

Volume II of II  
ORIGINAL COPY

Verbatim <sup>1</sup>

## RECORD OF TRIAL <sup>2</sup>

(and accompanying papers)

of

CAMACK, Brian E.

Specialist/E4

(Social Security Number)

(Rank)

377th Military Police Company,  
Cincinnati, Ohio

U.S. Army

Fort Bliss, Texas

(Branch of Service)

(Station of Ship)

By

SPECIAL

COURT-MARTIAL

Convened by

COMMANDER

(Title of Convening Authority)

United States Army Air Defense Artillery Center and Fort Bliss

(Unit/Command of Convening Authority)

Tried at

Fort Bliss, Texas

on

26 April, 20 May 2005

(Place or Places of Trial)

(Date or Dates of Trial)

### COMPANION CASE(S)

Member: Anthony M. Barham, 377th Military Police Company, Cincinnati, Ohio; co-accused, pending trial by Special Court-Martial on 30 August 2005.

Grand: William V. Private First Class, 377th Military Police Company, Cincinnati, Ohio; co-accused, pending trial by General Court-Martial on 15 August 2005.

<sup>1</sup> Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

<sup>2</sup> See inside back cover for instructions as to preparation and arrangement.

20050612



**RECORD OF PROCEEDINGS  
OF COURT-MARTIAL**



## E R R A T A S H E E T

UNITED STATES v. SPECIALIST BRIAN E. CAMMACK

Military Judge: LIEUTENANT COLONEL MARK P. SPOSATO

PAGE NUMBER	JUDGE'S INITIALS	PAGE NUMBER	JUDGE'S INITIALS	PAGE NUMBER	JUDGE'S INITIALS	PAGE NUMBER	JUDGE'S INITIALS
8	WPS	<div style="transform: rotate(-45deg);"> NOT USED </div>					
15	WPS						
22	WPS						
27	WPS						
35	WPS						
36	WPS						
14	WPS						
41	WPS						
49	WPS						
83	WPS						
<div style="transform: rotate(-45deg);"> NOT USED </div>							

NOTICE: The above page(s) ~~has~~ have corrections. A copy of each corrected page must be inserted in all copies of the record of trial.

Signature:



Date:

12 July 05



## Errata Sheet

United States v. Specialist Brian E. Cammack

Military Judge: LTC Mark P. Sposato  
 Trial Counsel: CPT Branson J. Parker  
 Defense Counsel: CPT Robert M. Leone

Page	Line	From	To
11	4	26 April 2005	20 May 2005
14	15	inaudible	issue
30	10	Peronial	Peronial
31	7	Peronial	Peronial
32	8	Peronial	Peronial
70	23	excepts	excepts
79	4	have come	not have
82	21	that was	that were
89	16	them was	them were
89	17	was accepting	were not accepting
90	13	has your	has your
93	14	They was	They were
102	5	Peronial	Peronial
105	9	is what	are what
107	21	not was he	and was
107	21	promised anything	promised him anything
107	22	governmental	government was
107	22	?	[sentence keeps going]

Page 1 of 1 Pages

Signature: [Signature]

Date: 5 July 05



## Errata Sheet

United States v. Specialist Brian E. Cammack

Military Judge: LTC Mark P. Sposato  
 Trial Counsel: CPT John Branson Parker  
 Defense Counsel: CPT Robert M. Leone

Page Line From			To	
30	10	peronial	peroneal	✓
30	13	Dicks	Dix	✓
31	2	Dicks	Dix	✓
31	5	Dicks	Dix	✓
31	7	peronial	peroneal	✓
32	8	peronial	peroneal	✓
34	6	Mortom	Morden	✓
34	7	Bowman	Boland	✓
36	6	bodily" harm	bodily harm"	✓
38	10	escorted guards	escort guards	✓
38	11	escorted guards	escort guards	✓
70	23	exerts	excerpts	✓
71	2	Mary Ann	Marianne	✓
75	12	We're a very closed net	We're very close-knit	✓
77	3	labor	laborer	✓
79	16	tight-netted	tight-knit	✓
79	17	trades	traits	✓
84	21	headed	hit it	✓
84	21	talking	together	corr
97	5	murdered	murderer	✓
101	23	launched	lashed	✓
102	1	launched	lashed out	✓
102	5	peronial	peroneal	✓
102	19	mean to disrespecting one's rights	means of disrespecting one's rage	corr
103	12	Investigators	Investigations	corr
103	19	disciplined	discipline	✓
104	1	Investigations	[DELETE]	corr
104	2	thee	there	✓
105	9	is what	are what	✓

Page 1 of  
 Signature: \_\_\_\_\_

Date: 23 JUNE 2005



**RECORD OF TRIAL**

of

CAMMACK, Brian E.

(Name, Last, First, Middle Initial)

(Social Security Number)

Specialist/E4

(Rank)

377th Military Police Company,  
Cincinnati, Ohio

(Unit/Command Name)

U.S. Army

(Branch of Service)

Fort Bliss, Texas

(Station of Ship)

By

**SPECIAL****COURT-MARTIAL**

Convened by

COMMANDER

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United States Army Air Defense Artillery Center and Fort Bliss

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Tried at

Fort Bliss, Texas

(Place or Places of Trial)

on

26 April, 20 May 2005

(Date or Dates of Trial)

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**COPIES OF RECORD**

\_\_\_\_\_ copy of record furnished the accused or defense counsel as per attached certificate or receipt.

\_\_\_\_\_ copy(ies) of record forwarded herewith.

**RECEIPT FOR COPY OF RECORD**

I hereby acknowledge receipt of a copy of the record of trial in the case of the United States v. CAMMACK, Brian E., delivered to me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

\_\_\_\_\_  
(Signature of accused)



PROCEEDINGS OF A SPECIAL COURT-MARTIAL

The military judge called the Article 39(a) session to order at Fort Bliss, Texas, at 0830, 26 April 2005, pursuant to the following orders:

Court-Martial Convening Order Number 25, Headquarters, United States Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas, dated 14 October 2004.

[END OF PAGE]



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

COURT-MARTIAL CONVENING ORDER  
NUMBER 25

14 October 2004

1. A special court-martial is convened with the following members:

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

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


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

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

BY COMMAND OF MAJOR GENERAL VANE:

DISTRIBUTION:

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



ANITA FRANCIS  
WO1, USA  
Legal Administrator



1 MJ: This Article 39(a) session is called to order.

2 TC: This court-martial is convened by Court-Martial Convening  
3 Order Number 25, Headquarters, United States Army Air Defense  
4 Artillery Center and Fort Bliss, dated 14 October 2004; copy of which  
5 have been furnished to military judge, counsel, and the accused, and  
6 which will be inserted into the record at this point.

7 The charges have been properly referred to this court for  
8 trial and were served on the accused on 3 April 2005.

9 The prosecution is ready to proceed with the arraignment in  
10 the case of the United States versus [Specialist] Brian Edward  
11 Cammack.

12 The accused and the following persons detailed to this  
13 court are present:

14 LIEUTENANT COLONEL MARK P. SPOSATO, MILITARY JUDGE;

15 CAPTAIN JOHN BRANSON PARKER, TRIAL COUNSEL;

16 MAJOR CHRISTOPHER CARRIER, ASSISTANT TRIAL COUNSEL;

17 CAPTAIN ROBERT LEONE, DEFENSE COUNSEL.

18 The members are absent.

19 Specialist Bryan Ortiz has been detailed reporter for this  
20 court and has previously been sworn.

21 All members of the prosecution have been detailed to this  
22 court-martial by Colonel Mark Rivest. All members of the prosecution  
23 are qualified and certified under Article 27(b) and sworn under



1 Article 42(a), Uniform Code of Military Justice. No member of the  
2 prosecution has acted in any manner which might tend to disqualify us  
3 in this court-martial.

4 MJ: Thank you, Captain Parker.

5 Specialist Cammack, you have the right to be represented by  
6 Captain Leone, your detailed military defense counsel. He is  
7 provided to you at no expense to you. You also have the right to  
8 request a different military lawyer to represent you. If the person  
9 you request is reasonably available, he or she will be appointed to  
10 represent you also free of charge. If your request for this other  
11 military lawyer were granted, however, you would not have the right  
12 to keep the services of Captain Leone, your detailed military defense  
13 counsel, because you are entitled to only one military lawyer. You  
14 may ask Captain Leone's superiors to let you keep him on the case but  
15 your request would not have to be granted. In addition, you have the  
16 right to be represented by a civilian lawyer. A civilian lawyer  
17 would have to be provided to you at no expense to the government. If  
18 you are represented by a civilian lawyer, you can also keep your  
19 military lawyer on the case to assist your civilian lawyer or you  
20 could excuse your military lawyer and be represented only by your  
21 civilian lawyer.

22 Do you understand that?

23 ACC: Yes, sir.



1 MJ: Do you have any questions about your rights to counsel?

2 ACC: No, sir.

3 MJ: By whom do you wish to be represented?

4 ACC: Captain Leone, sir.

5 MJ: And by him alone?

6 ACC: Yes, sir.

7 MJ: Captain Leone, if you would, announce your detailing and  
8 qualifications for the record, please.

9 DC: Good morning, Your Honor. I have been detailed to this  
10 court-martial by Lieutenant Colonel E. J. O'Brien, Regional Defense  
11 Counsel of the United States Army Trial Defense Service, Region IV.  
12 I am qualified and certified under Article 27(b) and sworn under  
13 Article 42(a) of the Uniform Code of Military Justice. I have not  
14 acted in any manner which might tend to disqualify me in this court-  
15 martial.

16 MJ: Thank you, Captain Leone.

17 I have been properly certified and sworn and detailed  
18 myself to this court-martial.

19 Counsel for both sides appear to have the requisite  
20 qualifications and all personnel required to be sworn have been  
21 sworn.

22 Trial Counsel, announce the general nature of the charges.



1 TC: Sir, the general nature of the charges in this case is  
2 assault, specifically, assault against a person under the United  
3 States control; and subsequent false official statements concerning  
4 that assault. The charges were preferred by Captain Eric Segarra,  
5 Commander, Headquarters and Headquarters Battery, United States Army  
6 Air Defense Artillery Center and Fort Bliss; forwarded with  
7 recommendations as to disposition by Major Michael Petty, Commander,  
8 76th Military Police Battalion.

9 Your Honor, are you aware of any matter which might be a  
10 ground for challenge against you?

11 MJ: I am not.

12 Does either side desire to question or challenge me?

13 TC: No, Your Honor.

14 DC: No, sir.

15 MJ: Thank you.

16 Specialist Cammack, you have the right to be tried by a  
17 court consisting of at least three officer members, that is, a court  
18 composed of commissioned and/or warrant officers. Also, if you  
19 requested, you could be tried of a court consisting of at least  
20 one-third enlisted members, but none of those enlisted members could  
21 come from your company. You are also advised, no member of the court  
22 would be junior in rank to you.

23 Do you understand what I've said so far?



1 ACC: Yes, sir.

2 MJ: Now, if you are tried by court members, the members will  
3 vote by secret, written ballot and two-thirds of the members must  
4 agree before you could be found guilty of any offense. If you were  
5 found guilty, then two-thirds must also agree in voting on a  
6 sentence.

7 You also have the right to request trial by military judge  
8 alone and, if approved, there would be no court members and the judge  
9 alone would decide whether you are guilty or not guilty, and if you  
10 are found guilty, the judge alone will determine your sentence.

11 Do you understand the difference between trial before  
12 members and trial before military judge alone?

13 ACC: Yes, sir.

14 MJ: Do you understand the choices you have?

15 ACC: Yes, sir.

16 MJ: By what type of court do you wish to be tried?

17 DC: Your Honor, at this time the accused would like to defer  
18 his choice of forum.

19 MJ: Very well. That request is granted.

20 The accused will now be arraigned.

21 TC: Your Honor, all parties to the trial have been furnished  
22 with a copy of the charges.

23 Does the accused wish the charges read?



1 DC: The accused waives the reading of the charges, Your Honor.

2 MJ: The reading may be omitted.

3 [THE CHARGE SHEET FOLLOWS AND IS NOT A NUMBERED PAGE.]

4 [END OF PAGE]

5



## CHARGE SHEET

## I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) <b>CAMMACK, Brian E.</b>		2. SSN	3. GRADE OR RANK <b>SPC</b>	4. PAY GRADE <b>E-4</b>
5. UNIT OR ORGANIZATION <b>377<sup>th</sup> Military Police Company, Cincinnati, OH 45237</b>			6. CURRENT SERVICE	
			a. INITIAL DATE <b>010810</b>	b. TERM <b>6 YRS</b>
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC <b>\$1967.80</b>	b. SEA/FOREIGN DUTY	c. TOTAL <b>\$1967.80</b>		<b>None</b>
				<b>N/A</b>

## II. CHARGES AND SPECIFICATIONS

10. CHARGE: I VIOLATION OF THE UCMJ, ARTICLE 128, ASSAULT

SPECIFICATION: In that SPC Brian E. CAMMACK, U.S. Army, did, at or near Bagram Airfield, Afghanistan, on or about 03 December 2002, unlawfully strike Habibullah (a/k/a BT 412, BT-412 or PUC 412) at least once in the leg with his knee.

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

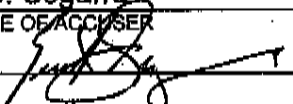
SPECIFICATION: In that SPC Brian E. CAMMACK, U.S. Army, did, at or near Bagram Airfield, Afghanistan, on or about 03 December 2002, maltreat Habibullah (a/k/a BT 412, BT-412 or PUC 412) a person subject to his orders, by striking Habibullah at least once in the leg with his knee.

CHARGE III: VIOLATION OF THE UCMJ, ARTICLE 107, FALSE OFFICIAL STATEMENT

SPECIFICATION 1: In that SPC Brian E. CAMMACK, U.S. Army, did, at or near Bagram Airfield, Afghanistan, on or about 04 December 2002, with intent to deceive, make to SA Richard P. Potter, USACIDC, an official statement, to wit: that he (SPC Brian E. CAMMACK) had not struck, nor was he aware of any other person striking, Habibullah (a/k/a BT 412, BT-412 or PUC 412), which statement was totally false, and was then known by the said SPC Brian E. CAMMACK to be so false.

SPECIFICATION 2: In that SPC Brian E. CAMMACK, U.S. Army, did, at or near Bagram Airfield, Afghanistan, on or about 16 December 2002, with intent to deceive, make to SA Daniel Flores, III, USACIDC, an official statement, to wit: that he (SPC Brian E. CAMMACK) had never struck, nor had he ever seen any other person strike, Habibullah (a/k/a BT 412, BT-412 or PUC 412), which statement was totally false, and was then known by the said SPC Brian E. CAMMACK to be so false.

## III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) <b>Erick J. Segarra</b>	b. GRADE <b>O-3</b>	c. ORGANIZATION OF ACCUSER <b>CDR, HHB USAADACEN&amp;FB</b>
d. SIGNATURE OF ACCUSER 		e. DATE <b>1 APR 05</b>

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 1<sup>st</sup> day of April, 2005, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

**Anthony T. Schaefer**  
Typed Name of Officer

**OSJA, HQ, US ARMY FORCES COMMAND**  
Organization of Officer

**O-3**  
Grade

**Judge Advocate**

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

  
Signature



12.

On 030930 APR 2005, 2005, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

Erick J. Segarra

Typed Name of Immediate Commander

HHB USAADACEN&amp;FB

Organization of Immediate Commander

O3

Grade

Signature

## IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 0813 hours, 4 April 2005 at 76<sup>th</sup> Military Police Battalion  
Designation of Command or

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

FOR THE<sup>1</sup>

Michael Petty

Typed Name of Officer

Commander, 76<sup>th</sup> MP BN

Official Capacity of Officer Signing

O4

Grade

Signature

## V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

HQ, USAADACEN&amp;FB

FORT BLISS, TX 79916

14 APRIL 2005

Referred for trial to the special court-martial convened by CMCO #25

dated 14 October 20 04, subject to the following instructions:<sup>2</sup> empowered  
to adjudge a bad-conduct discharge.

By COMMAND of BRIGADIER GENERAL MAHON  
Command or Order

KATHERINE A. LEHMANN

Typed Name of Officer

CHIEF, Criminal Law Division

Official Capacity of Officer Signing

MAJ

Grade

Signature

15.

On 15 APRIL, 2004 2005, I caused to be served a copy hereof on (each of) the above named accused.

ANTHONY T. SCHAEFER

Typed Name of Trial Counsel

CPT

Grade or Rank of Trial Counsel

Signature

FOOTNOTES: 1 — When an appropriate commander signs personally, inapplicable words are stricken.  
2 — See R.C.M. 601(e) concerning instructions. If none, so state.



1 TC: Your Honor, the charges are signed by Captain Segarra, a  
2 person subject to the code as accuser; they are properly sworn to  
3 before a commissioned officer of the armed forces authorized to  
4 administer oaths; and are properly referred to this court for trial  
5 by Brigadier General Francis <sup>Wagon</sup> ~~Mann~~ <sup>US</sup>, Convening Authority.

6 MJ: I believe he was the acting convening authority, and I have  
7 a copy of the assumption of command orders. [They] were attached to  
8 the charge sheet.

9 TC: Yes, Your Honor.

10 MJ: Accused and defense counsel, please rise.

11 [The accused and his counsel did as directed.]

12 MJ: Specialist Brian E. Cammack, how do you plead? Before  
13 receiving your plea I advise you, any motions to dismiss or to grant  
14 other appropriate relief should be made at this time. You can be  
15 seated and Captain Leone will speak for you.

16 DC: Your Honor, at this time Specialist Cammack wishes to defer  
17 pleas and motions.

18 MJ: Very well. That request is also granted.

19 I note for the record that at an R.C.M. 802 conference  
20 prior to this Article 39(a) session I discussed potential trial date  
21 with counsel, and, Captain Leone, you indicated that there were  
22 certain factors that required you to ask for trial in July.

23 Do you want to place those on the record, please?



1 DC: Yes, sir. At this time, I am currently detailed to courts-  
2 martial at five installations, which include Fort Polk, Louisiana;  
3 Fort Sam Houston, Texas; Fort Hood, Texas; Fort Bliss, Texas; and  
4 Fort Huachuca, Arizona. I'll need this additional time, Your Honor,  
5 to prepare these cases as well as to handle my duties at Fort  
6 Huachuca, Arizona, as the senior defense counsel, and also to prepare  
7 Specialist Cammack's case. Going any sooner than 19 to 20 July would  
8 not allow me to thoroughly represent Specialist Cammack.

9 MJ: Alright. And delay between now and those trial dates in  
10 July will be attributable to defense?

11 DC: Yes, Your Honor.

12 MJ: No issue in that regard from either side?

13 TC: Not on the part of the government, Your Honor.

14 DC: Not on the part of the defense, Your Honor.

15 MJ: Alright. Anything else either side cares to put on the  
16 record with regard to the [R.C.M.] 802 conference?

17 TC: Nothing from the government, Your Honor.

18 DC: No, Your Honor.

19 MJ: As it is my custom, I will sign a pretrial order in this  
20 case, which will set out suspense dates for notice of plea, forum,  
21 and motions. I'll provide that to the parties by email.



1 MJ: Specialist Cammack, what just happened is called an  
2 arraignment. An arraignment has certain legal consequences, one of  
3 which I'd like to explain to you now.

4 Under ordinary circumstances, you have the right to be  
5 present at every stage of your trial; however, if you were  
6 voluntarily absent on the date this trial is scheduled to proceed,  
7 and as I indicated that would be 19 July of this year at 0830 hours,  
8 if you were voluntarily absent on the date this trial is scheduled to  
9 proceed you may forfeit the right to be present. The trial could  
10 forward on the date scheduled even if you were not present, up to and  
11 including sentencing if necessary.

12 Do you understand that?

13 ACC: Yes, sir.

14 MJ: Now, I want you to understand I am not implying that you  
15 are going to go AWOL or anything of that nature. I just want to  
16 impress upon you the importance of keeping both your chain of command  
17 and Captain Leone apprised of your whereabouts between now and the  
18 19th of July.

19 Do you understand that?

20 ACC: Yes, sir.

21 MJ: Anything else we can take up at this time?

22 TC: Nothing on the part of the government, Your Honor.

23 DC: No, Your Honor.



1 MJ: Very well.

2 The court is in recess.

3 [The session recessed at 0837, 26 April 2005.]

4 [The session was called to order at 0832, 20 May 2005.]

5 MJ: The court is called to order. All parties are present as  
6 before.

7 Specialist Cammack, at the last session of this court-  
8 martial on the 26th of April I advised you of your counsel rights.

9 Do you remember those rights?

10 ACC: Yes, sir, I do.

11 MJ: At that time, you advised me that you wished to be  
12 represented by Captain Leone and by he alone, is that correct?

13 ACC: That's correct.

14 MJ: Is it still your desire to be represented by Captain Leone  
15 and only by him?

16 ACC: That's correct, sir.

17 MJ: Now I want to cover your forum rights with you again.

18 Specialist Cammack, you have the right to be tried by a  
19 court consisting of at least three officer members, that is a court  
20 composed of commissioned and/or warrant officers. Also, if you  
21 requested, you could be tried by a court consisting of at least one-  
22 third enlisted members, but none of those enlisted members could come  
23 from your company. You are also advised, no member of the court will



1 be junior in rank to you.

2 Do you understand what I've said so far?

3 ACC: Yes, sir, I do.

4 MJ: Now, if you are tried by court members, the members will  
5 vote by secret, written ballot, and two-thirds of the members must  
6 agree before you could be found guilty of any offense. If you were  
7 found guilty, then two-thirds must also agree in voting on a  
8 sentence. You also have the right to request trial by military judge  
9 alone and, if approved, there would be no court members and the judge  
10 alone would decide whether you are guilty or not guilty and, if you  
11 were found guilty, the judge alone would determine your sentence.

12 Do you understand the difference between trial before  
13 members and trial before military judge alone?

14 ACC: Yes, I do, sir.

15 MJ: Do you understand the choices you have?

16 ACC: Yes, I do, sir.

17 MJ: By what type of court do you wish to be tried?

18 DC: Military judge alone, sir.

19 MJ: Specialist Cammack, I have before me what's been marked  
20 Appellate Exhibit VI, a request for trial before military judge  
21 alone.

22 Do you have a copy there on the defense table?

23 ACC: Yes, I do, sir.



1 MJ: Is that your signature that appears on the top of that  
2 document?

3 ACC: Yes, it is, sir.

4 MJ: At the time you signed this request, did you know I would  
5 be the military judge in your case?

6 ACC: Yes, I did, sir.

7 MJ: Is your request a voluntary one? By that I mean, are you  
8 making this request of your own free will?

9 ACC: Yes, it is, sir.

10 MJ: If I approve your request for trial by me alone, you give  
11 up your right to be tried by a court composed of members.

12 Do you understand that?

13 ACC: Yes, sir.

14 MJ: Do you still wish to be tried by me alone?

15 ACC: Yes, sir.

16 MJ: Your request is approved. I am signing and dating the  
17 form.

18 The court is assembled.

19 Anything else from either side before I call upon the  
20 accused to enter a plea?

21 TC: No, Your Honor.

22 DC: No, sir.



1 MJ: Accused and defense counsel, please rise.

2 [The accused and her counsel did as directed.]

3 MJ: Specialist Brian E. Cammack, how do you plead? Before  
4 receiving your plea, I advise you any motions to dismiss or to grant  
5 other appropriate relief should be made at this time. Your defense  
6 counsel will speak for you.

7 DC: Your Honor, we have no motions. Specialist Cammack pleads as  
8 follows:

9	To Charge I and its Specification#:	Guilty.
10	To Charge II and its Specification:	Not Guilty.
11	To Charge III and its Specifications:	Guilty.

12 MJ: Thank you.

13 Please be seated.

14 [The accused and her counsel did as directed.]

15 DC: Your Honor, before we move on there's one issue we'd like  
16 to address with you.

17 MJ: Sure.

18 DC: Just for the record, Your Honor, both defense sentencing  
19 witnesses and government's sentencing witnesses are here in the  
20 courtroom present. I spoke to the prosecutor and it is my  
21 understanding they don't have an objection to my witnesses being in  
22 for providency. I have no objection to their witnesses through  
23 providency if it is okay with you, if you'd allow them to stay.

24 MJ: Government, any objection?



1 TC: No objection, Your Honor.

2 MJ: Alright. I'll allow them to remain in the courtroom  
3 through the providence inquiry.

4 DC: Thank you, sir.

5 MJ: Specialist Cammack, your counsel has entered a plea of  
6 guilty for you to several charges and specifications. Your plea of  
7 guilty will not be accepted unless you understand its meaning and  
8 effect. I am going to discuss your plea of guilty with you, and you  
9 may wish to consult with Captain Leone prior to answering any of my  
10 questions. If at any time you have any questions, please feel free  
11 to ask them.

12 A plea of guilty is equivalent to a conviction and it is  
13 the strongest form of proof known to the law. On your plea alone and  
14 without receiving any evidence, this court can find you guilty of the  
15 offenses to which you've pled guilty. Your plea will not be accepted  
16 unless you realize that by your plea you admit every act or omission  
17 and element <sup>was</sup> ~~of~~ the offenses to which you've pled guilty; and that you  
18 are pleading guilty because you actually are, in fact, guilty. If  
19 you do not believe you are guilty, then you should not, for any  
20 reason, plead guilty.

21 Do you understand what I've said so far?

22 ACC: Yes, sir.



1 MJ: By your plea of guilty you give up three important rights,  
2 but you give up these rights solely with respect to the offenses to  
3 which you are pleading guilty.

4 First, the right against self-incrimination, that is the  
5 right to say nothing at all;

6 Second, the right to a trial of the facts by this court,  
7 that is your right to have this court-martial decide whether or not  
8 you are guilty based upon evidence the prosecution would present and  
9 on any evidence that you may introduce;

10 Third, the right to be confronted by and to cross-examine  
11 any witnesses called against you.

12 Do you have any questions about any of these rights?

13 ACC: No, I don't, sir.

14 MJ: Do you understand that by pleading guilty you no longer  
15 have these rights?

16 ACC: Yes, sir.

17 MJ: If you continue with your guilty plea, you'll be placed  
18 under oath and I will question you to determine whether you are in  
19 fact guilty. Anything you tell me may be used against you in the  
20 sentencing portion of the trial.

21 Do you understand this?

22 ACC: Yes, sir.



1 MJ: If you tell me anything that is untrue, your statements may  
2 be used against you later for charges of perjury or making false  
3 statements.

4 Do you also understand this?

5 ACC: Yes, sir.

6 MJ: Trial Counsel, please place the accused under oath.

7 [The accused was sworn.]

8 MJ: Specialist Cammack, I have before me what's been marked  
9 Prosecution Exhibits 1 and 2 for identification. With [Prosecution]  
10 Exhibit 2 there's some--with the stipulation, there's some  
11 photographs that have been marked "a" through and including "i", I  
12 believe, which are mounted on hardboard. I'll be referring to both  
13 the stipulations, Prosecution Exhibits 1 and 2.

14 Specialist Cammack, is that your signature that appears on  
15 both of those documents?

16 ACC: Yes, it is, sir.

17 MJ: Did you read these documents through thoroughly before you  
18 signed them?

19 ACC: Yes, sir.

20 MJ: Do both counsel agree to the stipulations and that your  
21 signatures appear on the documents?

22 TC: Yes, Your Honor.

23 DC: Yes, sir.



1 MJ: Specialist Cammack, a stipulation of fact is an agreement  
2 among the trial counsel, your defense counsel, and you that the  
3 contents of the stipulation are true and, if entered in evidence, are  
4 uncontradicted facts in this case. No one can be forced to enter  
5 into a stipulation, so you should enter into it only if you truly  
6 want to do so.

7 Do you understand that?

8 ACC: Yes, sir.

9 MJ: Are you voluntarily entering into these stipulations  
10 because you believe it is in your best interest to do so?

11 ACC: Yes, sir.

12 MJ: If I admit the stipulations into evidence, they'll be used  
13 in two ways. First, I will use them to determine if you are in fact  
14 guilty of the offenses to which you've pled guilty; and second, I  
15 will use them to determine an appropriate sentence for you.

16 Do you understand and agree to these uses of the  
17 stipulations?

18 ACC: Yes, sir.

19 MJ: Do both counsel also agree to these uses?

20 TC: Yes, Your Honor.

21 DC: Yes, sir.

22 MJ: Specialist Cammack, a stipulation of fact ordinarily cannot  
23 be contradicted. If it should be contradicted after I've accepted



1 your guilty plea, I will reopen this inquiry. You should therefore  
2 let me know if there is anything whatsoever you disagree with or feel  
3 is untrue.

4 Do you understand that?

5 ACC: Yes, sir.

6 MJ: At this time, I want you to read your copy of the  
7 stipulation silently to yourself as I read it to myself, and please  
8 look up when you've finished.

9 [The accused did as directed.]

10 MJ: Counsel, I think I am missing the two statements that are  
11 attached--that are supposed to be attached to Prosecution Exhibit 1  
12 for identification, the two statements.

13 Do you have those?

14 TC: Yes, Your Honor.

15 MJ: Make sure you show those to Captain Leone before you give  
16 them to me. It's supposed to be a 16 December 2002 statement and a  
17 4 December 2002 statement.

18 [The trial counsel did as directed, and after inspection by the  
19 defense counsel, handed the documents to the military judge.]

20 MJ: Any objection to these two enclosures, Captain Leone?

21 DC: No, Your Honor.

22 MJ: Let the record reflect that what has been called  
23 Attachment 1 purports to be a statement of the accused made on



1 4 December 2002, which is four pages; and what is called Attachment 2  
2 is what purports to be a statement made by the accused on  
3 16 December 2002, which is three pages; as well as DA Form 3881,  
4 Rights Advisement Form, two pages.

5 [The accused continued examining PEs 1 and 2 for ID.]

6 MJ: Specialist Cammack, make sure you also review your two  
7 statements that I just referred to so you are familiar with them.

8 [The accused did as directed.]

9 MJ: Specialist Cammack, have you finished reading the  
10 stipulations?

11 ACC: Yes, sir.

12 MJ: And is everything in the stipulations true?

13 ACC: Yes, sir.

14 MJ: Is there anything in the two stipulations that you do not wish  
15 to admit is true?

16 ACC: No, sir.

17 MJ: Do you agree under oath that the matters contained in the  
18 two stipulations are true and correct to the best of your knowledge  
19 and belief?

20 ACC: Yes, sir.

21 MJ: Captain Leone, do you have any objections to Prosecution  
22 Exhibits 1 or 2 for identification?

23 DC: No objection, Your Honor.



1 MJ: Prosecution Exhibits 1 and 2 are received into evidence  
2 subject to my acceptance of the accused's guilty plea.

3 Specialist Cammack, I am now going to explain the elements  
4 to the offenses to which you've pled guilty.

5 By "elements" I mean those facts which the prosecution  
6 would have to prove beyond a reasonable doubt before you could be  
7 found guilty if you had pled not guilty. When I state each element,  
8 ask yourself two things: First, is the element true; and, second,  
9 whether you want to admit that it is true. After I list the elements  
10 for you, be prepared to talk to me about the facts regarding the  
11 offenses.

12 Do you have a copy of the charge sheets in front of you?

13 ACC: Yes, Your Honor.

14 MJ: First, let's take a look at The Specification of Charge I,  
15 which alleges a violation of Article 128 of the Uniform Code of  
16 Military Justice. The elements of that offense, which is known as  
17 assault consummated by battery, are as follows:

18 First, that at or near Bagram Airfield, Afghanistan, on or  
19 about 3 December 2002, you did bodily harm to Habibullah, also known  
20 as BT 412, BT-412, or PUC 412;

21 Second, that you did so by striking Habibullah at least  
22 once on the leg with your knee; and



1 Third, that the bodily harm was done with unlawful force or  
2 violence.

3 An "assault" is an attempt or offer with unlawful force or  
4 violence to do bodily harm to another. An assault in which bodily  
5 harm is inflicted is called a battery.

6 A "battery" is an unlawful and intentional or culpable <sup>was</sup>  
7 negligent application of force or violence to another. The act must  
8 be done without legal justification or excuse and without the lawful  
9 consent of the victim.

10 "Bodily harm" means any physical injury to or offensive  
11 touching of another person, however slight.

12 "Culpable negligence" is a degree of carelessness greater  
13 than simple negligence.

14 "Simple negligence" is the absence of due care.

15 The law requires everyone at all times to demonstrate the  
16 care for the safety of others that a reasonably careful person would  
17 demonstrate under the same or similar circumstances. That is what  
18 due care means. Culpable negligence, on the other hand, is a  
19 negligent act accompanied by gross, reckless, wanton, or deliberate  
20 disregard for the foreseeable results to others.

21 Now, let's take a look at the two specifications of Charge  
22 III, which allege violations of Article 107 of the Uniform Code of  
23 Military Justice. The elements of these two offenses, which are the



1 same except as I indicate and are known as making a false official  
2 statement, are as follows:

3 First, that at or near Bagram Airfield, Afghanistan, as to  
4 Specification 1, on or about 4 December 2002, you made to Special  
5 Agent Richard P. Potter, U.S. Army CID, a certain official statement,  
6 that is, that you had not struck nor were you aware of any other  
7 person striking Habibullah, also known as BT 412, BT-412, or PUC 412;  
8 and as to Specification 2, on or about 16 December 2002, you made to  
9 Special Agent Daniel Flores III, U.S. Army CID, a certain official  
10 statement, that is, that you had never struck nor had you ever seen  
11 any other person strike Habibullah, also known as BT 412, BT-412, or  
12 PUC 412;

13 Second, that as to both specifications, those statements  
14 were totally false;

15 Third, that as to both of those statements, that you knew  
16 the statements to be false at the time you made them; and

17 Fourth, that the false statements were made with the intent  
18 to deceive.

19 "Intent to deceive" means to purposely mislead, to cheat,  
20 to trick another, or to cause another to believe that is true that  
21 which is false.

22 For a document to be regarded as official it must concern a  
23 governmental function and it must be made to a person who, in



1 receiving it, is discharging the functions of his or her particular  
2 office or to an office which, in receiving the document or statement,  
3 is discharging its functions. Further, a person conducting an  
4 interrogation or an office requesting submission of a document must,  
5 under the circumstances, have the authority to require an answer or  
6 statement from you.

7 Specialist Cammack, do you understand the elements and  
8 definitions as I have read them to you?

9 ACC: Yes, sir.

10 MJ: Do you have any questions about any of them?

11 ACC: No, sir.

12 MJ: Do you understand that your plea of guilty admits that  
13 these elements accurately describe what you did?

14 ACC: Yes, sir.

15 MJ: Do you believe and admit that the elements and definitions,  
16 taken together, correctly describe what you did?

17 ACC: Yes, sir.

18 MJ: Alright. Tell me, when did you--when were you activated  
19 before December of 2002 into the active Army?

20 ACC: June of 2002, sir.

21 MJ: Alright. And at some point, were you deployed with your  
22 unit to Afghanistan?

23 ACC: Yes, sir.



1 MJ: When would that have been?

2 ACC: August of 2002, sir.

3 MJ: Where were you on the 3rd of December of 2002?

4 ACC: The isolation block number 2, which was the downstairs  
5 isolation block at Bagram----

6 MJ: That would be Bagram Airfield, in Afghanistan?

7 ACC: Yes, sir.

8 MJ: What was your unit at that time?

9 ACC: 377th Military Police Company, sir.

10 MJ: And what duties were you performing on the 3rd of December  
11 2003?

12 ACC: Prison guard, sir.

13 MJ: Alright. Did anything happen in regard to your interaction  
14 with an individual known as Habibullah or BT 412 in the vernacular?

15 ACC: Yes, sir.

16 MJ: Tell me what happened.

17 ACC: We attempted to enter his cell in order to feed him because  
18 he had been refusing to eat or drink anything.

19 MJ: And who was this gentleman? Was he a detainee of some  
20 sort?

21 ACC: Yes, sir.

22 MJ: Do you know why he was being detained at the time?



1 ACC: [Conferring with his counsel.] Terroristic [sic] acts  
2 against the U.S., sir, or believed terroristic [sic] acts.

3 MJ: Okay, so he was subject to an investigation as far as you  
4 knew at that time?

5 ACC: Yes, sir.

6 MJ: Okay. So you went in--what time of day was this that you  
7 interacted with him?

8 ACC: [Conferring with his counsel.] Approximately around  
9 9 o'clock, Afghan local time, sir.

10 MJ: Morning or evening?

11 ACC: Evening.

12 MJ: Alright. And why did you go into his cell? To try and  
13 help him eat?

14 ACC: Yes, sir.

15 MJ: He had refused to eat previously?

16 ACC: Yes, sir.

17 MJ: What was his physical condition at the time you first  
18 observed him on the 3rd of December when you went into his cell?

19 ACC: Initially, we couldn't get a positive physical condition  
20 because he--of his combative behavior towards the other guards, they  
21 had him placed with a bag over his head and he was in restraints.  
22 Once we pulled that bag off, at first he appeared to be okay. When  
23 we attempted to try and feed him, he refused to do so. I looked at



1 one of the other guards who was escorting me with--at the time, and I  
2 made the comment that, "This is a waste of time," and, "We need to  
3 just leave him." And as I was saying that, he launched over and spit  
4 on me. I became angry and I struck him, we placed the bag back over  
5 the top of his head, and we left the cell at that point.

6 MJ: Alright. Referring to the stipulation of fact I received  
7 in evidence as Prosecution Exhibit 2<sup>MS</sup>, are the photographs that are  
8 numbered 2a and 2b, is that the individual known as Habibullah?

9 ACC: Yes, sir.

10 MJ: And the photographs 2c and 2d, that would depict what, the  
11 door to his cell?

12 ACC: Yes, sir.

13 MJ: And 2e, f, g, h, and i, is that a fair depiction of how he  
14 was restrained at the time you observed him on the 3rd of December  
15 2002?

16 ACC: Yes, sir.

17 MJ: And was that a re-enactment?

18 ACC: Yes, sir.

19 MJ: And why--if you could, describe for me how was he  
20 restrained at the time as you recall it?

21 ACC: He had leg shackles on his ankles, he had a pair of short  
22 cuffs attached to a belly chain, and he had been attempting to kick  
23 out of his door so we had been ordered to place two extra belly



1 chains going to the ceiling to keep him from moving to kicking  
2 another door down because he had damaged one door earlier in that  
3 night, sir.

4 MJ: Could he stand or was he suspended above the ground?

5 ACC: No, he could easily stand on his own, sir.

6 MJ: And the belly chain ran from the handcuffs to a chain that  
7 was looped around his abdomen area?

8 ACC: Yes, sir.

9 MJ: And there's some kind of a black box between the handcuffs  
10 and where the chain is connected to the belly chain?

11 ACC: Yes, sir. The black box connects the handcuffs to the  
12 belly chain.

13 MJ: What is the purpose of the box?

14 ACC: It keeps their hands at their waist from being able to grab  
15 or undo ankle or--it restricts movement, sir.

16 MJ: So he was shackled in that fashion when you went into the  
17 room?

18 ACC: Yes, sir.

19 MJ: Who removed the hood from his head?

20 ACC: I think it was myself, sir.

21 MJ: And at that point you indicated that he spit on you?

22 ACC: Yes, sir, after attempting to feed him for a few minutes.

23 MJ: How did you attempt to feed him?



1 ACC: At first, we undid his belly chain. He could have used his  
2 hands, and he refused to hold on to the food, he would just let it  
3 fall out of his hands. We put him back into the handcuffs and we  
4 tried to put it into his mouth and he refused to do so, and after  
5 several minutes of doing so, then that's when we realized that he was  
6 just not going to eat or drink anything. Even when we tried to pour  
7 water into his mouth, he would just let it run out of his tongue and  
8 back out his mouth. He refused to accept any of it. That's when I  
9 looked at the other guard with me and I said a comment somewhere  
10 along the lines of, you know, "This is a waste of time, he's not  
11 going to do it," and while I was saying that is when he had spit on  
12 me.

13 MJ: And you actually--did you actually see him spit on you?

14 ACC: No, sir, I had----

15 MJ: You felt it?

16 ACC: I had my head turned and out of the corner of my eye I saw  
17 him lean forward towards me and I felt something hit my chest, I  
18 looked down, and there was obvious spit there on my chest.

19 MJ: As a result of that, what did you do?

20 ACC: I struck him on the leg with my knee with a strike that I  
21 had been taught by the military, but in that scenario it was the  
22 wrong action to take.



1 MJ: Where on his--which leg and where on his leg did you strike  
2 him with your knee?

3 ACC: It was his right leg, center of his--the outside of his  
4 thigh, sir.

5 MJ: With your left leg?

6 ACC: With my right leg, sir.

7 MJ: Your right knee?

8 ACC: Yes.

9 MJ: What is that called?

10 ACC: It's called the common Peroneal strike, sir.

11 MJ: Where were you taught that?

12 ACC: In few different unarmed self-defense courses, mostly while  
13 I was in Fort Dix, New Jersey, sir.

14 MJ: Was that pursuant to your duties as a military policeman or  
15 was that just soldier self-defense training?

16 DC: One second, sir [conferring with the accused].

17 ACC: Some of the NCOs of our unit had taught us that strike,  
18 sir, and I was under the assumption it was military-approved, but  
19 I've recently found out that it is not a military-approved strike.

20 MJ: Alright. The people in your unit that taught it to you  
21 were fellow military policeman?

22 ACC: Yes, sir.



1 MJ: And was this in conjunction with training you received?

2 Did you know at the time that you were at Fort Dix in training that  
3 you would be conducting duties at a confinement facility?

4 ACC: Eventually, sir. I don't remember at what point we found  
5 out we would be. When we initially got to Fort Dix, we did not know  
6 we were going to be standing in a confinement facility, sir.

7 MJ: Was the Peroneal strike that you were taught by other NCOs  
8 in your unit, was that in any--in conjunction with any military-  
9 police-related training, at least in your mind?

10 ACC: In my mind at that time, sir, yes, I thought it was. They  
11 went over several handcuffing and self-defense procedures that I had  
12 learned while going through MP school, and some of them had recently  
13 switched over from other MOSS to MP and they were fresher out of  
14 school, and they had taught me something I had not learned and I  
15 assumed that those were new ones that was [sic] approved and that  
16 they had learned through military police school, sir.

17 MJ: What is your profession as a civilian? Is it law-  
18 enforcement related?

19 ACC: No, sir. I am a quality inspections technician for an  
20 automotive plant.

21 MJ: And what military police training had you received? Had  
22 you gone through advanced individual training as a military  
23 policeman?



1 ACC: I took the reserve component course of that, which is one  
2 weekend a month for 6 months and then a 2-week certifying course. I  
3 didn't do the active duty military police course in order to get my  
4 military police certification, sir.

5 MJ: But you were assigned the, what is it, 31B MOS after  
6 completing that?

7 ACC: Yes, sir.

8 MJ: And when you were taught the Peroneal strike, what were  
9 you--when were you told it was appropriate to use?

10 ACC: In combative situations to gain positive control over a  
11 combative detainee or suspect, sir.

12 MJ: Alright. Turning your attention back to the  
13 3rd of December 2002, after the individual Habibullah spit on you or  
14 at least you thought that, did you think you were somehow at risk by  
15 his action?

16 ACC: No, sir.

17 MJ: Were you in fear of physical injury from Habibullah at the  
18 time after he spit on your?

19 ACC: No, sir.

20 MJ: Were you angry that he did that?

21 ACC: Yes, sir.

22 MJ: You were probably frustrated that, I suppose, he was  
23 resisting your efforts to feed him among other things?



1 ACC: Yes, sir.

2 MJ: Had you had any history of interaction with this individual  
3 before?

4 ACC: No, sir.

5 MJ: Aside from trying to feed him?

6 ACC: Yes, sir.

7 MJ: How many times do you remember striking him in the thigh  
8 with your knee on that occasion?

9 ACC: I am pretty sure it was two times, sir.

10 MJ: How much force did you use?

11 ACC: [Conferring with his counsel.] I hit him a little bit  
12 harder than it would--than we were taught because it doesn't take  
13 very much pressure to hit the nerve to numb the leg, sir. I did hit  
14 him a little bit harder than what was authorized for a correct method  
15 of that.

16 MJ: And how far apart were the blows as far as you recall, in  
17 time?

18 ACC: One right after another, sir.

19 MJ: And he was still restrained by the series of shackles  
20 you've already described?

21 ACC: Yes, sir.

22 MJ: So at the time, did you think in your own mind that you  
23 needed to strike him in that fashion to defend yourself?



1 ACC: No, sir.

2 MJ: Were there other individuals in the cell at the time with  
3 you as well?

4 ACC: Yes, sir.

5 MJ: Who would that have been?

6 ACC: There were two individuals, Specialist Morden and a  
7 Sergeant Boland, sir.

8 MJ: Both military police?

9 ACC: Yes, sir.

10 MJ: Was anybody armed at the time?

11 ACC: No, sir.

12 MJ: You don't carry weapons inside the facility?

13 ACC: No, sir.

14 MJ: Did Mr. Habibullah consent to your striking him with your  
15 knee on his thigh region?

16 ACC: No, sir.

17 MJ: Did he say anything or otherwise provoke you to strike him  
18 except for spitting on you?

19 ACC: No, sir.

20 MJ: Do you think you had any legal justification or excuse to  
21 strike him in the fashion you've described?

22 ACC: No, sir.

23 MJ: Have you discussed that with Captain Leone?



1 ACC: Yes, sir.

2 MJ: Have you discussed with him self-defense? <sup>WMS</sup>

3 ACC: Yes, sir.

4 MJ: [Examining DA PAM 27-9.] I want to read you a definition  
5 of self-defense just so you are aware of it. <sup>WMS</sup>

6 Self defense is a complete defense for the offense of  
7 assault consummated by battery, Specialist Cammack. For self defense  
8 to exist you must have had a reasonable belief that bodily harm was  
9 about to be inflicted on yourself and you must have actually believed  
10 that the force you used was necessary to prevent bodily harm.

11 In other words, the defense of self-defense has two parts. <sup>WMS</sup>  
12 First, you must have had a reasonable belief that physical harm was  
13 about to be inflicted on you. The test here is whether under the  
14 same facts and circumstances in this case any reasonably prudent  
15 person faced with the same situation would have believed that he  
16 would be immediately physically harmed. Because the test is  
17 objective, such matters of intoxication or emotional instability in  
18 yourself are not relevant. Secondly, you must have actually believed  
19 the amount of force you used was required to protect yourself. To  
20 determine whether your actual belief as to the amount of force which  
21 was necessary was appropriate, you have to look at the situation  
22 through your own eyes. In addition to those circumstances known by  
23 you at the time, your age, intelligence, emotional control are all



1 important factors in determining your actual belief about the amount  
2 of force required to protect yourself, and in protecting yourself you  
3 are not required to use the same amount or kind of force as the  
4 attacker and you cannot use force which is likely to produce death or  
5 grievous bodily harm.

6 "Grievous bodily harm" means serious bodily injury. It  
7 does not mean minor injuries, such as a black eye or bloody nose, but  
8 it does mean fractures, dislocated bones, deep cuts, torn members of  
9 the body, serious damage to internal organs, or other serious bodily  
10 injuries.

11 Do you understand that definition of self-defense as I've  
12 explained it to you, Specialist Cammack?

13 ACC: Yes, sir.

14 MJ: Do you think that defense applies to the situation with  
15 Habibullah on the 3rd of December 2002?

16 ACC: No, sir.

17 MJ: Were you in any fear whatsoever of imminent physical harm  
18 when you struck him?

19 ACC: No, sir.

20 MJ: How old were you at the time this happened?

21 ACC: 25, sir.

22 MJ: What education did you have at that time?

23 ACC: High school and 1 year of college, sir.



1 MJ: As well as military training you've described already?

2 ACC: Yes, sir.

3 MJ: And was your striking Habibullah with your knee on his  
4 thigh two times on the 3rd of December 2002 a deliberate act on your  
5 part?

6 ACC: Yes, sir.

7 MJ: It wasn't an accident?

8 ACC: No, sir.

9 MJ: Let's move on now to Specification 1 of Charge III, which  
10 alleges you made a certain statement to CID Special Agent Potter on  
11 the 4th of December 2002.

12 Tell me about that.

13 ACC: Sir, the same night we've just talked about, when I struck  
14 him on the leg, later we came in for a second attempt to try and feed  
15 him and we noticed his condition was not doing very good and we  
16 called for an ambulance. Once he left on that ambulance, we sent him  
17 out with a couple of escorted guards.

18 MJ: How soon was this after the knee strike? How much time had  
19 passed?

20 ACC: I am not real sure, sir.

21 MJ: We are talking hours or minutes?

22 ACC: Probably approximately an hour, maybe just a little bit  
23 less, sir.



1 MJ: And anyone else had anything to do with him in a physical  
2 fashion after the knee strikes you described that you----

3 ACC: No, sir. From the moment we left his cell when I struck  
4 him with my knee to when we had returned and noticed that his  
5 physical condition was not doing very good, that was the only times  
6 anybody else had stepped into the cell.

7 MJ: Alright. So what happened next?

8 ACC: Once the ambulance took him out, we sent out two escorted  
9 guards to make sure that--it's procedure with the facility, anytime  
10 somebody had to leave, two escorted [sic] guards went with him. As  
11 soon as the two escorted [sic] guards returned, we found out that he  
12 had been pronounced dead at the hospital. At that point, CID came in  
13 and started talking to everybody, saying if he had been talking to  
14 them. I got scared because I knew I was wrong when I struck him for  
15 spitting on me, and they put me in there and I panicked, I got  
16 scared, and I lied. I told him I had not struck him when he spit on  
17 me, sir.

18 MJ: Who did you think Special Agent Flores--Special Agent  
19 Potter was? Was he the one that asked you the questions?

20 ACC: He was the one typing them, sir. Special Agent Flores and  
21 Special Agent Potter was [sic] asking me the questions, sir.

22 MJ: And this was on the 4th of December?

23 ACC: Yes, sir.



1 MJ: So this is what, the--what time of day is this now after  
2 the 3rd of December? Was this early in the morning of the 4th?

3 ACC: Yes, sir.

4 MJ: You indicated that your initial interaction with  
5 Habibullah, when the knee strikes occurred, was some time around 9 in  
6 the evening of 3rd December 2002, is that right?

7 ACC: That's correct, sir.

8 MJ: So we are early the next morning after it was determined  
9 Habibullah had died, CID came over and started questioning the--  
10 yourself and other guards?

11 ACC: Yes, sir.

12 MJ: Where did they question you?

13 ACC: They had an office approximately about 400 or 500 meters  
14 from the facility, sir.

15 MJ: And how did you get to their office?

16 ACC: They walked with me, escorted me from the facility down to  
17 their office, sir.

18 MJ: Were you under apprehension at that time?

19 ACC: No, sir.

20 MJ: Did they read you your rights at any point?

21 ACC: Yes, sir.

22 MJ: Before they questioned you on the 4th of December?

23 ACC: Yes, sir.



1 MJ: What did they advise you they suspected you of?

2 ACC: [Conferring with his counsel.] I don't remember at that  
3 time, sir.

4 MJ: Did you understand your rights at that time?

5 ACC: Yes, sir, I did.

6 MJ: Did you waive your rights and agree to talk to them?

7 ACC: Yes, sir.

8 MJ: And what specifically did you tell them about whether or  
9 not you struck the individual identified as Habibullah?

10 ACC: I panicked and I said that I had not struck him, sir.

11 MJ: Did they ask you specifically whether you had struck him?

12 ACC: Yes, they did, sir.

13 MJ: And is Attachment 1 to Prosecution Exhibit 1 in fact the  
14 statement you made on the 4th of December 2002?

15 ACC: Yes, sir.

16 MJ: Is that your signature on page 4 of that document?

17 ACC: Yes, sir, it is.

18 MJ: And did Special Agent Potter swear you to that statement  
19 before you signed it?

20 ACC: Yes, sir.

21 MJ: I presume those are your initials on each of the four pages  
22 as well?

23 ACC: Yes, sir.



1 MJ: Did you read the statement through before you signed it?

2 ACC: Yes, sir.

3 MJ: Did you think at the time CID Agent Potter was conducting  
4 an official investigation?

5 ACC: Yes, sir.

6 MJ: Why did--what specifically did he tell you he was  
7 investigating when he spoke to you?

8 ACC: He just said he was looking into any wrongdoing and he  
9 specified at the time that we were not actual suspects but we were  
10 just needed for information, sir.

11 MJ: But he did read you your rights before he questioned you on  
12 the 4th?

13 ACC: Yes, sir.

14 MJ: Now, on page 3 of your 4 December 2002 statement there's a  
15 question, "After he spit on you, did you strike him in any way?"  
16 Answer, "No, the only time we would put our hands on him is when we  
17 tried to pick him up, so we grabbed his shoulders."

18 Did you make that statement?

19 ACC: Yes, I did, sir.

20 MJ: Was that statement true or false?

21 ACC: The statement is false, sir.

22 MJ: Was it totally false <sup>and</sup> the fact you hadn't stuck him?

23 ACC: Yes, I had struck him, sir.



1 MJ: Did you know that to be a false statement when you made  
2 that statement?

3 ACC: Yes, sir.

4 MJ: So when you signed your name after being sworn, you  
5 understood that was an incorrect statement of fact contained within  
6 your statement?

7 ACC: Yes, sir.

8 MJ: What was your intent when you made that statement?

9 ACC: [Conferring with his counsel.] I didn't want them to know  
10 that I hit him, sir. I was afraid that they would try to associate  
11 me with his death and I got scared, sir.

12 MJ: But did you want Special Agent Potter and Special Agent  
13 Flores to believe that you had not struck Habibullah?

14 ACC: Yes, sir.

15 MJ: Let's talk about Specification 2 of Charge III.

16 Did you make a second statement to CID on the  
17 16th of December 2002?

18 ACC: Yes, sir.

19 MJ: Who did you make the second statement to?

20 ACC: Special Agent Flores, sir.

21 MJ: Alright. What's been labeled Attachment 2 to Prosecution  
22 Exhibit 1, does that look like the three-page statement you made to  
23 CID on the 16th of December 2002?



1 ACC: Yes, sir.

2 MJ: Is that your initials that appear on each of the three  
3 pages?

4 ACC: Yes, sir.

5 MJ: Is that your signature that appears on page 3?

6 ACC: Yes, sir.

7 MJ: And did Special Agent Flores swear you to that statement  
8 before you signed it?

9 ACC: Yes, sir.

10 MJ: What did you tell Special Agent Flores on the  
11 16th of December?

12 ACC: That I had not struck him or that I had not seen anybody  
13 else strike him in any way, sir.

14 MJ: Did he read you your rights before he questioned you on the  
15 16th of December 2002?

16 ACC: Yes, sir.

17 MJ: Is that the rights advice form you signed that's also  
18 attached to Prosecution Exhibit 1?

19 ACC: Yes, sir.

20 MJ: So he advised you that you were suspected of aggravated  
21 assault on Habibullah?

22 ACC: Yes, sir.



1 MJ: Did he tell you he was conducting an investigation before  
2 he questioned you?

3 ACC: Yes, sir.

4 MJ: What did he tell you he was investigating?

5 ACC: He said that he was investigating into mistreatment leading  
6 to the death of Habibullah, sir.

7 MJ: What specifically did he ask you about whether or not you  
8 struck Habibullah on the 16th of December 2002?

9 ACC: [Conferring with his counsel.] Can you restate that, sir?

10 MJ: What did he ask you? What was he specifically asking you  
11 about when he questioned you?

12 ACC: [Conferring with his counsel.] He specifically asked me  
13 had I struck him or had I seen anybody else strike him in any way,  
14 sir.

15 MJ: And what did you tell him in response to that?

16 ACC: I told him I had not seen anybody strike him and that I had  
17 not done so, sir.

18 MJ: I am looking at page 1 of your 16 December 2002 statement.  
19 The first question, "Did you ever strike either BT-412 or BT-421?"  
20 Answer, "No." Question, "Did you see anyone else strike either one  
21 of them?" Answer, "No, I didn't."

22 Were those the actual answers you gave to those two  
23 questions?



1 ACC: Yes, sir.

2 MJ: And who was BT-412?

3 ACC: Habibullah, sir.

4 MJ: Is that the--why were they assigned those numbers?

5 ACC: When the facility was first started, BT stood for Bagram  
6 Temporary because we were a temporary holding facility. The first  
7 prisoner that came in was assigned BT 1 and the next person was BT 2  
8 and each number went up--or, each person went up one number from that  
9 point on, sir.

10 MJ: Now, when you made the two statements--let me ask you this.  
11 Did Special Agent Flores confront you with any new evidence before  
12 you made the second statement?

13 ACC: No, sir, he didn't.

14 MJ: At the time you told him you had never struck nor have you  
15 ever seen any other person strike Habibullah, did you think those  
16 statements were false?

17 ACC: Yes, sir.

18 MJ: Were they false statements?

19 ACC: Yes, sir.

20 MJ: Had you ever seen anyone else strike Habibullah?

21 ACC: [Conferring with his counsel.] After he had spit on me,  
22 sir, and I delivered my strikes, I am pretty sure one of the other  
23 guards grabbed him by the shirt because he had seen me get spit on as



1 well. I think that was happening at the same time that I had struck  
2 him. I left that part out also, sir.

3 MJ: By grabbing him by the collar, was that--do you think that  
4 was assault?

5 ACC: Yes, sir. I should have at least told them about that part  
6 also, sir.

7 MJ: So were those two statements totally false?

8 ACC: Yes, sir.

9 MJ: And why did you make those two statements to Special Agent  
10 Flores on the 16th of December of 2002?

11 ACC: I was scared, sir. I have no excuse other than that.

12 MJ: But it was your intent to tell him the truth or to make him  
13 believe something other than the truth?

14 ACC: Yeah, my intent was to make him believe something other  
15 than the truth, sir.

16 MJ: So you were trying to deceive him about what the truth  
17 really was?

18 ACC: Yes, sir.

19 MJ: Did anyone force you to make either of the two statements,  
20 either on the 4th of December 2002 or the 16th of December 2002?

21 ACC: No, sir.

22 MJ: Were those voluntary statements that you made to CID?

23 ACC: Yes, sir, they were.



1 MJ: After being advised of your rights?

2 ACC: Yes, sir.

3 MJ: Did either Special Agent Potter or Special Agent Flores  
4 make any threats in order to get you to make the two statements, on  
5 the 4th and the 16th of December of 2002?

6 ACC: No, sir, they did not.

7 MJ: Did they use any physical force to get you to make those  
8 two statements on the 4th and the 16th of December of 2002?

9 ACC: No, sir. They both treated me very nicely.

10 MJ: Specialist Cammack, we are going to go through the elements  
11 one more time.

12 With regard to The Specification of Charge I, do you admit  
13 that at or near Bagram Airfield, Afghanistan, on or about 3 December  
14 2002, you did bodily harm to Habibullah, also known as BT 412,  
15 BT-412, or PUC 412? Do you admit that?

16 ACC: Yes, sir.

17 MJ: Do you admit you did so by striking Habibullah at least  
18 once on the leg with your knee?

19 ACC: Yes, sir.

20 MJ: And do you admit that the bodily harm was done with  
21 unlawful force or violence?

22 ACC: Yes, sir.



1 MJ: As to Specification 1 of Charge III, do you admit that at  
2 or near Bagram Airfield, Afghanistan, on or about 4 December 2002 you  
3 made to Special Agent Richard P. Potter, U.S. Army CID, a certain  
4 official statement, that is that you had not struck nor were you  
5 aware of any other persons striking Habibullah, also known as BT 412,  
6 BT-412, or PUC 412? Do you admit that?

7 ACC: Yes, sir.

8 MJ: Do you admit that such statement was totally false?

9 ACC: Yes, sir.

10 MJ: Do you admit that you knew the statements to be false at  
11 the time you made them?

12 ACC: Yes, sir.

13 MJ: And do you admit that the false statement was made with the  
14 intent to deceive?

15 ACC: Yes, sir.

16 MJ: As to Specification 2 of Charge III, do you admit that at  
17 or near Bagram Airfield, Afghanistan, on or about 16 December 2002  
18 you made to Special Agent Daniel Flores III, U.S. Army CID, a certain  
19 official statement, that is that you had never struck nor had you  
20 ever seen any other persons strike Habibullah, also known as BT 412,  
21 BT-412, or PUC 412? Do you admit that?

22 ACC: Yes, sir.

23 MJ: Do you admit that such statement was totally false?



1 ACC: Yes, sir.

2 MJ: Do you admit that you knew the statement to be false at the  
3 time you made it?

4 ACC: Yes, sir.

5 MJ: And do you admit that the false statement was made with the  
6 intent to deceive?

7 ACC: Yes, sir.

8 MJ: At the time you made the statement to Special Agent Potter  
9 and Special Agent Daniel Flores, who did you believe them to be?

10 ACC: CID agents, sir.

11 MJ: Had they identified themselves to you?

12 ACC: Yes, sir.

13 MJ: Does either side believe any further inquiry is required?

14 TC: No, Your Honor.

15 DC: No, sir.

16 MJ: Trial Counsel, what do you calculate to be the maximum  
17 punishment authorized in this case based solely on the accused's guilty  
18 plea?

19 TC: Your Honor, given the offenses and the jurisdiction of this  
20 court, we believe it to be 1-year confinement, two-thirds' forfeitures  
21 of pay and allowances, bad-conduct discharge, and a reduction E1.

22 MJ: Do you believe a fine is appropriate?

23 TC: No, Your Honor.

MJ: Defiant, do you agree?

DC: Yes, Your Honor.