based on the need or urgency
11 to accomplish what you were doing. I mean, would it hurt to wait
12 five minutes, or ten minutes or an hour? All of these things are
13 subjective. They are based on a situation as I've talked about
14 situational response. I don't know anything about PFC Brand's
15 situation. I wasn't at Bagram. Looking at the slides in PE 11,
16 slide five is the slide for verbal persuasion; you are given the
17 authorization of the facility commander in the SOP. If there is no
18 SOP, there has been communication from the senior leadership in the
19 facility that gives the guard the authority to use verbal persuasion.
20 It's part of their job duties. I don't know about anything that went
21 on at Bagram. On slide number 21 of PE 11, this deals with physical
22 force other than weapons fire. This is only for self-defense,
23 defense of yourself and another. You use physical force to quell
24 disturbances. You use it to move prisoners, and even to shower,
25 shave, or haircut a prisoner. I don't know anything about the PUCs
26 at the Bagram facility while PFC Brand was there. I don't know how
27 unruly they were or the situation ~~at~~ that specific facility. Slide
28 number 25 of PE 11, physical force other than weapons fire, it says,
29 "In this slide applications of physical force must be recorded. All
30 physical force were to be recorded not only in the course, but it's
31 also in the regulation. You would record them to document them in
32 case there were injuries in the future, in case there were
33 allegations of mistreatment of a prisoner, to document the actions
34 relative to prisoners in your care because you have a responsibility
35 for the care and treatment of the prisoner. That's what I taught at
36 my course. I didn't teach, by myself, anyone at the 95 Charlie or
37 Bravo course, but I did teach the course for three and a half years
38 at a unit down at Rochester, Minnesota. I was the senior trainer who
39 taught it to them. It's more difficult to deal with prisoners who
40 don't speak English, having seen that in Iraq. You need
41 interpreters. This was not the first time I saw that prisoners did
42 not speak English, in some of the role-playing and some of the
43 previous training exercises, we had individuals who spoke other
44 languages for that purpose. Real world experience that was the first
45 time I dealt with a prisoner who did not speak English in Iraq. It

1 was difficult to understand them, and it was difficult for them to
2 understand me. I would agree that it was a different environment
3 working in a prison camp in Iraq or Afghanistan than it was in Camp
4 Ripley, Minnesota. I would agree that sometimes soldiers rely on
5 verbal word of mouth or techniques passed down from one prison guard
6 to another to use on prisoners, but this doesn't take away from their
7 core training responsibility and the prohibition ~~from~~ corporal
8 punishment. Just because they talk about it, that would be the same
9 as saying the guards in Auschwitz were all together, and they were
10 doing the right thing by what they did. I would agree that the
11 environment at Camp Ripley that I was teaching my MPs to be prison
12 guards in was different than the real world environment where we had
13 to deal with Iraqis and Afghanis. PFC Brand was not instructed on
14 the common peroneal strike at Camp Ripley. That was part of his
15 basic MP training as I stated earlier. That course was taught in the
16 basic MP school. The word common peroneal was not used in Camp
17 Ripley in 1999. That is something they would have been trained in.
18 The only place where hooding and chaining is authorized in the entire
19 MP training is in forced cell moves to facilitate the prevention of
20 spitting and biting by a prisoner being confined.

REDIRECT EXAMINATION

Questions by the Trial Counsel:

21
22
23
24
25 I was in ten or more forward operating bases in Afghanistan last
26 year, not including Bagram.

27
28 The Defense Counsel objected to the question, "Do you consider
29 that to be a combat environment," for relevance. The Trial Counsel
30 withdrew the question.
31

32 In the forward operating bases I was in, if an enemy came over
33 the fence and attacked me, I could shoot him, or throw a grenade and
34 blow him up. If he had run into a minefield, it would have been
35 legitimate for him to die that way. I could punch him in the face
36 based on the defense of you or another soldier. I could give him a
37 common peroneal strike based on the defense of myself or another
38 soldier. In basic training, we learn that if the enemy is coming at
39 me, I can shoot him with deadly force. At some point in basic
40 training, we throw grenades. We learn how to use a claymore. We do
41 a little bit of bayonet training. Each one of those are legitimate
42 techniques to use in a life-threatening situation, with the emphasis
43 on life threatening. If I had a detainee in an isolation cell, you
44 cannot shoot him if he's chained up to the top of the isolation cell.
45

1 You can't stab him with a bayonet. You can't lob a grenade in there
2 and blow him up. You cannot punch him in the face. You cannot give
3 him a common peroneal strike when he is chained to the ceiling, and
4 his feet are together because it's corporal punishment.

5 **RECROSS-EXAMINATION**

6 **Questions by the Defense Counsel:**

7
8
9 I just said to 1LT Trainor that giving someone a peroneal strike
10 is corporal punishment with hands chained above the head and feet
11 chained together. It would also be corporal punishment to have
12 someone in chains and a hood in absence of an SOP that authorized it.
13

14 The following questions were marked as: AE LXXXVIII, question
15 by SGC Escamilla; and LXXXIX, question by LTC Simonelli.
16

17 **EXAMINATION BY THE COURT-MARTIAL**

18 **Questions by the Military Judge:**

19
20
21 Generally, the current use of force techniques taught to the 31
22 series are all techniques having to do with hand-to-hand, arm bar
23 techniques, come-along techniques, peroneal stuns, carotid stuns,
24 carotid restraint, use of the MP club, use of hand irons as a
25 restraint instrument, and the use of OC spray. These are taught to
26 both active and reserve. The same six steps that I described are
27 still taught in the same fashion as was the case in 1999. There has
28 been no change that I'm aware of in my entire career. This continuum
29 has been in effect as long as I've been a military policeman. During
30 the past two years after Bagram and Abu Ghraib, there has been an
31 enhancement in the use of force training and/or points of instruction
32 for EPW/POW handling for active and reserve component. We've put a
33 far greater emphasis on the authorization and the use of force
34 continuum, a much greater emphasis on the authorization and the time
35 expediency requirements. Corporal punishment is any punishment
36 inflicting pain, humiliation or degradation that is not authorized
37 specifically by UCMJ, AR 190-14, 190-8, or SOPs to the contrary. I
38 stated that physical force can prevent damage to government and
39 private property, even if an individual is chained and blindfolded,
40 if there isn't an assumption of damage and other types of use of
41 force have not worked, physical force can be used in that situation,
42 but it would be based on the time expediency. If their ability or
43 damaging of property was of such a nature that is time expedient,
44 then physical force is authorized, but absent the time expediency
45

1 where they are trying to damage property or whatever, you would call
2 for assistance with other people, and absence a higher level of
3 force. That's one of the reason they use five people to do forced
4 cell moves. It's the mere mass of people which lowers the need for
5 the actual, physical force on the prisoner.

6 7 8 9 **RECROSS-EXAMINATION**

10 **Questions by the Defense Counsel:**

11 Training was not changed, but it was enhanced after the Abu
12 Ghraib scandal. They were instructed Army wide that told them they
13 bear a very meaningful responsibility in the care, protection, and
14 treatment of the individuals under their custody. That PowerPoint
15 was not enhanced. I don't know that the slides were enhanced. I
16 just know that Army wide, an enhancement went out saying to emphasize
17 this more. A higher emphasis was placed on things. This was not
18 because of deficiency in the training, just a need to reacquaint
19 people with the use of force and how to use force military wide. I
20 don't know if PFC Brand, in particular has had other training other
21 than the one-hour PowerPoint slide. PFC Brand had had his basic MP
22 instruction, but my involvement here ends with the one hour
23 PowerPoint presentation. That's all I'm testifying too.

24
25 The following questions were marked as: AE XC, question by SGC
26 Escamilla; and XCI, question by SGM Jones.

27 28 **EXAMINATION BY THE COURT-MARTIAL**

29 30 **Questions by the Military Judge:**

31
32 For MP reserve component units that are deploying, I don't know
33 what pre-deployment training these units are receiving relevant to
34 the situations that have occurred in the past at Abu Ghraib and
35 Bagram. The Army use of force continuum and the MP basic course is
36 almost a full day. As I stated in the beginning of my testimony, the
37 Charlie IR conversion course was to take those portions of the two
38 course, the Charlie course correctional specialist in the basic MP
39 course, and remove all of those things and crunch it down to just the
40 stuff relative to the 95 Charlie conversion internment resettlement
41 EPW course. That portion that talks about use of force is an
42 enhancement or reacquainting with what they've already previously
43 gotten. I also might add that there is an ongoing concurrent
44 training that I have been a part of in MP companies whether they be
45 correctional companies or basic MP companies that occur within the

1 drill cycle each year where part of their training schedule is they
2 reacquaint with use of force, managing of prisoners, forced cell
3 moves, the whole gambit is a part of their general training doctrine
4 year so that they get it over and over and over again. It's just a
5 part of their training because that's their tools. It's like why
6 truck drivers go out on drill and drive trucks, because that's their
7 tools of trade, why mechanics work on trucks, and they get that in
8 the drill hall. Based on the enhanced emphasis the program of
9 instruction should add more time to the force continuum class, but
10 the Army wide enhancement went out to every unit. We got it in our
11 unit on the use of force and the controlling of prisoners you take
12 into custody. So, the enhancement was out there, but to speak to
13 what the course is right today, based on that enhancement that went
14 out Army wide, I would suspect that it has been extended, but I
15 personally don't know if it had.

16 RECROSS-EXAMINATION

17 Questions by the Defense Counsel:

18
19
20 I don't know if PFC Brand got that enhanced training because I
21 don't have his unit's training schedules for the years prior from
22 1999 to when they went to Bagram. It is quite possible that the 377th
23 MP Company in Cincinnati, Ohio never gave that training, but I have
24 been in the military for 33 years, and I've signed a lot of training
25 schedules and done a lot of NCODP, and I find it very hard to believe
26 that a unit didn't practice the tools of their trade in the drill
27 hall. That would assume they sat and watched cartoons and drank
28 coffee. It's a pretty sorry state of the representation of the
29 military and the reserves if they did watch cartoons and drink
30 coffee, and I would disagree that they did not drill in their hall.

31
32 The Trial Counsel objected to the question, "And this is also
33 the same unit that chained and hooded prisoners at Bagram, correct?
34 Chaining and hooding is not taught, is it," for lack of knowledge.

35 Questions by the Defense Counsel:

36
37
38 I only know what you have told me about the unit chaining and
39 hooded the detainees. I don't have personal knowledge of it. The
40 only knowledge I have to PFC Brand's training is the course he
41 attended in 1999 at Camp Ripley, Minnesota. The only personal
42 knowledge about use of force that was discussed at that training camp
43 was one hour of a PowerPoint presentation.

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

Talking about the internment resettlement aspect of this 95 Charlie course, in 1999 a lot of emphasis was placed on the fact that this might be an OCONUS operation because it was based on experiences that were in the world at the time. When you look at the reason why the MP school, and the commandant of the MP school put this all together, it was based on the fact that they wanted a more versatile force, and by taking the correctional specialists who were taught to be guards in theory, like in Leavenworth or in stockades, and taking what they had as far as the EPW portion of the military which was a whole other 95B, they needed to take and combine the expertise of the correctional specialist into the EPW compounds.

The Defense Counsel objected to the witness's answer as hearsay. The Military Judge overruled the objection.

Questions by the Trial Counsel continued:

Someone who was coming to the course was on notice that he was being trained not only for possibly Leavenworth, but for operations overseas. That was the EPW/CI portion, which was called the EPW/CI conversion course, which is enemy prisoner of war slash civilian internee course. I slash R means internment resettlement. Internment is where you basically restrict someone's access to come and go. Resettlement is where you bring in the internees which could be anything from a mother and her children to combatants, and they're categorized within a compound facility, and there are portions of those that are repatriated back out into the community. There are others that are put in different categories, are sent to different places; it's a whole categorization process. Those that are repatriated, they would be repatriated because when you occupy an area, there is an assumption that you don't have the time expediency to go, "Those are good guys. Those are bad guys. Those are good guys. Those are bad guys." You just scoop everybody up, and then with time on your behalf rather than on their behalf, you are able to determine who the real combatants are. While these detainees are in the facility, the guards are taught not to use excessive force on any of the detainees based on the SOP and their training regardless of whether they actually are combatants or they happen to be people who got scooped up. A person who can be ultimately repatriated back into the community based on the fact that they are locked down can become unruly, and I've seen it. I've seen people in Iraq where people who were ultimately repatriated back into the community, just because

1 they were put inside of a fence, didn't like it, and they became
2 unruly. If a detainee is chained up in one of those facilities, I
3 could imagine no instance where a guard would be allowed to use a
4 common peroneal strike in a non-life threatening situation. A guard
5 would not be allowed to hit a detainee in the face, or use a baton on
6 him. A guard would be allowed, if it was necessary, to grab a hold
7 of a detainee with other people to calm him down.

8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45

RECROSS-EXAMINATION

Questions by the Defense Counsel:

I don't know anything about the Bagram SOP. I never read the
Bagram SOP. I never saw the SOP, or had any input into it.

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

SSG Marianne C. Plummer, 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:

I am Marianne C. Plummer. I am a warrant officer candidate,
slash E6, and my duty position is that I'm a squad leader, and I'm
also the unit administrator for the 377th MP Company. As the unit
administrator, I have duties regarding personnel files. I maintain
all the personnel files for all soldiers assigned to our unit. I'm
the custodian of those records. I see PFC Brand in front of me. PFC
Brand is a member of our unit. I am the custodian of his record. PE
9 for ID is a DA 1059. This was placed in the soldier's records
which belong to PFC Brand. This is a true and correct copy of what's
in the records back at the unit. This is kept in the normal course
of my duties as the custodian.

The Trial Counsel offered PE 9 for ID. There being no objection
from the defense, the Military Judge admitted PE 9.

Questions by the Assistant Trial Counsel continued:

PFC Brand was a member of the 377th until the activation for the
trial. I have been assigned to the 377th MP Company since March of
1999. I have not been the unit administrator this whole time. I
became the unit administrator in March of 2000. From September 2002

1 until March 2003, I was with the 377th. We were stationed in Bagram,
2 Afghanistan. While I was at Bagram, Afghanistan, I did work at the
3 Bagram collection point. I was in there from mid-October of 2002
4 until around the 9th or 10th of December 2002. I was working with
5 first platoon when I first went into the facility on night shifts,
6 and then the middle of November, I switched to third platoon and
7 worked on the day shift. In December 2002, I was on day shift. In
8 December 2002, our primary mission of the Bagram collection point was
9 to take in detainees from the fire bases, and process them. The MI
10 would interrogate them to see if they had any intelligence value, and
11 then we either repatriated them or we sent them on to Guantanamo Bay.
12 We were an internment facility. Some of the persons there were
13 resettled or repatriated. I held the position of SOG sometimes. I
14 would be floor NCOIC. We might do the crash team which moved
15 prisoners, escorted them from point A to point B. Any of the jobs in
16 the facility, I could have done or did. On average, I was in the
17 Bagram collection point almost every day. During December, when I
18 was with third platoon, we would only do half days off. So, every
19 day, we were in the facility at some point working. I still have a
20 recollection of what the Bagram collection point looked like in
21 December 2002. It had two floors, the second floor only being a
22 partial floor. It wasn't a complete full, second floor. On the
23 first floor, we had where we came into the facility. There was an
24 operations point. When you came into the actual detainment facility
25 area, there were five general population cells to the left, and then
26 on the right, there were various rooms, and there was also an
27 isolation cell on the first floor. On the second floor was the MI's
28 headquarters or their operations area, a couple of interrogation
29 rooms, and also another isolation cell. So, if you were up on the
30 second floor, you could actually look down and see the first floor.
31 It was like a balcony. The rooms were actually located over the top
32 of the rooms on the first floor that were to the right, and then
33 there was a balcony, and you could look out over the general
34 population. I have sufficient recollection to recognize a diagram of
35 both of those floors today. Looking at PE 8 for ID, this is the
36 layout of the actual first floor of the facility. This is not drawn
37 to scale. It does truly and accurately reflect the way it was laid
38 out in December of 2002. Looking at the two photographs on the top
39 of PE 8 for ID, the left is the door into one of the downstairs
40 isolation cells, and the top right-hand photograph is also another
41 picture of the door into the isolation cell on the first floor. PE 7
42 for ID has three pictures on it, and the bottom is the diagram of the
43 upstairs, and overlooking down onto the first floor general
44 population. The top left-hand photograph of PE 7 for ID is a picture
45 of the inside of an isolation cell on the top floor. The top right-

1 hand photograph of PE 7 for ID would depict one of the doors going
2 into one of the isolation cells on the top floor. On PE 7 for ID,
3 the diagram is not to scale. PE 7 for ID truly and accurately
4 reflects the layout of the upstairs in December of 2002. The two
5 photographs on the top truly and accurately reflect the isolation
6 area upstairs in December 2002. The top two photographs of PE 8 for
7 ID fairly and accurately depict isolation cells in the downstairs
8 area in December 2002.

9
10 The Assistant Trial Counsel offered PE 7 and 8 for ID. There
11 being no objection, the Military Judge admitted PE 7 and 8, and
12 stated that substitution of smaller versions could be placed in the
13 record of trial.

14
15 **Questions by the Trial Counsel continued:**

16
17 I am familiar with the deaths of two detainees in that facility
18 in December of 2002. I remember the detainee numbers were BT 412,
19 and the other was BT 421. The first detainee to die was BT 412, and
20 the second detainee that died was BT 421. I know that BT 412 entered
21 the facility at the end of November time frame; I don't know the
22 exact date. I know BT 412 died less than 10 days after he had come
23 into our facility. In total BT 412 was there for less than 10 days.
24 The second detainee arrived there about the same time frame, about
25 the first part of December, and end of November. He also left within
26 10 days of his arrival. I left the Bagram detention point on the 9th
27 or 10th of December. I can check my records to give you the exact
28 dates. BT 421 was in that facility less than 10 days. I remember
29 the first dead detainee was found in the upstairs isolation cell. I
30 don't recall what the first detainee's name was.

31
32 The Defense Counsel objected to the witness's answer as hearsay.
33 The Military Judge sustained the objection.

34
35 **Questions by the Trial Counsel continued:**

36
37 In the course of my duties, I did have contact with the first
38 detainee that died. The first detainee was housed in an isolation
39 cell. This is BT 412, Habibullah. I had contact with the second
40 detainee who died. The second detainee was also housed in an
41 isolation cell in the Bagram collection point. If a guard told a
42 detainee to do something a detainee was supposed to do it. If I told
43 a guard to move a detainee, the guard would be required to do that,
44 and the detainee would be required to move. I would say the
45 detainees were subject to the orders of the guards while they were in

1 that facility. There were logbooks kept in the facility. The
2 logbooks were the green bound ledgers that you get from SSSC. While
3 I was in the facility, I was a Sergeant of the Guard. I had an
4 opportunity to look at those log books in the course of my duties to
5 make sure that the guards were logging information into the log
6 books.

7
8 The Defense Counsel objected to the question, "And in looking
9 through there, did you ever see anyone write in that they had struck
10 a detainee," for leading. The Military Judge sustained the
11 objection.

12 The Defense Counsel objected to the question, "What, if
13 anything, did you ever see concerning the striking of detainees in
14 log books," for hearsay. After argument from both sides, the
15 Military Judge sustained the objection and directed the Assistant
16 Trial Counsel to rephrase the question.

17
18 The Defense Counsel objected to the question, "If a detainee was
19 in an isolation cell and chained to the ceiling, was a guard allowed
20 to strike him," for leading. The Military Judge overruled the
21 objection.

22
23 **Questions by the Trial Counsel continued:**

24
25 If a detainee was in an isolation cell and chained to the
26 ceiling, a guard would not be allowed to strike him. If the detainee
27 refused to put his hood on, the guards could have put his hood on. I
28 mean, he was chained. So, he really couldn't argue back. I never
29 authorized a soldier to strike any detainee for not putting a hood
30 on. I never authorized a soldier to give a common peroneal strike.
31 I have never saw or heard of another NCO or officer in that facility
32 authorize a soldier to strike a detainee that was chained up.
33 Corporal punishment was not allowed in the facility.

34
35 **CROSS-EXAMINATION**

36
37 **Questions by the Defense Counsel:**

38
39 I am still with the 377th. PFC Brand was with the 377th until
40 this year. PFC Brand transferred to Fort Bliss to attend the court-
41 martial. The 377th has no ties to Fort Bliss other than this court-
42 martial. Going back to December 2002, I worked on the day shift.
43 PFC Brand worked on the night shift. PFC Brand did not work for me
44 at the time all of this stuff was happening. I was not PFC Brand's
45 supervisor. I trained PFC Brand at Bagram when we first went into

1 the collection point. As to if when we first went into the
2 collection point, PFC Brand was working as a sentry outside, and not
3 as a prison guard, no, I was assigned to the first platoon up until
4 mid-November of 2002. So, I was in his platoon, with him, when they
5 first moved into the collection point. I did not work with PFC Brand
6 when PUC 412 or 421 were in the facility. SGT Berkley was the
7 Sergeant of the guard at that time. Regarding the logbooks, there
8 were logbooks where the MPs would document things that happened to
9 the detainees. We don't know what happened to the logbooks. They
10 were in the facility when we left, but I don't know where the
11 logbooks are now. There was a dry erase board on the outside of
12 those cells. It was not ordered that when the ICRC came around, the
13 dry erase board be totally erased. I said in my statement that the
14 board should be wiped clean when the ICRC, International Committee
15 for the Red Cross, came to the correction point, but you still left
16 their BT numbers and things like that on there. Any of the things
17 that the MI had directed us to do were usually taken off. The reason
18 we took the MI information off the dry erase board was because that
19 was the policy that was put in place before we go there by the MI as
20 far as I know. There was some friction at the facility between the
21 MI personnel and the MPs. The friction seemed to be normal banter
22 between MI and MP, or any two branches in the service where you have
23 your competition. There was some friction in the fact that the MIs
24 would give us orders what to do like hanging and hooding prisoners.
25 The hooding and hanging of prisoners were done at the request or
26 orders of the MI. I don't believe the MI soldiers wore their
27 uniforms in the prison at all. A lot of the MPs also sterilized
28 their uniforms by taking off their names and their ranks. I would
29 not say there was a break down in military authority at Bagram. I
30 would say there was no break down of military discipline at Bagram.
31 People were walking around without their uniforms on because that was
32 their policy. This was a war zone. People were walking around
33 without their uniforms. I do remember PUC 412 and PUC 421. As to if
34 I remember PUC 412 and 421 being chained at all, most of the
35 detainees that were in the isolation cells were chained, especially
36 when they first got there. Looking at PE 8, there are no chains on
37 these pictures that you see. You don't see the chains because the
38 PUCs were chained inside of the cells. PE 8 represents the outside
39 view of the cell. PE 8, the two pictures on there represent the
40 outside of the cell and not the inside of the cell. Looking at PE 7,
41 the two pictures at the top are as follows: The upper left-hand
42 picture is the inside of one of the isolation cells on the top floor;
43 and the picture on the upper-right is the door leading into one of
44 the isolation cells on the upper floor. Looking at the top left-hand
45 photo of PE 7, there are shackles in that photo. There are a set of

1 leg irons and a set of hand irons, one on each side of the cell.
2 Those would be used to chain the detainees to the roof or the ceiling
3 of the cell, but they would be closer together for a prisoner. They
4 are too far apart for one prisoner to be chained with those. I
5 remember that I've seen a prisoner chained in a cell. The arms of
6 the prisoner were not extended out fully, but they were closer to the
7 body. The arms were outstretched somewhat on the detainee. The legs
8 had leg irons on their legs most of the times. So, the detainee's
9 legs were fairly close together. The detainee's legs were not spread
10 open. I did state that I had contact with PUCs 421 and 412. As to
11 if they had a reputation for being violent and aggressive, I never
12 encountered any aggressive behavior with those PUCs. I have not
13 encountered much aggressive behavior from other PUCs. Most of the
14 time, they were shackled. I never experienced PUC 421 or 412 act
15 aggressively or act out of control. I dealt with prisoners on a day-
16 to-day basis when I was the Sergeant of the Guard. Usually, the
17 isolation guard was tasked with hooding and chaining the prisoners.
18 I was not an isolation guard. PFC Brand was an isolation guard. He
19 would have hooded and chained the prisoners and had contact when he
20 had to move the prisoners, but I also moved them when I was on
21 escort. I mentioned to 1LT Trainor about hooding, it might have been
22 difficult to hood a detainee who was thrashing around. I never had
23 to hood those prisoners, but I have dealt with hooding prisoners
24 moving around, trying to avoid having a hood put on them. I don't
25 recall if I ever tried to put a hood on PUC 412 or 421. I don't
26 recall if I ever had to move PUC 412 or 421. I would say I'm not
27 sure of the longest time I've had a detainee in chains. I know when
28 the detainees first came in, the first 48 hours were sleep
29 deprivation, and they usually were chained. Sleep deprivation is
30 where we kept them awake.

31
32 The Trial Counsel objected to the line of questioning that the
33 Defense Counsel was asking for relevance. After argument from both
34 sides, the Military Judge sustained the objection.

35
36 **Questions by the Defense Counsel continued:**

37
38 I don't recall seeing soldiers strike detainees. I never saw
39 PFC Brand strike a detainee. PFC Brand was not under my supervision
40 at the time of the deaths. When I was SOG, PFC Brand would have been
41 under my supervision, and I never saw him strike a detainee during
42 the time that I worked with him.
43
44

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

If a soldier struck a detainee, the soldier was to notify the SOG immediately, and record it in his logbooks, and he'd have to do a sworn statement. This is the same type of sworn statement that CID takes. When I was the Sergeant of the Guard, I would look through the logbooks periodically to ensure that the soldiers were recording information in them. If I had seen a notation in the logbook that a detainee was struck, it would have piqued my interest. In looking through there and trying to determine whether the detainees had been hit or not, I had never seen an annotation in the logbooks.

The Defense Counsel objected to the answer for hearsay. The Military Judge overruled the objection.

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

As to if I ever received training on common peroneal strikes, there was training given at Fort Dix. I was not at the training on that day. Other people might not have been there when that training was given. As to how useful that training at Fort Dix was for what we did at Afghanistan, some of the training was useful and a lot of it was not useful. That was the training we received prior to deploying to Afghanistan.

The following questions were marked as: AE XCII, question by 1SG Montague; XCIII, question by SGM Escamilla; XCIV, question by LTC Simonelli; and XCV, question by 1SG Sims.

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

I would pull duty as the Sergeant of the Guard anywhere between two to three times a week. I would conduct checks of the confinement areas during my whole shift checking each area. Typically, when I was Sergeant of the Guard, I believe we had around 15 soldiers in the facility working shift, but I'm not for sure on that. The platoon Sergeants of each platoon were in charge of the Sergeants of the Guard, and the platoon leaders. We had a guard mount prior to every shift where we would go over anything that had happened on a previous

1 shift, and anything we were looking for that day, i.e. if there were
2 medical appointments that the prisoners needed to be moved to, we
3 coordinated that at those guard mounts. A soldier's shift was 12
4 hours on, and then guard mount was anywhere from a half hour or 45
5 minutes prior to a shifts start, and then after shift was over, you
6 could do what you wanted to do. It was usually 7:00 or 7:30 before
7 you got off. Most people would take showers. They could watch TV if
8 they had one in their tents. We were all restricted to post. So,
9 they could do whatever they wanted on post; go to the gym, or
10 whatever. The unit did have an SOP that we constructed while we were
11 there that dealt specifically with the handling of detainees. I
12 don't recall if the SOP addressed use of force. I'm sure it did.
13 There were interpreters in the facility, but they weren't always
14 available. Again, there was an SOP that we constructed for
15 operations. It did not incorporate operations with MI personnel. It
16 did address the MP responsibilities. I don't believe it addressed
17 what the MI responsibilities or limitations were that I recall. The
18 general demeanor of the detainees would just depend on the detainees.
19 There was one detainee that we had that liked to use the bathroom in
20 his cell, and throw it at the guards. These detainees that died, I
21 don't recall having that problem with them. A lot of them, if they
22 were in general population, they were usually quiet, well behaved.
23 The ones in the isolation cell, some were quiet, some would yell or
24 what have you. The normal sorts of entries that I recall in the log
25 books without going into specifics would be like when a prisoner was
26 moved to the bathroom, when they were fed, if MI needed to see them,
27 when they left, when they came back, what room we moved them to. I
28 don't recall if our SOP had anything about when hoods or chaining
29 could be done. I don't recall sterilizing the uniforms was in the
30 SOP. The reasons for hooding and chaining was a form of punishment.
31 When they first came in, it was a form of punishment, but it was also
32 used to keep them awake, make sure they stood up, and MI directed
33 that we'd have them stand and be chained. From my personal
34 knowledge, the general attitudes of PUC 421 and 412, I don't recall
35 having dealt with them when they've been aggressive. They would have
36 been in their cell. As to if the chain of command at the battalion,
37 brigade, or higher level would come in and check on the Bagram
38 facility, the PMO would come in periodically usually with the ICRC,
39 and that was it that I recall. My general duties as a Sergeant of
40 the Guard were to walk around the facility and ensure that things
41 were being kept up. If there was a problem with a detainee, the
42 guards were to call you immediately. You would go to make sure that
43 everything was handled correctly, and made sure that the meals were
44 being put out, that water was given to them, breaks were being given
45 to the guards, and any of that type of stuff. There was no audio or

1 video recording capability available at the collection point that I
2 was aware of for normal operations because we weren't supposed to
3 have cameras in the facility. I know that there was no recording
4 authorized because it was a classified facility. What went into the
5 facility stayed in the facility. There was no written or oral SOP
6 that documented striking a detainee that I recall. I know, once the
7 first detainee died, then it was stated that you weren't supposed to
8 strike the detainees at all, but I don't recall what was put out
9 prior to that. Prisoners did not attempt to destroy the cells by
10 kicking them, even if they appeared to be made out of wood. The
11 prisoners had on a soft shoe, and they didn't have a hard shoe on
12 their foot. So, they could kick it, but I don't recall them kicking
13 it. As Sergeant of the Guard, I did enter an isolation cell to move
14 a detainee into a cell or to quell an unruly detainee. This was not
15 one of the two PUCs, but we did have a detainee who we called Timmy,
16 and I went into his cell because they thought he was mentally
17 retarded, and he would utilize the facilities in the cell and throw
18 it up through the top of the cell, and we'd have to clean it, and he
19 would wipe it on the walls, and we'd have to clean it off. So, we
20 would have to go in and move him and hold him while the guards
21 cleaned up the cells. The logs reflected the fact that the detainees
22 were hooded and chained in stationary positions.

23
24 The following questions were marked as Appellate Exhibits: AE
25 XCVI, question by LTC Simonelli; XCVII, question by ISG Montague.

26
27 **Questions by the Military Judge, continued:**

28
29 Detainees were usually in isolation cells, and weren't normally
30 moved from general population to isolation. It was normally ^{at AF}
31 isolation to general population. BT 412 and 421 were first into
32 isolation cells which is standard procedure, and to my knowledge,
33 they never went to general population. I got moved from first
34 platoon because we had a Staff Sergeant that left the country for a
35 family emergency and wasn't coming back, and there were four E6s in
36 first platoon. We had a soldier who got promoted while we were
37 there. So, they moved me to third platoon to cover the missing E6.
38 The unit chain of command, the company commander, First Sergeant, or
39 platoon Sergeant, were located in the operations room in the front of
40 the facility where the commander and the operations NCO would be.
41 The First Sergeant normally didn't enter the facility. It was a very
42 unique situation with the commander and the First Sergeant. They
43 didn't get along. So, she didn't come into the facility very often.
44 She would stay in her tent area or maintenance area. The platoon
45 Sergeant and platoon leader would normally be in the operations

1 center in the front of the facility. As to what the guard
2 configuration was when I was the Sergeant of the guard, if it was an
3 escort, there were two folks that were on escort to move the
4 prisoners, usually that was a requirement that you had two MPs that
5 escorted, especially out of the isolation cells. Sometimes, if it
6 was from one of the lower cells, if they were tasked out like we
7 needed to move, usually, there was always two escorts. A guard could
8 have been alone with a detainee.

9 RECROSS-EXAMINATION

10 Questions by the Defense Counsel:

11
12 I have heard of the common peroneal strike being used at Bagram
13 prior to this investigation occurring. There was an incident where I
14 heard of a common peroneal being used. What happened was that a
15 detainee was being moved to go to MI. He struck out at one of the
16 guards like he was going to try and escape, and they used a common
17 peroneal to take him down. That use of force was appropriate because
18 the detainee struck one of the guards in the face. The guard was
19 within his bounds to subdue the prisoner. To my knowledge, and this
20 is all hearsay, they used the common peroneal. There were two guards
21 escorting the prisoner. The prisoner struck out at one of the
22 guards. The other guard used the common peroneal, and took him down,
23 and they used the strike once. That guard was not reprimanded or
24 punished for using the strike in that instance. He was made to write
25 a sworn statement, and everyone within earshot was made to do
26 statements on what happened. I know SGT Boland and SPC Cammack. I
27 know CPT ~~Bevington~~. They are all still part of the 377th.

28
29
30 The Trial Counsel objected to the question, "Now, what was on
31 the dry erase board outside of the isolation cells," for beyond the
32 scope. The Military Judge sustained the objection.

33
34 The Trial Counsel objected to the question, "Isn't it true that
35 on the dry erase boards were times ----", for relevance. The
36 Military Judge sustained the objection.

37 Questions by the Defense Counsel, continued:

38
39
40 No interpreter came to me to complain about the treatment of the
41 PUCs. As to how often a doctor was around to review the detainees or
42 serve the detainees, we had a medical person on call at all times. I
43 believe they are 91 Whiskeys. He was a medic and not a doctor. The
44 doctor would come in when necessary, and he also came in periodically
45

1 to do the medical examination. The PUCs wore long pants. The PUCs
2 showered during the day shift. There would be a person watching them
3 in the shower. If there were any bruising or leg damage to the PUCs,
4 the guards would have seen it if they were looking for it. I said we
5 constructed an SOP while we were at Bagram. There was not an SOP
6 waiting for us when we got there. We weren't in the facility before
7 the other guards that were there. So, we weren't trained by the
8 guards that were there prior to us from the previous unit. We were
9 trained by the second platoon. We learned things from second platoon
10 that weren't taught at Fort Dix. Some detainees did throw feces at
11 guards. The chaining was a form of punishment. The chaining was
12 also used when a detainee first came into the facility, not just as a
13 form of punishment. I don't know if it had been determined whether
14 PUCs 412 or 421 would be repatriated or if they had knowledge or
15 military intelligence value to send them on to Guantanamo. I don't
16 know that. The MI interrogators would make that decision as to where
17 they should go. There were a bunch of procedures that changed after
18 PUC 412 died. I heard that they had changed quite a few of them.
19 Some of those procedures included using goggles instead of the hoods.
20 Some of those procedures included changing the way prisoners were
21 chained. The changes were a result of the first death, but I'm not
22 sure if it was the first death or after the second death. Just to be
23 clear, the chaining was over the head with arms outstretched some.
24 The chaining could have had the hands above the head. It was two
25 positions. It was whoever chained them up who made the decision how
26 the hands would be placed. I stated that the First Sergeant and
27 commander did not get along. The First Sergeant just didn't come
28 into the BCP. I don't know what her reasoning was behind that. I
29 know she and CPT ~~Beating~~ didn't get along. It could have been one of
30 the reasons she did not come into the facility. The First Sergeant
31 wasn't in the BCP that often. She was in PFC Brand's chain of
32 command. She was the senior NCO there for our unit. I mentioned
33 that we called one prisoner Timmy. I don't know why they called him
34 Timmy.

35
36 The Trial Counsel objected to the question, "Was that in
37 reference to the South Park character who is mostly retarded," for
38 relevance. The Military Judge sustained the objection.

39
40 **Questions by the Defense Counsel, continued:**

41
42 There were different interpreters at the Bagram collection
43 point, and I don't know how many there were. At one time, it would
44 depend on what was going on at the facility that day, but I don't
45 recall how many interpreters we had. We could do our job with or

1 without an interpreter. There were some basic words that they put on
2 the board for us so that we would know them. I don't believe we
3 needed an interpreter to move a detainee. It was sometimes difficult
4 to communicate with the detainees without interpreters there. If we
5 needed to tell them something, we would usually get an interpreter.
6 If a detainee was trying to tell us something, and we couldn't figure
7 out what it was, we would also request an interpreter to come in.
8 None of the stateside training prepared us to deal with Afghan
9 detainees who spoke no English, but we did get some training on a
10 board there with words like, "Stop. Count to ten," some different
11 words on it. This was on the job training.

12 REDIRECT EXAMINATION

13 Questions by the Trial Counsel:

14
15
16 A detainee would shower once a week. I want to say that ICRC
17 had requested that we give the detainees one more often to like twice
18 a week, but I don't recall whether or not that was ever put in. I
19 know they got one at least once a week. I am a unit administrator at
20 the 377th. My company commander is a reservist and is there two days
21 during the month, and comes in for drill weekend, but if we need him
22 for something, we can reach him by phone. The commander's failure to
23 be there does not keep me from doing my unit administrative tasks. I
24 don't have an SOP that tells us to do our unit administrator tasks,
25 but I am not incapable of performing my unit administrator tasks
26 because I don't have a written SOP. I have been trained to be a unit
27 administrator. I fall back on my training to help me decide what to
28 do every day.

29
30 The Defense Counsel objected to the question, "Do you do illegal
31 things because nobody is around to tell you ----", as being
32 argumentative. The Military Judge sustained the objection.
33

34 RECROSS-EXAMINATION

35 Questions by the Defense Counsel:

36
37
38 I am a unit administrator, and that is my civilian job. I don't
39 act in the military capacity as a unit administrator. I am paid as a
40 civilian.
41

42 There being no further questions, the witness was warned and
43 withdrew.
44
45

1 The court-martial recessed at 1721, 15 August 2005.

2 The court-martial was called to order at 0836, 16 August 2005.

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

5 LTC Elizabeth Rouse, U.S. Air Force, was called as a witness for
6 the prosecution, was sworn, and testified in substance as follows:

7 **DIRECT EXAMINATION**

8 **Questions by the Trial Counsel:**

9 I am LTC Elizabeth Rouse. I serve with the U.S. Air Force. I'm
10 stationed with the Uniformed Services University at the Health
11 Sciences. I am currently an assistant professor of pathology. I
12 also continue to serve as a Regional Medical Examiner for the Armed
13 Forces Medical Examiner's Office. I attended Virginia Polytechnic
14 Institute for my undergraduate degree. I majored in biology. I
15 attained a bachelors of Science. I graduated summa cum laude. After
16 receiving my undergraduate degree, I completed graduate work in
17 veterinary medicine, and then I also attended the Uniform Services
18 University and received a medical degree.

19 The Defense Counsel stated that they were willing to stipulate
20 that LTC Rouse was an expert in pathology. The Military Judge
21 allowed the Trial Counsel to continue with his line of questioning.

22 **Questions by the Trial Counsel:**

23 I attended medical school at the Uniform Services University at
24 the Health Sciences in Bethesda, Maryland. That was a medical
25 degree, and that is the area I graduated. I was in the top 3rd
26 percent that I graduated in. After graduating from medical school, I
27 completed a residency in anatomic and clinical pathology at Combined
28 Program at Walford Hall Medical Center at Brook Army Medical Center
29 in San Antonio, Texas. That was a five-year medical residency in
30 both anatomic and clinical pathology. The difference between
31 anatomic pathology and clinical pathology is that pathology is a
32 broad specialty that covers the study of disease. Clinical pathology
33 deals primarily in the hospital with laboratory studies. It
34 encompasses diagnosing disease and assisting physicians in the
35 diagnosing of a disease through laboratory methods, microbiology, the
36 chemistry lab, those sorts of things, laboratory methods. Anatomic

1 pathology is actually looking at organs both grossly and
2 microscopically to diagnose disease, inter-operative tissue, tissue
3 that's removed during surgery as well as autopsy diagnosis of disease
4 processes. Gross observations are what you can see with the naked
5 eye when you actually look at tissue whether it's tissue removed from
6 surgery, a biopsy sample, or any sort of tissue that's removed.
7 After my residency, I completed a fellowship in forensic pathology in
8 the Barrett County Medical Examiners Office in San Antonio, Texas.
9 Since that fellowship, I was a staff pathologist at Wolford Hall
10 Medical Center, and I was a Regional Medical Examiner for the Armed
11 Forces Medical Examiners Office meaning I did my general duties as a
12 staff pathologist in the hospital, and in addition, I would travel
13 throughout the central part of the country doing forensic cases. I
14 have a license to practice medicine in the state of Virginia, and
15 then I've also received board certification in the fields of
16 anatomic, clinical, and forensic pathology through our licensing
17 which is the American Board of Pathology. To become board certified,
18 it requires the successful completion and endorsement of residencies
19 in those fields for forensic pathology, or it requires a fellowship
20 in the field of forensic pathology and then they do a board
21 examination. For anatomic and clinical pathology, it's a three-day
22 examination procedure, and then for forensic pathology, it's a one-
23 day examination. I have done teaching in the field of pathology. In
24 my current job I'm teaching essentially full time at the medical
25 school. As a staff pathologist and other positions, I've taught
26 forensic pathology to a number of AFIPs which is Armed Forces
27 Institute of Pathology, basic forensic pathology course. We also
28 teach a forensic pathology graduate course at George Washington
29 University, and I've taught at other courses at Brooks Air Force
30 base, the flight surgeons course, the aircraft mishap course. I have
31 testified in court as an expert witness before in military and
32 civilian courts. I have given expert opinions on questions of
33 pathology. After being offered as an expert, I've been allowed to
34 testify approximately 25 times as an expert. I have performed
35 between 1,200 and 1,500 autopsies personally. In those autopsies, I
36 have seen blunt force injuries as a component approximately a quarter
37 to half of those cases. In my supervisory capacity, I have reviewed
38 approximately four to five thousand autopsy reports.

39
40 The Trial Counsel requested that the witness be recognized as an
41 expert in the field of pathology. There being no objection from the
42 defense, the Military Judge so recognized her as an expert witness in
43 the field of forensic pathology and advised the members.
44
45

Questions by the Trial Counsel, continued:

1
2
3 I am familiar with Mr. Dilawar who was known by the temporary
4 number of 421. I became familiar with that name because, in our
5 office, at the time I was the first Chief Deputy Medical Examiner at
6 the Armed Forces Institute of Pathologies, Armed Forces Medical
7 Examiners Office. We were notified approximately on the 10th of
8 December that there had been a death at the Bagram detention
9 facility. That was back in 2002. When we were notified, I made
10 preparations to fly out and I left that evening out of Andrews Air
11 Force base to fly to Afghanistan to complete that autopsy. I was
12 able to go to Afghanistan to conduct the autopsy. When we perform an
13 autopsy, there are a number of steps to that procedure. Initially,
14 we try to accumulate and review any medical records pertaining to the
15 deceased, and then, as far as actually performing an autopsy, we
16 initially do an external examination of the body as it's received in
17 the bag with the clothing, any medical devices, and anything that's
18 in the body is documented both photographically as well as in our
19 notes. Then, we begin removing all clothing or medical devices and
20 examine the body again, all skin surfaces, look in the mouth, other
21 orifices for any injury or evidence of disease, any abnormalities. A
22 complete external examination with documentation is performed. Then,
23 we begin the internal examination of the body. We typically do a Y
24 shaped incision on the chest, examine and remove all of the organs.
25 Initially, we look at the body as they are in the body, looking for
26 fluid, abnormal processes in the body. We remove the organs, examine
27 them, section them, and we also typically take small samples for
28 microscopic evaluation if necessary. So, we examine the organs of
29 the chest, the abdomen. We also make an incision on the scalp,
30 examine the tissue of the scalp for any injury, remove the top part
31 of the calvarium or the skull and remove the brain, again, examining
32 that for injury both in the body and once it's removed. We section,
33 meaning slice, the organs looking for any process or abnormalities
34 within the tissue, and take samples for microscopic examination if
35 indicated. We also collect fluids of various sorts, fluid of the
36 eye, blood, urine, bile, as well as occasionally, if fluids are not
37 available, tissue for toxicological analysis. That's the basic
38 autopsy. If abnormalities are evidence in other parts of the body,
39 that may warrant further examination. For example, in the limbs,
40 other parts of the body that aren't typically examined in an autopsy.
41 If, as part of the autopsy, methods of identification are obtained to
42 ultimately obtain a scientific identification of the individual if
43 possible, and that may include taking fingerprints, dental
44 examination, those are performed by other individuals, not myself,
45 but that's part of the autopsy. DNA samples may be taken typically